Environmental Compliance in India through an Auditor's Lens

Introduction

India – A Rapidly Growing Economy

India, counted among the emerging economies of the world is scripting its growth story today. Its economy grew at an accelerated rate of 7.6% in 2015/16[1]. The Indian manufacturing sector is being given "necessary impetus" and the National Manufacturing Policy (NMP) envisages enhancing the share of manufacturing sector in GDP to 25% (DIPP, 2015). To realize this vision and to put the economy on a faster growth track, the Indian Government has taken up a series of initiatives with the core objectives of improving the "ease of doing business." Some of the noted initiatives to promote industrialisation in the country include Make in India, E-Biz Project, Start-Up India Action Plan, Skill development programmes, streamlining the process for obtaining environment & forest clearances and labour sector reforms. However, rapid (and so far, largely inadequately regulated), industrial growth in India over the past two and a half decades has led to an accelerated degradation of the environment, long term adverse environmental impacts, and socio-economic conflicts in various parts of the country.

Foundations of Environmental Regulations in India

India has a parliamentary form of government with separate executive, legislative and judicial branches. The Indian constitution is one of the few in the world that contains provision relating to environment conservation. Article 21 of the Constitution of India guarantees the right to life and personal liberty as a fundamental right. The Supreme Court of India in 1978 breathed substantive life to this Article in the case of *Maneka Gandhi vs. Union of India (1978)*. In the case *Subhash Kumar vs. State of Bihar (1991)*, the Supreme Court of India declared that Article 21 *"includes the right of enjoyment of pollution free water and air for full enjoyment of life"*. Since then right to live in a healthy environment has emerged as an inherent part of the Right to Life enshrined in Article 21. Introduction of the Public Interest Litigation (PIL), concept in India led to consequent liberalisation of *locus standi*[2]. The first PIL on environmental issues in the country before the Supreme Court of India was the case, *Rural Litigation and Entitlement Kendra vs. State of UP (1988)*.

India has a number of Acts and Rules along with national and sub-national policies and standards covering various environmental aspects. Environmental Democracy Index (EDI)[3] ranked India at the 20th position out of 70 countries by acknowledging India's progress in enacting national laws to promote environmental democracy. However, the country does lack on the implementation and enforcement front of these laws and regulations.

How This Article Can Help

Often those responsible for the implementation of these regulations in industries — the Factory Manager, EHS Manager, etc. — are unaware of all the nuances of environmental regulations or are unclear about their interpretation, attracting avoidable liabilities for their facility and organisation. Hence this article is designed as a quick review of some of the most common violations observed in India and reasons for the same.

[1] Union Budget of India for the Financial Year 2016/17 http://indiabudget.nic.in/ub2016-17/bh/bh1.pdf

[2] *Locus standi* is a Latin phrase whose literal meaning is *"place to stand"*. It refers to whether or not someone has the right to be heard in court on a particular matter. Usually, this requires a person who has approached the court to show that s/he has suffered/ anticipates suffering a legal injury.

[3] The Environmental Democracy Index was developed by The Access Initiative (TAI) and World Resources Institute (WRI) in collaboration with partners around the world. EDI scores are based on strength of laws enacted to protect environmental democracy and do not measure implementation.

It is to be noted that the status of compliance with environmental regulations and the drivers for achieving compliance vary widely between different industry sectors, scales of operations, and States. This article is based on the most common trends observed by the authors across various industry sectors and States in India. The views presented here do not represent the condition of any specific sector or group of industries; nor do they represent conditions in any particular State within India.

Common Environmental Compliance Gaps Observed in India

1. **Lack of Valid Environmental Permits:** Setting up an industry in India requires environmental permits among several other licenses, and some industrial facilities do not obtain the Environmental Clearance (EC), Consent to Establish (CTE), or Consent to Operate (CTO) permits that are required for operation. Other environmental permits including Hazardous Wastes Authorisation and Bio-medical Wastes Authorisation must also be obtained depending on operations conducted at the facility. In other cases, industries that initially obtained these permits do not renew the same prior to the dates of expiration. Others do not obtain prior consent from the concerned State Pollution Control Board (SPCB)/ Pollution Control Committee (PCC) before making changes to installed equipment, processes, raw materials, or production (including changes to production capacity and product mix).

