

Environmental Audit

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1. TERMINOLOGY

The term “auditor” was used in the 16th century and the term “auditoria” (audit) in the 17th century.¹ The expression comes from the Latin *auditor, auditoris* – listener.

In Portuguese: “*Auditoria* – s.f. (*auditor* + *ia*) 1. Cargo de auditor. 2. Casa ou tribunal onde o auditor desempenha as suas funções. 3. Função de auditor junto às empresas comerciais”.² Auditoria, segundo a contabilidade, “é o exame analítico e pericial que segue o desenvolvimento das operações contábeis, desde o início até o balanço”.³ (1. Post of an auditor. 2. House or court where the auditor executes his/her functions. 3. Position of an auditor in commercial firms”. Audit, in accounting terms, “is the analytical and expert examination following the development of accounting operations, from its beginning to the balance sheet”.)

In English: “1. An examination of records or accounts to check their accuracy. 2. An adjustment or correction of accounts. 3. An examined and verified account. 4. ‘Rare’ – an audience or hearing”.⁴

In French: “*Audit* – de l’anglais *internal auditor* – dans une entreprise, personne dont la fonction est de s’assurer que les directives de la direction sont suivies et que le patrimoine de l’entreprise est préservé”.⁵

2. CONCEPT OF ENVIRONMENTAL AUDIT

Environmental audit is the procedure of regular or occasional examination and assessment of a company’s behavior in relation to the environment.

The environmental audit can be either public or private, as it may be determined and/or carried out by the Public Power or by the company itself.

1. Antonio G. da Cunha, Dicionário Etimológico da Língua Portuguesa, p. 83.

2. Dicionário Brasileiro da Língua Portuguesa, Mirador Internacional, p. 222.

3. Aurélio Buarque de Holanda Ferreira, Novo Dicionário da Língua Portuguesa, p. 160.

4. The American Heritage Dictionary of the English Language, p. 86.

3. ENVIRONMENTAL AUDIT AND SUSTAINABLE DEVELOPMENT

Private environmental audit has been driven by “the awareness of advantages over the competition, which can confer to certain companies the adoption of measures attesting their “ecological awareness” within their competition strategy, new products, new technologies and new management systems”.⁶In addition, nowadays, in the occasions of mergers or selling of companies, including state ones, it is good practice to perform an environmental audit in order to establish any possible environmental asset. “Some of the major transnational corporations – at least partly as a response to Bhopal shock – have now started to carry out regular environmental audits to ensure that long term regulation requirements and environmental responsibilities (such as legal obligations related to waste disposal) are accurately reflected in their subsidiaries’ balance sheets”.⁷

In the North American environmental legal system, a bank that has financed companies involved in soil degradation – having the financing a mortgage security – in the case of borrower insolvency, can become the owner of the contaminated soil, thus, also becoming responsible for the pollution.⁸ In this case, it is appropriate to verify, through an environmental audit, the activities of the borrowing company.

Directive 1.836/93 of the European Economic Community defines environmental audit as “the management tool including systematic, documented, regular and objective assessment of the working of the management system organization, as well as of the environment protection processes”.

Different legislations will provide other characteristics related to environmental audit, notably, the persons who are qualified to carry it out and their degree of publicity.

Sustainable or sustained development is that which meets the needs of present and future generations. The novelty in this concept is the introduction of future generations, not only as stakeholders, but also as entitled to rights in relation to development.

The 1988 Federal Constitution introduced this concept in art. 225, *caput*.

Until the advent of the concept of sustainable development, economic planning, even when following an environmental trend, was limited to planning the schedule – short, medium and long term – aiming at the present generation, that is, the generation that would immediately enjoy the planned development.

In order for future generations to find usable environmental resources which have not been exhausted, corrupted or polluted by present generations, new environmental control mechanisms were designed and are being introduced in legislations.

