
ENVIRONMENTAL DUE DILIGENCE

An Approach
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What is Due Diligence ?

- The process of identifying potential liabilities and risks in a merger and acquisition (M&A) process
- Carried out by the buyer to assess acceptability of the liability or risk as part of the M&A deal
- If acceptable, to determine the cost of risk mitigation to minimize potential liabilities that would have to be assumed
- This cost to be then leveraged during the commercial negotiations to arrive at the final sale price.
- The due-diligence is also useful while apportioning liabilities among the parties involved in the deal.
- Due diligence is normally carried out for several aspects of the business like financial, taxation, legal, etc.



Environmental Due Diligence

Environmental Due Diligence (EDD) is the due diligence exercise carried out with primary focus on Environmental issues (health and safety can also be considered) that may have an implication on the transfer of liability that would take place as a result of the M&A.



Drivers of an EDD?

- Environmental liabilities associated with the site operations (like manufacturing/ services) could be related
 - to historical, past or present activities
 - On-going changes to the regulatory scenario
 - Present regulatory frame-work
 - Capability of alignment with future proposed legal scenario
- Environmental liabilities could be “hidden” and surface only when environmental or social impacts are encountered
- Environmental liability could result in adverse impacts on business continuity, regulatory fines and levies, public opposition and complaints, loss of existing and prospective customers, etc.
- Safety & health issues could also result in similar liability scenarios

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Drivers of an EDD

- Safeguarding oneself from liabilities arising out of environmental issues. These issues need not be existing today but can potentially arise at a later date.
- Informed decisions can be taken in view of the potential liabilities. It may also result in go/no-go situations
- Mitigation measures can be implemented before or at the time of the acquisition of the property thus reducing liability at a later date
- Cost of mitigation measures can be leveraged at the time of financial negotiations
- Multinationals seeking to comply with their own corporate environmental performance requirements and expectations of their stake-holders.
- Funding agencies

