Environmental Audit in Brazil

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General Overview - Brazilian Environmental Laws

1) Federal Law 6.938/81 - National Environmental Policy.
   - Control Instruments (zoning, licensing, ...)
   - SISNAMA - National Environmental System
   - Strict Liability
   - Prosecutors role

2) Public Civil Action (Law nº7347/85) and Consumers Defense Code (Law nº8.078/90)
   - Enforcement and protection
   - TAC
   - Prosecutors and NGOs attribution to seek remedies

3) 1988 - Constitution
   - Right of all

4) CONAMA Resolutions

5) Environmental Crimes Law (Law nº9.605/98)
Environmental Audit

1) management instrument

2) prevention of environmental liability

3) private interest
   - “volunteer” compliance with legislation

4) public interest
   - enforce compliance with legislation
   - administrative and judicial actions
Definition

1) Systematic procedure

2) Evaluates the situation of practices and activities that can potentially harm the environment

3) comparison - pre-established criteria
   - compliance with environmental legislation, technical requirements, politics and/or practices
   - defined by the scope

4) Sampling - evaluation
   - most relevant indications
Driving Forces of Environmental Audit

1) World Wide:

- Compliance with environmental regulations
- marketing tool - consumers aspects and the raising value of “green products”
- public investments and International Banks requirements (green protocol)
- site acquisitions/ incorporations/ joint ventures/ external stakeholders
- international audits standards (ISO)

2) Brazil:

- Public pressure - NGOs
- Public Civil Action - Criminal Action
- Press Attention to environmental issues
- legal express requirements
- Acquisitions and joint ventures “fever” - due diligence's
Environmental Audit in Brazil

1) Voluntary performance - recent

2) Laws requiring environmental audits
   - Rio de Janeiro (state law nº1898/91, state decree nº21470/95, CECA deliberation nº3427/95)
   - Minas Gerais (State Law nº10.627/92)
   - Espírito Santo (State Law nº4802/93, state decree nº3795/94)
   - São Paulo (State constitution, still not been regulated)
   - Mato Grosso (State Environmental Code - law 38/95)
   - Paraná (CEMA resolution nº007/2001)
   - CONAMA Resolution 265/00 - Oil E&P activities
   - Technical standardization - ABNT - ISO 14000 regulations
Disclosure of information contained on the audit reports

1) World wide tendency

2) Requirement of Brazilian legislation
   - obligation to inform the population
   - delivery of the environmental audit report to the environmental agency

3) possible arising of discussions on this issue
   - confidentiality issues
   - privacy
   - professional privilege
Auditors liability

1) traditional liability system (fault) - Brazilian Civil Code.
   - General rule
   - indemnification based on auditor’s fault

2) Strict Liability for environmental damages (Federal Law nº6.938/81)
   - Applicable to the causer of the environmental damage.
   - Recovery - against the auditor (indemnification)
   - Possible liability of the consultant firm, depending on the special circumstances of the case - damage caused by “service defect” under Consumers Defense Code

3) Criminal Liability
   - evaluated according with the level of the fault