“The adoption of new types of certificates and of information communication to third parties, as well as the adoption, within internal management, of new management information systems are inevitable and indispensable for companies which wish to adhere to the principles of sustainable development or of durable development. The administration councils, the managers, stakeholders and regulatory authorities wish to obtain this information, which they require to be trustworthy and relevant. Company directors, who are sensible to innovation, will want to take part in the design of new types of information and of information communication, both for the decision making process and for the accounts review. These directors will insist that the profitability aspect of information and information communication systems, as well as associated systems, should be duly taken into consideration.”⁹

6. Benoît Boivin, “La verification environnementale”, in *Développements Récents en Droit de l’Environnement*, p. 81. 1992.

7. Peter H. Sand, *Lesson Learned in Global Environmental Governance*, p. 33. 1990

8. Patrick Thieffry, “L’opportunité d’une responsabilité communautaire du pollueur — Les distortions entre les États-membres et les enseignements de l’expérience américaine”, *Revue Internationale de Droit Comparé* 1103-123, 1994.

9. Benoît Boivin, *ob. cit.*

The Entrepreneurial Chart for Sustainable Development of the International Trade Chamber, published during the II Industry World Conference on Environmental Management (WICEM II, Paris, 1991), in its Principle 1 recognizes that environmental management within the company is a determinant factor of sustainable development and points out another fundamental principle – “Conformity to regulations and information: inspect performance of actions on the environment, regularly carry out environmental audits and assess conformity to company internal requirements, to legal requirements and to these principles; as well as, regularly provide relevant information to the administration council, shareholders, staff, authorities and the general public”.

4. SCOPE OF AUDIT

In the state of Rio de Janeiro the following facilities should carry out yearly environmental audits: “I – refineries, oleoducts, petroleum or petroleum derivative terminals; II – port facilities; III – facilities for storage of toxic and dangerous substances; IV – facilities for the processing and for the final disposal of toxic or dangerous residues; V – facilities for electricity generation using thermal or radioactive sources; VI – facilities for treatment and systems for the final disposal of household effluent; VII – petrochemical and steel industries; VIII – chemical industries and metal works” (art. 5º Law 1.898, of 26th November 1991).

"In order for future generations to find usable environmental resources which have not been exhausted, corrupted or polluted by present generations, new environmental control mechanisms were designed and are being introduced in legislations."

The sole paragraph of art. 5º allows the State Commission for Environmental Control (Comissão Estadual de Controle Ambiental-CECA), as proposed by the State Environmental Foundation (Fundação Estadual de Meio Ambiente-FEEMA), “excuses the environmental audit in facilities for final disposal of household effluent, in chemical industries and metal works”.

The system in the state of Rio de Janeiro is combined with regards to obligation, since only the activities in items I to V are required to carry out environmental audits in a compulsory manner, and the environmental body is not allowed to excuse such requirement. With regards to the other activities licensed by the environmental body, the environmental audit will be voluntary, that is, it is the company’s choice.

The state of Espírito Santo, through Law 4.802, of 2nd August 1993, published in the State Gazette of 16th August 1993, has all the same requirements (items I to VII) comprised in the Law of Rio de Janeiro state and an extra three requirements: “IX – cellulose and paper industries; X – hospital waste; and XI – mining”.

5. CONTENTS OF ENVIRONMENTAL AUDIT

5.1. BRAZILIAN LAW

Law 1.898/91 of Rio de Janeiro state establishes that an environmental audit, through its studies and assessments, shall determine: “I – effective or potential levels of pollution, environmental degradation caused by activities of individual or legal entities; II – operational and maintenance conditions of equipment and systems of pollution control; III – actions to be taken to restore the environment and protect human health; IV – capacitation of people responsible for the operation and maintenance of systems, routines, environmental protection facilities and equipments, as well as those related to workers health” (art. 1º).