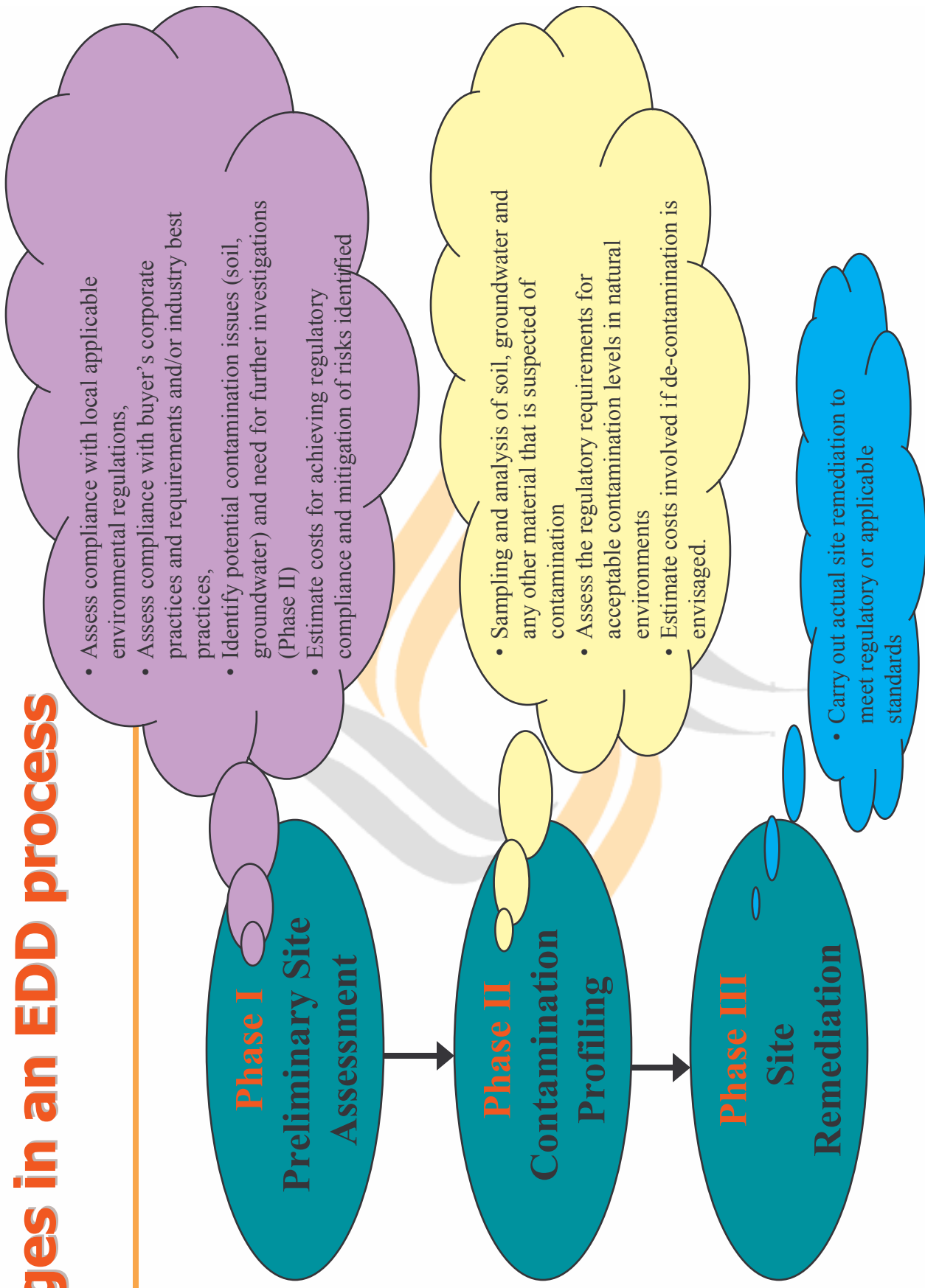


EDD Frameworks

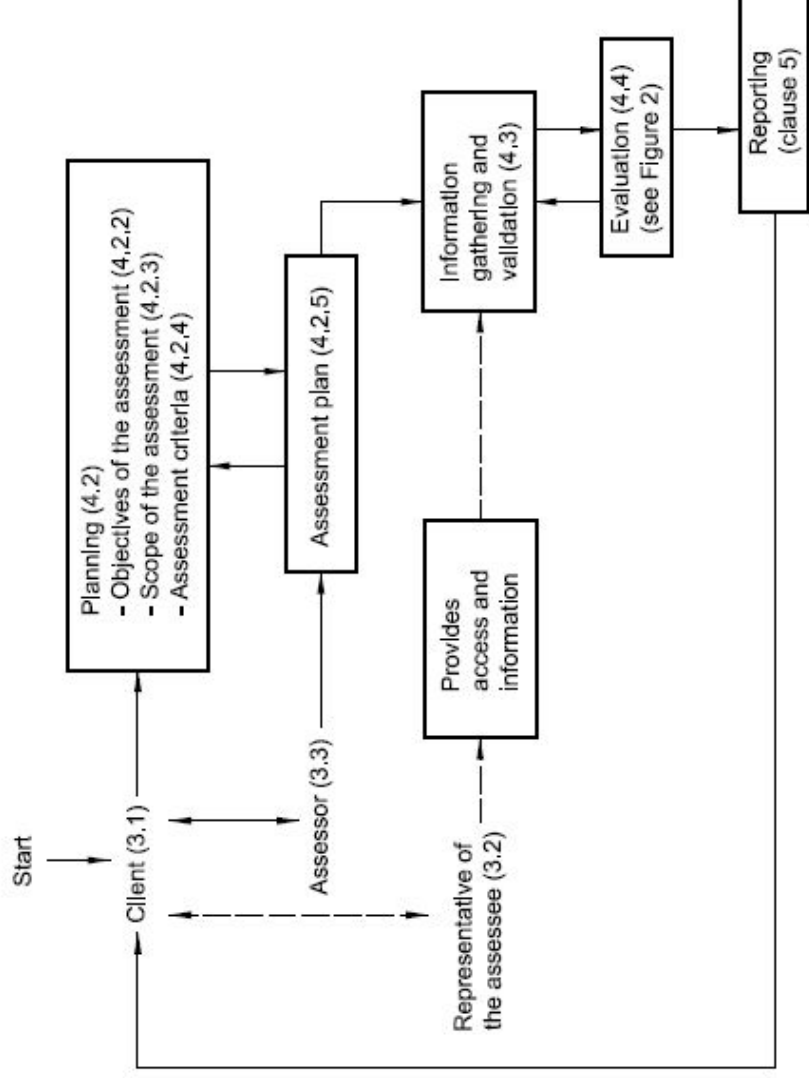
- Largely governed by client requirement/ expected output from the exercise
- Guidelines by World Bank/IFC
- ASTM standard (s): E-1527:00
- ISO 14015



