

ENVIRONMENTAL DUE DILIGENCE AND ITS APPLIANCE IN SPECIFIC NATIONAL ENVIRONMENTAL CONDITION IN SERBIA&MONTENEGRO

B.Vujic¹,G.Vujic²

¹ Provincial Secretariat for Environmental Protection and Sustainable Development
Executive Council of the Autonomous Province of Vojvodina
Bulevar Mihajla Pupina 16
21000, Novi Sad, Yugoslavia
Phone: 381-21-4874690, Fax: 381-21-456-238, e-mail: bogvujic@eunet.yu

² Institute of Energy and Process Engineering, Faculty of Technical Sciences
University of Novi Sad
Trg Dositeja Obradovica 6, 21000, Novi Sad, S&M
Phone: (381) 21-459-981, Fax: (381) 21-350-775, e-mail: gvujic@uns.ns.ac.yu

Abstract

Investors and conscientious companies around the world are realizing that environmental risks are as important as other potential risks. Environmental due diligence thus refers to the targeted environmental screening of proposed investments by development banks, commercial banks, municipal and private portfolio managers.

Environmental due diligence is the process used by the investor to identify, quantify, and then mitigate the environmental risk which may be associated with providing financing for a proposed project.

Development banks may also require the consultant to evaluate occupational health & safety issues in the framework of the environmental due diligence. This is why Environmental due diligence is important project in the new condition in Yugoslavia.

This type of projects can be applied in the process of privatization in Eastern countries and investment project of banks as WB (World Bank), EBRD (European Bank for Reconstruction and Development) and it can be also applied in the process investment of different funds like pension fund etc. After democratic changes in Yugoslavia these projects are start in use.

Complexity of Environmental due diligence and its protocol application, with changes caused by specific Yugoslav conditions at the first place Yugoslav legislative, could give completely environmental view of the subject. Using of these projects could be the right direction for the reconstruction and development of environmental system of economy facilities in Yugoslavia.

Introduction

Transitional changes and commercial development in countries with Communistic past are picturesquely described by United Nations experts on the example of a chair. The chair with its four legs, where one leg is economic development, second leg is social development, third development of social consciousness i.e. the impact of public opinion and fourth leg is the environment preservation. It is obvious from the example that only with the balanced development of all four legs of the chair, it will be safe and applicable. If only one branch of development is neglected, i.e. legs of the chair from the example, the chair will be useless i.e. unstable. There is also a mislead opinion that with the quick economic development other segments of the development can be fixed in the future and since such attitude exists, United Nations warn and place such examples so that countries in the process of development would not fall in even more difficult position they are already in.

The formulation of the laws and goals of the privatization include the principles of environment preservation in the most important principles together with social, commercial and economic. In existing process of privatization, the principles of environment preservation are not adequately included in the privatization of a specific subject.

Methods

With the beginning of privatization and with new laws of privatization, it has been announced that the principal of environment preservation will be the essential factor of the strategic partner choice. Yet the process of privatization in Serbia has shown that during the sale of a company, in some cases, the environment preservation principle has been neglected or it has been left to the strategic partner to choose if the environment preservation principle will be implemented. The Ministry of Natural Resources and Environment has signed the protocol of cooperation with the Privatization Agency, which is in charge for privatization of Serbian companies, in order to protect the implementation of environment preservation aspects. This protocol states that all companies which are buying other companies through the auctions are obliged to create the project of analysis of the impact of the takeover of the company and to make a suggestion for the environment preservation problem solution. The Ministry evaluates all the suggestions and analysis projects of the impact.

The indicators that there are certain problems in the implementation of the environment preservation principle in the process of privatization are the following:

Companies, which are implementing the privatization through the tenders, do not have clearly defined environment assessment algorithm and they are not included in the sale contracts together with the economic and social demands. Including of environment aspects during the sale of companies through tenders is not completely defined by the law, which leads to the possibility of either neglecting aspects of environment, or leaving the choice of dealing with the problem to the consciousness of the new owner.

The capacities of the Ministry are not still so enlarged and improved to review projects analysis of the environment audit that are created during the auction privatization in the best and fastest way.

The province secretariat for the Preservation of the development and environment preservation still has not been consulted in any case of documentation preparation for the assessments of the environment preservation as the regional institution, on the territory of Vojvodina, i.e. it has not been consulted in individual cases.