The Law in Rio de Janeiro determines that both the pollution found and the potential one are considered. Besides pollution it encompasses environmental degradation, including the fauna and flora. Therefore, environmental resources used by a company (such as, for example, paper and cellulose factories) will be taken into consideration, not only the operational conditions of pollution control equipments and systems, but also the maintenance conditions of such equipments and systems.



The Law of Rio de Janeiro includes measures of making amends to the environment and to human health, regardless of any judicial action requiring this reparation. The environmental audit will observe what is effectively done to remedy any harms, be them inevitable or not, caused to human health and to the environment, observing the principle of civil liability regardless of guilt.

The environmental audit in the states of Rio de Janeiro, Espírito Santo and Paraná mentioned below, is not limited to the examination of preventive measures against harm specifically to the environment, but with regards to human health it will contemplate systems, routines, facilities and equipments related to workers health and safety. The hypothesis of accidents demonstrates the rigidity of the professional *milieu* not dissociated from the internal and external environment of the company.

Law 4.802, of Espírito Santo, of 2nd August 1993, pursues the same objectives of the Rio de Janeiro Law, adding purposes that should be highlighted (art. 2^o): "I - to estimate the quality of the performance of environmental management functions, of systems and equipments used by the company or entity... IV - verify the administration of guidelines and standards of the company or entity, aiming at the preservation of the environment and of life; ... VI - propose solutions which allow to minimize the probability of operators exposure and public exposure to risks originating from hypothetic (but possible) accidents, as well as of continuous emissions which could directly or indirectly affect their health or safety".

Law 11.520/2000 - Rio Grande do Sul State Environmental Code, in its chapter XII - Environmental Audits, in its art. 98, provides that among the aspects to be included in the environmental audit, a comparison should be made between the environmental impacts present in the EIA/RIMA and the ones actually observed, and that a schedule should be presented with corrective and preventive actions.

Law 13.448 of 11th January 2002, of Paraná state, determines the assessment of accident risks and contingency plans for the evacuation and protection of workers and of the population in the influenced area; when necessary; the assessment of the effects of pollutants over workers and neighboring population, as well as the analysis of available alternatives, processes, systems, treatment and monitoring for reducing the level of pollutant emissions.

5.2. COMPARED LAW

Resolution 1.836/93 of the European Community - EC (now European Union),¹⁰ of 29th June 1993, proposes as themes to be included in an environmental audit: 1) assessment, control and reduction of impacts of the activity in question over different environment sectors; 2) energy management, economy and selection; 3) raw materials management, saving, selection and transportation; water management and saving; 4) waste reduction, recycling, reutilization, transportation and elimination; 5) assessment, control and reduction of noises inside and outside the facilities; 6) selection of new production methods and modification of existing ones; 7) product planning (concept, packaging, transportation, utilization and elimination); 8) environmental behavior and practices of contractors, subcontractors and suppliers; 9) preventing and limiting environmental accidents; 10) emergency processes in case of environmental accidents; 11) information and capacitation of staff regarding environmental issues; 12) external information regarding environmental issues.

The EC norm disposes in its Annex I that a list should be presented with "legislative, regulatory dispositions and others related to environmental policies". To this end, it is necessary a legal assessment of the company's behavior, however, within an interdisciplinary approach.

10. Published in the European Economic Community Journal.

In the United States, the environmental audit encompasses, among other subjects: “financial planning of investments in the environmental segment; financial effectiveness of environmental regulations; awareness and motivation of staff in the environmental segment; company mergers and acquisitions; anticipation in relation to legislative and regulatory evolutions”.¹¹ Lepage Jessua points out that companies used to use audits as a preventive measure against legal actions.

The British Standard BS 7.750/92 recommends that “the procedures should include, when appropriate, considerations about: a) controlled and uncontrolled emissions in the atmosphere; b) controlled and uncontrolled water discharge; c) solid and other waste; d) soil contamination; e) usage of soil, water, fuel and energy and other natural resources; f) sound, smell, dust, vibration and visual impacts; g) effects over specific parts of the environment and ecosystems”.