Stages in an EDD process



The Phase I EDD process*



NOTE The numbers between brackets refer to (sub)clauses in this International Standard. The dashed lines indicate that the assessee is not necessarily involved in an EASO as described in this International Standard (see note to 3.2)

Figure 1 — Process for conducting an Environmental Assessment of Sites and Organizations

* As per ISO 14015

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Scope - Phase I EDD

- Reconnaissance survey of the site and surrounding area
- Documentation of historical use/s of the property and surrounding areas (based on available secondary data)
- Environmental regulatory compliance vis-a-vis the existing applicable environmental laws. This is based on review of available records and documents
- review of present/past issues with regulatory authorities in terms of notices/ correspondence regarding non-compliances, public complaints, etc.
- Compliance verification can be carried out also against any corporate requirements or international standards if these are desired



Scope - Phase I EDD

- current environmental performance including adequacy of the existing waste management systems
 - ✓ Effluent and sewage management
 - ✓ Stormwater management
 - ✓ Air emissions
 - ✓ Noise
 - ✓ Solid wastes
 - ✓ Hazardous wastes
- Hazardous materials storages
- Existing or potential environmental contamination on the property and in the surrounding areas based on secondary information and current and past waste handling and disposal practices



Scope - Phase I EDD

- Origin of fill material used to build-up land
- Possibility of ingress of pollutants, air, water and noise from adjoining facilities
- Any other issues as per client requirement (like land conversion, asbestos use, etc.)



Methodology - Phase I EDD

- Site reconnaissance survey
- Walk-through of the plant
- Interviews/discussions with plant officials
- Inspection of records and documents
 - ✓ Permits/consents and other clearance documents
 - ✓ Correspondence documents with regulatory authorities and public/employee complaints if any
 - ✓ Past environmental audit reports
 - ✓ Monitoring and measurement records
 - ✓ Compliance monitoring documents
 - ✓ Site and plant layout drawings etc.
- Identification of additional monitoring/measurement requirements



Outputs - Phase I EDD

- Report of the EDD audit comprising
- Executive summary highlighting the major findings and concerns, if any
 - Detailed discussion of the observations/ findings
 - Recommendations for addressing the gaps observed, if any. These can be prioritized for ease of implementation based on the level of criticality
 - Budgetary costs for implementing the major recommendations (wherever feasible)
 - Supporting documents collected during the course of the study (if made available by assessee)



Why CMSRSL for EDD?

- Availability of technical expert (s) with thorough knowledge and understanding of the legal framework in India
- Knowledge of technical issues related to resource and waste management and waste disposal
- Knowledge of best practices in the Indian industry by virtue of audit experience in various industry sectors
- Apart from Environmental issues, OH&S issues can also be focused on based on client's specific requirement. CMSRS has vast experience also in OH&S area
- Apart from environmental audits, CMSRS personnel have carried out purely EDD studies for:
 - Refractory manufacturing unit
 - Edible oil refinery units
 - Railroad tie manufacturing units



Why CMSRSL for EDD?

- Other Environmental audits and assignments carried out for:
 - ✓ Power (thermal & hydro)
 - ✓ Cement
 - ✓ Petrochemical industry
 - ✓ Foundry
 - ✓ Automobile
 - ✓ Software
 - ✓ Ports
 - ✓ Mining (open cast)
 - ✓ Fertilizer
 - ✓ Agrochemical
 - ✓ Steel