The projects of the assessments of the current condition are done on the basis of Impact Analysis Model, which are too long, profuse, and formed to create predictions and decrements of coming influences and not to serve as models of future assessments of current condition of the situation in the field of environment, as well as in the field of finding the historical pollution etc.

In some tender dossiers and in some auction company sales, the programs of development and revitalization of the environment are being done and those programs are being done by the environmental departments or in the better cases, in the cooperation with the consulting companies for the environment engineering and consulting. The question of the validity and quality of such solutions is being posed, since the assessment of such programs was not done by the relevant institutions.

There are cases that the Privatization Agency decides that some cases of pollution are not drastically expressed and, as the example of cement factories showed, it is clearly seen where the pollution comes from and how to stop it (according to the opinion of the project manager who lead the process of privatization of cement factories), the project of research of environment was not demanded in such tender dossier. In such cases Environment due diligence is a part of the package together with other diligence projects (social, financial etc.) and it is lead by the Investment Bank, which is selected as the leader of the process of the privatization, also the environment preservation problems plan is demanded and being carried out by potential investors or the Investment Bank. The project revision is the unknown factor, i.e. the quality revision and the suggested solutions and the funds are unknown factors as well.

In most cases the assessments of the condition of the environment, or the Environment due diligence, is done by the investors on by side, since the final goal of this project is to establish the amount of funds, which are supposed to be invested in the subject of the investment in order to establish the complete system of managing of the environment (EMS or ISO 14000).

The assessment of the implemented Environment due diligence projects, i.e. the assessment of the final part of such projects, which is the amount of the funds for the revitalization of the environment and suggestions for future actions and investments in the development of the environment preservation management in the process of privatization, is being processed by the tender committee, which does not include representatives, i.e. experts, of resource environment preservation institutions. The sophistication of such projects, as well as their complexity, which could be seen in the following example, can not be evaluated without the expert involvement.

Environment due diligence is carried out in three phases:

Environment audit phase I

Environment audit phase II

The condition of the employees health care

The recommendations and the needed funds

Environment audit phase I is very much alike to the Analysis of the Impact of objects and works on the environment and this is very common in our country. The main goal of the Environment due diligence in this case is to establish the source of the pollution, which was the result of normal or accidental work of the factory in past and present time, as well as to coordinate emission data with the allowed national regulations and those of EU.

Environment audit phase II represents the continuation of the first part of the research and, if it is necessary and above all, it represents the research of the old pollution which was or was not caused by the factory and it was not the object of the remedial process (the significant pollution can exist as the result of the NATO bombing, or even as the result of the Second World War pollution, then pollution which came into existence by the migration in time through underground waters etc.). In this part, the degree of success of remedial process is being measured, if it was carried out on that location.

The third part represents the research of the employees' health condition and not only employees, but the local population as well. The research data are being compared to the quality and quantity of the eventually dangerous and carcinogenic emission from the factory.

The last, but not the least, is the recommendation assessment, which will be the base of the solution for the problem, or the continuation of the research through the risk assessment etc., as well as the establishing of the funds which are necessary for the solution of that problem in particular: The implementation of the new remedial processes, the reduction of the emission and achieving the accepted level by the national standard and EU standard, as well as establishing of the complete management system of the environment protection in the object.

Environment due diligence projects consists of the following parts in its general form:

Introduction

Facilities, Physical Description, Facility Operations Location, History and Environmental Setting, Summary of Utilities and Ownership

Review of environmental management, Environmental Management Structure, Emergency, Security & Safety Plans, Company-Community Interaction, Environmental Insurance Coverage, Allocation of Environmental Responsibility

Environmental status, Regulatory Compliance Summary, Air Emissions, Raw Water and Waste Water, Material Handling, Storage and Transport, Hazardous Materials Management. Oil-Filled Electrical & Hydraulic Equipment (PCBs), Asbestos, Mineral Dusts & Fibers, Waste Management, Housekeeping, Noise, Vibrations and Other Physical Factors, Radioactive Materials, Contaminated Ground-Water & Land, Cleaner Technology Initiatives, Energy and Energy Conservation, Waste Reduction