The mentioned norm also provides that the procedures should include effects originating from, or susceptible to originate from: a) normal operating conditions; b) abnormal operating conditions; c) incidents, accidents and potential emergency situations; d) past, current and planned activities.

The environmental audit should also analyze environmental policies and the environmental program, when the company has explicitly elaborated these two documents. The lack of such documents or their being in preparation does not hinder the execution of the audit. It is opportune to point out the concepts of these terms in the Directive 1.836/93-EC: the “Environmental Policy” portrays the global goals and principles of action of a company concerning the environment, including conformity to all relevant regulatory dispositions; and “Environmental Program” is the description of company goals and specific activities to ensure better environmental protection in a certain industrial facility, including the description of measures taken or forecast in order to enforce these goals and, when appropriate, deadlines for the application of such measures.

6. ENVIRONMENTAL IMPACT STUDY (ESTUDO DE IMPACTO AMBIENTAL-EIA) AND ENVIRONMENTAL AUDIT

In Brazil, there are two types of Environmental Impact Studies (EIA): one previous to the installation of the activity or building works and one required before the authorization and/or the working or operating license.

The environmental audit will always take place after the Previous Environmental Impact Study (Estudo Prévio de Impacto Ambiental-EPIA) constitutionally required for the beginning of building works or activity potentially causing significant degradation of the environment. (art. 225, § 1º, IV, of FC). The audit should assess whether the guidelines in the study are being observed and whether environmental control methods are effective.

However, the Environmental Impact Studies (EIA) for granting a new authorization and/or license for operation is different. In this case the environmental audit may be carried out before the EIA/RIMA and guide some of their considerations.

The two environmental-legal institutes are similar in the sense that both will be carried out at the company and/or entrepreneur’s expenses. The independence of the auditors is a topic which will be addressed later on.

7. LICENSING AND ENVIRONMENTAL AUDIT

In the case of an Installation License and/or Installation Authorization, the audit stage will come after the licensing. However, for granting an Operation License and/or Operation Authorization, the environmental audit can happen before this stage, and it will also be of great importance when the licensing is renewed.

Renewing the license has become an administrative activity without the engagement of the interested individual or legal entity. The environmental audit will avoid that this procedure becomes a mere routine and will be able to add a different dimension to the intervention of the public environmental body.

In the case of an Installation License and/or Installation Authorization, the audit carried out *a posteriori* should verify the observance to the conditions in the licensing.

11. Corinne Lepage Jessua, *Audit d’Environnement*, p. 288.



8. MONITORING AND ENVIRONMENTAL AUDIT

Monitoring is a procedure for measuring effluent emissions and disposal, being registered continually or in predetermined periods. Elaborating the register is indispensable for the company's own information and for the environmental public body, as well as for the process of auditing.

Environmental monitoring can be carried out by the company itself, in a self-regulatory action, or by the environmental public body. The fact that the company or entrepreneur carries out self-monitoring does not eliminate the environmental public body's duty to verify the correctness of the data originated from this monitoring.

The environmental audit cannot do without the environmental monitoring, because without its data it becomes so difficult to carry out a proper environmental assessment that the audit becomes an environmental inspection, that is, it will assess current conditions without including preceding periods. The environmental audit aims to analyze the company's activities in a determined preceding period of time, and if there are no precise and broad data, this assessment is hindered. Therefore, a company that does not carry out regular self-monitoring, is not able to present as valid an integral environmental audit.

9. INSPECTION AND ENVIRONMENTAL AUDIT

Environmental inspection is characterized by its non-periodic nature and by the fact that it is not yet subject to a linking schedule for the environmental public body. Without the inspection, the Public Authority is not able to follow up and verify the licensing.

Inspection will use data from the environmental monitoring, however, when these are not available, the inspection itself should collect the data even if focusing on the current reality of the environment, that is, at the time when the inspection was carried out.