2. **Omission of Details of Site Operations in Applications, Statutory Records & Returns:** Another common observation is omission of details of site operations from applications for environmental permits as well as from statutory records and returns [*e.g.* Water Cess Returns (Form-1), Annual Environmental Statement (Form-V), Annual Hazardous Waste Returns (Form-4), Annual Report under Bio-medical Waste Rules, 1998 (Form-II), Record of Hazardous Wastes (Form-3), Hazardous Waste Labels (Form-12), Hazardous Wastes Manifests (Form-13), Returns under Batteries Rules, 2001 (Form-I), and Records under E-Waste Rules, 2011 (Form-2)].

   Some common details often omitted from records and returns include:
   - Details of water consumed for different applications are omitted in water cess returns;
   - Emissions from stacks fire water pumps and vents of local exhaust systems are omitted in Consent applications and Form V;
   - Cooling tower blow-down is omitted in Consent applications and Form V;
   - Empty chemical containers and waste oil are omitted in application for Authorisation and in Form 3 and Form 4;
   - Analysis results for soil and groundwater monitoring are omitted in Form 3;
   - Hazardous waste categories are omitted in Form 12 and Form 13; and
   - The date of generation of hazardous waste is omitted in Form 12.

3. **Lack of Proper Waste Management:** One of the areas where compliance gaps are commonly observed across a spectrum of industries is in the area of waste management. The compliance gaps observed include:
   - Inadequate segregation of wastes;
   - Lack of documented records of waste characterisation and inventory;
   - Lack of prescribed labels on containers of hazardous chemicals and hazardous wastes;
   - Lack of appropriate storage areas (i.e., designated, segregated, weather-proof storage areas with secondary containment, impervious floors, and appropriate caution boards for hazardous chemicals, fuels, and hazardous wastes); and
   - Lack of documented information regarding the waste vendors and final fate of disposed wastes.

4. **Lack of Spill Response Plans and Equipment:** A spill in a factory can cause significant loss to life and property, especially in factories using and storing hazardous chemicals. While maintaining

a spill response plan and associated equipment is not an explicitly stated regulatory requirement under present Indian laws, this is necessary to comply with the General Duty clauses contained under the Factories Act, 1948; the Manufacture, Storage & Import of Hazardous Chemicals Rules, 1989 as amended 2000 (hereinafter "MSIHC Rules, 1989"); and the Hazardous Wastes (Management, Handling & Transboundary Movement) Rules 2008 (hereinafter "Hazardous Wastes Rules, 2008"). Due to the lack of explicit regulatory requirements, most factories are not aware of this, and spill response plans are often absent in Indian factories.

5. **Lack of Appropriate Training, Equipment, and Information to Workers and Neighbouring Communities:** It is commonly observed that workers engaged in handling, storage and use of hazardous chemicals and hazardous wastes are not provided appropriate training, equipment, and information to ensure their safety and prevent risks to their health and well-being. While this puts at risk life and property in the industry and beyond, it is also in violation of General Duty clauses under the Factories Act, 1948, MSIHC Rules, 1989, and Hazardous Wastes Rules, 2008.

6. **Effluent Discharge without Treatment:** Certain industries discharge effluents into the environment (such as through storm runoff; used fire water; cooling tower blow-down; floor and drum washings) without adequate prior treatment. By allowing the discharge of polluting matter into streams, drains, sewers, or on land, they potentially violate Section 7 of the Environment (Protection) Act, 1986 and Section 24 of the Water (Prevention and Control of Pollution) Act, 1974. Should it be proved that the untreated effluent contains polluting matter in excess of prescribed standards, such industries could face stringent enforcement measures. Should such discharge be proven to be the cause of environmental degradation (on-site or off-site), liability to clean-up and restore the environment to its original state may be required.

Most Common Reasons for Regulatory Non-Compliance

Some of the most common reasons for non-compliance with environmental regulations are listed below.

1. **Lack of Management Commitment**: Lack of visible management commitment is the most common reason for industries not considering environmental aspects as an integral part of their operations and decision-making. Treating environmental management as an add-on or additional expense often leads to sub-optimal environmental performance including compliance gaps.

2. **Lack of Adequate Knowledge of the Applicable Regulations** – India has numerous regulatory and enforcement authorities (at times under different Ministries), covering various aspects of the environment. Apart from MoEF&CC, other Ministries such as Ministry of Petroleum & Natural Gas and Ministry of Water Resources also administer some laws that are related to environmental aspects. Often, the factory management and personnel responsible for complying with these regulations are not fully aware of applicable regulations and actions required by them. This leads to compliance gaps.