Product issues

Occupational health & safety status, Regulatory Compliance Summary, Accident Reporting, Recording and Investigation, Health and Safety Management, Site Safety Procedures, Medical Monitoring Program, Noise and Vibration Level Exposure, Chemical/Material Handling, Temperature Exposure, Personal Protective Equipment and Training, Emergency Response Capability and Training, Fire Protection, Training Programs

Conclusion and recommendations, Conclusion, Recommendations & Cost Estimates, Terms of Reference for Further Information/Studies Recommended, Appendices, Photo log, Supporting Documentation

On the contrary to this protocol which was mainly used in processes of privatization, in our country the only law protocol is the one from 1996 of the Object Impact Analysis and it consists from: 1) The description of the location where the building is planned; 2) The description of the object and production process; 3) The possible changes and impact of the object on the environment; 4) The review of the measures which are going to be implemented for the reduction or ending of bad influences on the environment; 5) The review of the interrelationship of all elements of the analysis; 6) Enclosure of all used data sources for the analysis and methods for the assessment of the impact of the object to the environment; 7) Footnote regarding possible nonexistence of suitable solutions for the environment protection (the lack of scientific, technological, legislative and other solutions) or inability to collect suitable information.

In presented reviews of the protocol, the difference in the major parts can be seen, without closer examination of both protocols. The model of assessment of the environment condition is formed in order to assess and create complete picture of the existing environment condition, as well as the

employees health condition and other pollution in the commercial subject, while the impact analysis is formed to evaluate future influences in newly formed objects and how to reduce such influences. The impact analysis which are operating in our country are always extremely voluminous and very uncommunicative for economic, legislative and other experts which are not familiar with the environment preservation issues. Environment due diligence is thus formed in such a way that it is easily read by economists and other experts who will be determining adequate financial value for the problem solution regarding environment preservation.

Our laws mention postproject impact analysis, which has the same form as the object and process environmental impact analysis. Intended conception of this project as well is to follow influences, which are already established in the impact analysis project. The production of postproject impact analysis is not directly related to providing of necessary permits, so there is no legal way to force investors to make this project.

Results and Discusions

Concrete actions that can be carried out in order to include resource institutions, thus the control of involving of aspects of environment preservation in the privatization process through the tender sale are:

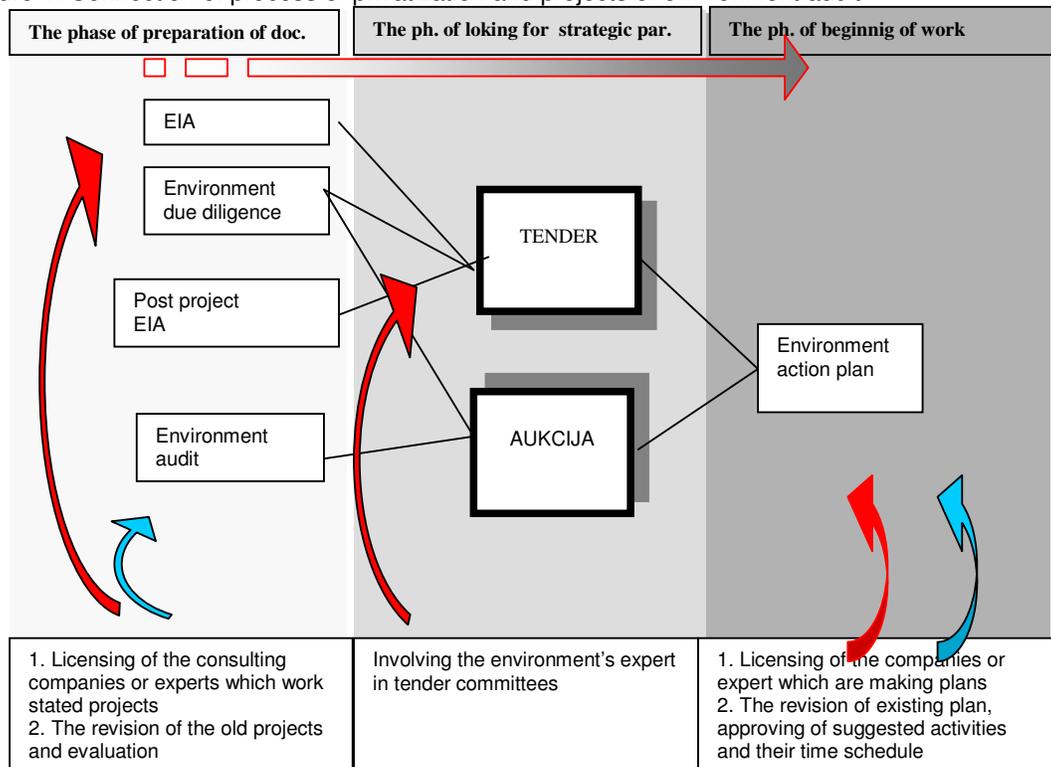
The revision of the company, which is being forwarded to the Consultant, who is leading the privatization process and which is being made by the Ministry of natural resources and environment preservation or by the Secretariat for development and environment of Provincial Council of Vojvodina.