The environmental audit, however, will depend on examination and assessment of the data collected and documented along time, that is, including a certain preceding period as well as the current reality of the environment.

It is worth highlighting the regulation in the state of Rio de Janeiro regarding environmental audits. In its art. 5^o declares that "the presentation of the environmental audit results does not imply suspension of any inspecting action nor of the obligations of environmental control of the activities." Therefore, the audit does not exempt the Public Power from inspecting, and if it is observed that its omission or lack of inspection have contributed to creating a dangerous situation for human, vegetal or animal safety, or contributed to irreversible harm to the fauna, flora or the environment, civil servants will respond, even criminally, as stated in art. 15, § 2^o, Law 6.938/81, amended by Law 7.804/89.

10. THE PUBLIC ENVIRONMENTAL BODY AND THE AUDIT

Not all environmental audits will be compulsory because of legislation or determined by the public environmental body. In the core of the audit there is great freedom with regards to its execution, however, there are other legal systems which attribute a compulsory nature to some audits.

In the case of compulsory audits, similarly to the Environmental Impact Studies (EIA), the public environmental body can elaborate a "term of reference" including guidelines to be followed in specific cases or in general.

Optional or voluntary audits are not subject to public environmental body intervention. They are valid for themselves, not depending on administrative approval. However, these audits, especially when related to the benefits of quality labels or certification, should conform to legislation requirements.

11. THE ENVIRONMENTAL AUDITOR

11.1 CONCEPT OF AUDITOR

The Directive 1.836/93-EC conceptualize the auditor as “the person or team, belonging or not to the company cadres, acting in the name of the company’s higher body, having, individually or collectively the competences referred to in topic C of Annex II and sufficiently independent in relation to the activities inspected in order to be able to judge objectively”.

11.2 AUDITOR’S CAPACITATION

The Directive 1.836/93-EC, in Annex II, C, affirms: “Environmental audits should be carried out by persons or groups of persons with adequate knowledge on the sectors and areas of the audit, including knowledge and experience on environmental management and on relevant technical and regulatory environmental issues, as well as the necessary qualification and specific competences for the execution of audits, so that they can achieve the aimed objectives. The resources and time dedicated to the audit should be adequate to the scope and objectives of the audit.”.

11.3 THE INDEPENDENCE OF AUDITORS

11.3.1 THE INDEPENDENCE OF AUDITORS IN PUBLIC ENVIRONMENTAL AUDITS¹²

Law 1.898/91 of the state of Rio de Janeiro provides:

“Art. 4º. - Whenever it is judged convenient to ascertain the trustworthiness of an audit, governmental bodies can determine that the audit be carried out by independent technical teams.

“§ 1º. In the cases referred to in the *caput* of this article, audits should be carried out preferably by non-profit institutions, as long as one can ensure the technical capacitation, conditions for meeting deadlines and global values compatible to those proposed by other technical teams or legal entities.”

Law 11.520/2000 - Rio Grande do Sul State Environmental Code, in its chapter XII - Environmental Audits, with eleven articles, provides:

Art.90. “The environmental audit shall be carried out by a multidisciplinary qualified team, registered with the competent environmental body, not dependent directly or indirectly of the contractor, who will be technically responsible for the results presented.”.

It is not easy for auditors to conquer independence, even within public environmental audits, since they are paid by the individual or legal entity being audited. Since impartiality is a fundamental factor for the trustworthiness of the procedure, it seems that, similarly to EIA, a Public Audience is necessary. Therefore, the public, including environmental associations and other non-governmental organizations, will be able to inspect more closely the whole procedure of public environmental audit.

The Directive 1.836/93-CE, in Annex II, C, states: “Auditors should be sufficiently independent in relation to the activities they examine, in order to act in an objective and impartial manner.” It is worth highlighting that the European Economic Community Directive created an external independent auditor, called environmental inspector. This auditor is subject to a supranational accreditation regime, valid in all EC countries (currently European Union).