3. **Lack of Understanding of Actions Required to Demonstrate Compliance –** Being aware of relevant laws applicable to an industry is one thing, but having a clear understanding of the actions that need to be taken to demonstrate compliance is quite another.

   The Indian legal system belongs to the Common Law family and therefore, at times uses broad language without specific and prescriptive requirements. This ambiguity makes it even tougher for industry stakeholders to understand actions that may be required to demonstrate desired compliance. Common examples of this include ambiguity around:
   - Regulatory requirements for secondary containment — most factories are unsure whether provision of secondary containment to liquid chemicals and oils is a regulatory requirement and if so, the volume of secondary containment required;
   - Requirements to develop and maintain a spill response plan, which was mentioned earlier;
   - Actions required to demonstrate due diligence in disposal of hazardous wastes generated; and

- Requirement for soil and groundwater surveillance and monitoring (for factories using or handling hazardous chemicals and hazardous wastes).

4. **A Culture of *'Casual Compliance'*:** An organisational culture of casual compliance that permits non-compliance in the interest of greater profits has proven to be dangerous. This culture of casual compliance, when coupled with the management's belief that the cost of compliance is much more than that of merely 'managing' the regulators is one of the main causes of the observed compliance gaps.

5. **Lack of Adequate Resources** – Flowing from the culture of casual compliance is the issue of lack of adequate resources. For effective compliance with regulations financial and human resources are essential. A dearth of adequate resources to ensure compliance with regulations often occurs in one of the following two ways:
   - Resources not being allocated or being allocated in inadequate amounts; and
   - Resources allocated not being fit for purpose. This is especially true for human resources and equipment provided to achieve compliance.

6. **Lack of adequate resources for regulators:** For environmental compliance to be enforced, the regulators and enforcement agencies also need to have sufficient resources. A lack of these is often observed among regulatory bodies such as SPCBs/ PCCs. The SPCBs and PCCs were first constituted under the Water Act, 1974 when India did not have any other environmental regulation and very few industrial units. While the number of environmental regulations and industrial units have both increased manifold since 1974, these agencies have not seen a proportionate increase in staff strength or budget allocations.

Conclusion

While there exist real challenges to achieving full compliance with environmental regulations, this is not an insurmountable obstacle. Each of the common compliance gaps noted above, as well as the most common reasons for their existence, can be resolved with visible management commitment and sustained effort towards achieving compliance.

Management commitment when combined with an efficient, management systems-driven approach towards compliance has been proven to yield rich results. Key elements of such a system usually include: comprehensive regulatory registers, tracking of all required actions, periodic internal and external compliance assessments, an appreciation of root causes of non-compliance rather than a 'band-aid' approach to fixing symptoms of the larger issue, a robust reporting system for employees to use without fear or favour and an appropriately calibrated mechanism of rewards and penalties.

It is imperative for the industry to understand that what's good for the environment is also beneficial to the business. Environmental protection and commercial success are not mutually exclusive; rather, they complement each other.

The challenge for improved environmental management in the country is not the lack of regulations, but ineffective implementation and enforcement of the existing regulations in letter and spirit. To achieve better implementation and enforcement of regulations, both Industry and Regulators have to work together in a spirit of partnership. The regulators can contribute significantly by providing constructive, positive support to industries on their compliance journey. The regulators today must change from being the government's agent in a *'Command & Control'* system to being a valued partner to industries in the sustainable development journey that our nation has set out on. To this end, while some laws may need to be updated, the resources available to regulators also need to be augmented urgently. Further, it would also be beneficial for the regulators to keep themselves abreast of the most recent innovations and technologies relating to environmental protection and conservation (including the use of information technology for effective governance).

Disclaimer

This article is based upon the application of professional judgment to certain facts with resultant subjective interpretations. The information presented above is based on the experience of the authors over the course of more than 350 assessments across India in the past decade. However, it is not intended as the only/ most comprehensive list of environmental violations in India; nor are the reasons for compliance gaps presented the only causes of such occurrence.

To the extent that more definitive conclusions are desired than are warranted by the currently available facts, it is specifically the authors' intent that the conclusions stated herein will be intended as guidance and not necessarily a firm course of action. In addition, the information provided in this article is not to be construed as legal advice.

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