Involving licensed environment preservation experts in tender commissions.

Approving of the Environmental action plan after the takeover of the privatization subject, i.e. determination of time limit by which the plan should have been finished and approved.

Involving resource institutions in direct negotiations regarding finding the strategic partners for big systems which can be carried out without tenders. Big systems can be a big problem regarding old pollution.

Figure 1. Connection of process of privatization and projects of environment audit



Involving resource institutions during the auction sales could be carried out through the Revision projects of researching of environment or through licensing of companies and experts which are dealing with those projects of assessments, i.e. assessment of environment present condition.

Conclusions, recommendations and activities which have to be carried out regarding the environment preservation problem must be included in general sale documentation, and only then the classic auction sale could begin. Resource institutions, which will participate, must see that the general conditions include solutions for environment preservation.

Conclusions

The government of S&M will be in a very unpleasant situation after the announcement of the new law regarding on sistem of environment preservation and the implementation of sanctions following the principal polluter pays, related to the foreign investors and thanks to the discrepancies within the law related to the business activities of privatization subject. By strengthening of Government institutions, Ministry, inspections, agencies and by adoption of laws regarding the system of protection of the environment and all the documents which will be in accordance with EU regulations, will expose strategic partners to more severe environment protection measures and stronger inspection supervision. Fines and taxes will be increased for the emissions, i.e. pollution, which will pose the question of profitability or profit of certain new private companies, which did not regulate the issue of environment in the very beginning of the privatization process or immediately after it. The implementation of the new law regarding the environment protection and in accordance with the existing ombudsman law of the transfer of certain jurisdictions to the regional-provincial level. The Secretary for development and environment protection will take over the large number of inspection jurisdictions on the territory of Vojvodina, and the large number of taxes for the exploitation of natural resources will be within its jurisdiction as well. The fines for polluters will be significantly increased and the principle the polluter pays is in accordance with the law of EU. As the result of the above-mentioned law, many companies, which were sold without the consideration of the principal of environment preservation, will have big problems. Thus, many companies will have to pay huge fines and some of them may even be closed as big polluters. The example is the cement factory. If the inspectors would now start to implement the law, some excavation site would have to be closed since the transportation of the ore is done through the national park and the factory itself would have to be closed since it initiated larger emission from the allowed one, or it would have to use a substantial part of its budget for fines.

If the investor faces the situation where government kept its eyes shut in front of the environment preservation problem, he could make the Environment due diligence (on by side) and he could demand certain funds in order to compensate solutions and remedial processes for system management development of environment preservation of the privatization subject or for operating within the law regulations of EU. EU can establish the significant amount and it can expect from the state to have certain benefactions, which are in accordance with the price of the privatization subject. Based on this data, it is necessary to include resource institutions of environment preservation in the process of privatization. The possibilities for taking part in the process of privatization are: being the reviser of the Environment due diligence project (if they are created before the choice of the strategic partner), or as a reviser of the Environment action plan (if the company is sold) and if the privatization process of the commercial subject is carried out through the auction, as a reviser of the assessment project of the company in the part of the environment preservation. There is a possibility to involve the legal institutions through the engaging the licensed experts and companies, which will carry out the environment condition assessment of the company, which is involved in the process of privatization. It is also necessary to form or adopt one of the existing models of assessments of environment condition. Existing regulations only except the model of impact analysis, which has been implemented in our country since the nineties.

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