"The environmental audit cannot do without the environmental monitoring, because without its data it becomes so difficult to carry out a proper environmental assessment that the audit becomes an environmental inspection, that is, it will assess current conditions without including preceding periods."

12. V. Independent biannual audits and Law 9.966 of 28th April 2000 in item 11.1.5 of Sole Chapter of Tit. XII.V. Resolution 306 of 5th July 2002 (Federal Gazette dated 19th July 2002, section, 1, p.75)

11.3.2. THE INDEPENDENCE OF AUDITORS IN PRIVATE ENVIRONMENTAL AUDITS

As previously mentioned, the private environmental audit is the one carried out voluntarily by the audited individual or legal entity. As included in the concept of auditor within the Directive of the former European Community (currently European Union), an auditor can be a person belonging to the company cadres.

Corinne Lepage Jessua points out that “if the environmental auditor is part of the company, he/she will find the difficulties inherent to any internal auditor, and even greater difficulties in the sense that the environment still is, in the majority of cases, the company’s “poor relative”. In such conditions, the internal environmental auditor runs the risk of not having all the independence or power necessary to perform his/her mission in a satisfactory manner. Indeed, in a hierarchical plan, the environmental auditor should not be subordinated to another director or superior out of an environmental direction or audit.”¹³

In order for the environmental audit to be effective, the EC recommended (Annex II, C) that “the company’s administration, in its higher level, should support the audit”.

The auditing regulation in Rio de Janeiro states in its art. 4^o:

“The environmental audit may be carried out by the company’s own team, by a contracted company, be it private or not, profit-making or not, as well as by autonomous auditors.

“Sole paragraph. The company that carries out its own Environmental Audit cannot make up its team with technicians responsible for the audit operation.”

11.4 AUDITORS’ LIABILITY

Environmental civil liability is objective and independent of guilt, as per art. 14, Law 6.938/81. This is the entrepreneur or the company’s responsibility, of which they cannot be exempt because they were subject to an audit.

The audited entrepreneur or company, however, can claim against independent auditors who have ill advised them with negligence, inability, imprudence and/or fraud. Independent auditors’ liability fits within the system of subjective responsibility, or responsibility with guilt, therefore it is up to the authors of the legal proceedings (audited entrepreneur or company) the onus of proving them guilty.

In the private environmental audit, carried out by internal auditors, it does not seem very likely that the entrepreneur or the company should claim against their staff, unless in cases of fraud, since there is a subordination link, irrefutable in the hierarchical scale of any company.

12. REGULARITY OF ENVIRONMENTAL AUDIT

The private or public environmental audit should be repeated in determined time intervals. It is not generally sporadic, happening only in the event of environmental catastrophes, even if an extraordinary audit may be carried out.

The time routine of an audit is linked to the idea of following up proposed measures, making this procedure more integrated, not isolated within a company’s production chain.

Law 1.898/91 of Rio de Janeiro, in its art. 5^o, *caput*, establishes, for the activities prescribed, compulsory annual audiance. Law 848, of 10th April 1992, of São Sebastião (state of São Paulo), establishes environmental audits every two years (art. 3^o, § 7^o). The municipal Law in Vitória (Law 3.968, of 15th September 1993) establishes a maximum interval of two years between audits, and the Law 4.802/93, of Espírito Santo state, establishes a limit of three years (the law of the Vitória municipality is entirely within the municipal constitutional autonomy). Law 13.448 of 11th January 2002, of the state of Paraná provides that compulsory environmental audits should have maximum intervals of 4 years (art. 4^o).

Private environmental audits shall be subject to the company’s environmental policy and, notably, to the expiry dates of quality certificates conferred to them.

13. Ob. cit., p. 147.

13. ENVIRONMENTAL AUDIT DOCUMENTATION

British Standard BS 7.750/92 suggests in item 4.4, “Effects over the environment”:

“4.4.1 Report of legal, regulatory and other specifications: companies should create and maintain procedures to register all legal, regulatory and other specifications relevant to the environmental aspects of its activities, products and services.

