

The environmental perspective of mergers and acquisitions

Part 2: Compliance – what is an environmental compliance audit and why do I need one?



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Are you thinking of growing your business? Pursuing a merger or an acquisition may be the best way to help your business grow quickly and easily. Aside from the obvious economic and legal tasks associated with mergers and acquisitions, there are some technical steps that contribute to a successful transaction.

This article is the second of three in a series explaining these technical areas. The three steps to a successful transaction include addressing:

1. Environmental due diligence;
2. Compliance; and
3. Facility energy efficiency and condition evaluation.

Our first article covered the importance of environmental due diligence and how environmental site assessments evaluate the potential for, or existence of, environmental contamination on the business property.

Another critical component of the merger and acquisition process is environmental compliance by the company currently operating the facility. An environmental compliance audit focuses on whether the business has all appropriate permits and whether its operations are being conducted in compliance with applicable federal, state, and local environmental laws and regulations. Safety (OSHA) compliance is sometimes addressed as well.

Do I need an environmental compliance audit?



Because the applicability and scope of regulatory compliance audits depends on the type of transaction, facility location, and specific disclosure requirements, attorneys

are often involved in the decision about whether to conduct an audit. Whether you are a buyer or a seller, you should consider an environmental compliance audit for the business. Audits can be conducted by qualified staff internal staff or external consultants. The purchaser, during an acquisition transaction, often assumes the environmental liabilities of the seller. Ensuring all environmental requirements applicable to the business are met before selling can make your business more attractive to a prospective purchaser and allow for a smooth transaction. As a purchaser, an environmental compliance audit can considerably decrease the amount of hidden expenses associated with non-compliance penalties and costs associated with bringing the business into compliance.

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What is an environmental compliance audit?

The ASTM Standard Practice E2107-06 covers the environmental regulatory compliance audits process and its contents. The specific scope of an audit will depend upon the size of the business, the products it produces, the materials and inventory it uses, its waste stream processes, and its involvement in hazardous waste treatment and/or storage.

A general environmental compliance audit consists of:

- Scoping, scheduling, and planning.
- Background research and regulatory applicability analysis.
- Visual inspection of the facility and staff interviews.
- Records/permit review, including compliance with record keeping laws and regulations.
- Team meetings
- Summary of findings relative to facility's compliance with federal, state, and local laws and regulations.

Environmental compliance audits can be an integral part of the merger or acquisition process to ensure environmental compliance issues associated with an active business identified early in the process and don't become a last minute issue that holds up a strategic opportunity.

Keep an eye out for Part 3: Facility energy efficiency and condition evaluation of this series to learn more about the next step to ensure a successful transaction.

If you would like to learn more about environmental audits, please contact Tom Culp at SCS BT Squared, 608.216.7340 or tculp@scsengineers.com *