“4.4.2 Communications: companies should create and maintain procedures for receiving, documentation and response of communications (internal and external) of relevant stakeholders relating to environmental effects and their control.

“4.4.3 Assessment and register of effects over the environment: companies should create and maintain procedures to examine and assess both direct and indirect effects over the environment of their activities, products and services, as well as compile a register of those effects identified as significant.”

14. PUBLICITY AND CONFIDENTIALITY OF THE ENVIRONMENTAL AUDIT

The dissemination of environmental audit data to the public may involve “risks of distortion by a publicity system which is very demanding or of a misconception with regards to auditing. The preoccupation with communication and marketing should not overcome a serious and objective analysis of environmental performance making it omit deficiencies and offering a deformed image because it is overly optimistic. Also, as validly pointed out by Corinne Lepage Jessua,¹⁴ one should not omit real risks under the pretext that if they appear in the audit it would denounce the company’s president or people responsible.”

It is worth highlighting that in European Union countries, as in other countries, including Brazil, the confidential environmental audit is allowed and valued. The company may voluntarily utilize this assessment instrument for self-orientation, having the right to maintain secrecy with regards to the data in the audit. I emphasize that this confidentiality includes the auditing procedures, and not the data comprised in the self-monitoring regularly carried out by the company.

The directive 1.836/93-EC only provided for voluntary environmental audits. However, companies adhering to the eco-management system will include “providing information to the public concerning the matter” (art. 1º, § 1º). Therefore, in the European Economic Community regulation, especially for obtaining a “Declaration on the Environment” issued by companies, there are no secret or confidential audits.

The environmental audit in which confidentiality is extolled, is that aimed at the company’s internal adjustment and counsel. The situation is different with the audit aiming at obtaining environmental quality certification. In this case the participation of the public is relevant. In this sense, Franca’s Municipality (state of São Paulo) Environmental Code (Complementary Law 9/96) provided: “ When individual and legal entities carry out optional private audits, aimed at obtaining environmental quality label or certification, the audit report will be subject to the public audience procedure, as per art. 18 of this Code”.¹⁵

15. ENVIRONMENTAL AUDIT AND NON-GOVERNMENTAL ORGANIZATIONS

The experience of “Friends of the Earth” in the United Kingdom, which has carried out environmental audits at municipal level since 1988, is mentioned.

14. Ob. e loc. citis.

15. The author participated as Legal Consultant in the preparation of the preliminary draft that circulated in Franca’s Municipal Chamber; the author of the project was the physician Dr. Joaquim Pereira Ribeiro.

It seems to me that there are two possible types of environmental audits carried out by non-government organizations - NGOs.

The first type of audit would be carried out in areas outside the boundaries of the property of the audited company, measuring external effects of the activity on water, atmosphere, biota and soil. This audit would not require the company's agreement; it could take place with its cooperation or even if it disagreed.

The second type of environmental audit would be an activity of a NGO within the audited company, contributing with the environmental public body, but with definite and indispensable agreement of the audited company. However, not to be mistaken with an NGO visit to a company with an audit. In a visit, the company is free to show whatever it sees fit, and there is no formal right of inspection.

16. PUBLIC CIVIL ACTION AND ENVIRONMENTAL AUDIT

The Federal and the State Public Prosecution Service has the irrefutable right to require the environmental audit report when the audit is carried out to fulfill legislation requirements. However, it is not the case with optional or voluntary audits, as per Law 7.347/85.

In the cases provided for in the municipal and state laws mentioned, if the environmental audits are not carried out, it is possible to enforce this obligation through a public civil action. It is also possible to search the enforcement of the obligation of not having it done, when the audit is carried out by persons declared as unsuitable or persons who do not meet legislation requirements. ■

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