
STATE PERSPECTIVE IN U.S. ENFORCEMENT RELATIONSHIP

KENNETH L. ALKEMA

Director of Environmental Health, State of Utah, 150 West Temple, P.O. Box 2500, Salt Lake City, Utah 84110-2500

I INTRODUCTION

States and local governments have been in the business of environmental protection, including enforcement since statehood and even earlier. Most of this effort began with water quality and general sanitation issues but evolved into all environmental media. Because of the inconsistency among states on the level of environmental protection provided and the growing concern that many people in the United States were not being protected, federal laws were passed to insure that human health and the environment received equal protection throughout the country. The federal statutes set the minimum level of protection that would be provided. States are allowed to, and in many cases do, have more stringent requirements. The only major exception to allowing states to be more stringent is in the area of radioactive materials management where the federal government pre-empts states from independently regulating many radioactive materials.

It is also important to note that many of the federal requirements for environmental protection were patterned after programs developed in progressive states. While the need for national requirements and involvement to protect public health and the environment is essential, the fact that the federal government stepped into an area that for many years was left to the states to regulate complicated the development of a partnership.

Further, it must be kept in mind that there were already state/federal relationships that had been developed over many years that impacted relationships for environmental programs. These relationships vary from state to state, depending on the specific history, needs, and circumstances within each state. For example, Utah was settled by Mormon pioneers who fled the United States seeking religious freedom. Later when the territory became part of the United States, soldiers were sent to Utah to make sure the Mormons did not create any problems. The philosophy that any federal person has been sent to Utah to squash a rebellion has not totally been eliminated. Trust has not come easy.

In addition, more than 75 percent of the land in Utah is federally owned. Historically, Utah has a mistrust of the federal government and has resented the fact that the federal government manages much of the land within the State. Utahns, as are many Westerners, are very independent and innately resent anyone from outside the State suggesting that they know what is best for Utah. Obviously, there are many other factors that affect a state/federal relationship. Given that each state has a different history and different concerns and priorities (as I am sure does each province within the Netherlands) developing a successful partnership between the states and the federal government is more difficult than many of the environmental problems that we must solve. However, it is essential that it be done.

I UTAH'S COMPLIANCE/ENFORCEMENT PROGRAM

Before getting into the specifics of Utah's program, it is important to understand a little bit more about Utah. Utah is the second driest state in the United States. As such, water resource management has been a priority in Utah. Systems of dams, reservoirs,

canals, and pipelines have been built. To maximize the use of the water that is available for agriculture, industry and municipalities, recreational use, and wildlife. Utah is about seven times bigger than the Netherlands with only 1.7 million people. Eighty percent of the people are located in a relatively small basin 100 miles in length, and 5 to 20 miles wide, surrounded by mountains. The scarcity of water and the inversions that trap dirty air within our populated area have heightened the awareness that we have on the value of clean water and clean air.

Utah has independent authority to pass state laws to protect the environment. Federal involvement is seen as an opportunity to support through federal resources and federal assistance the state's efforts to protect public health and the environment. Less than 40 percent of our budget is from federal grants. This support has been much higher in the past but is dropping as state funding grows and EPA funding shrinks. Support in Utah for environmental protection is growing. Our agency has doubled in size during the last five years and is expected to double again in the next five. Therefore, more important to us than the money that the federal government provides is the technical support and direction they give to us. It makes good sense to us to use this support.

The Utah Legislature is responsible for defining the authority we have to develop rules for protecting the environment. Each program must provide for planning, permitting, monitoring, and compliance. In Utah, as in many states, the specific authority for promulgating rules and taking enforcement actions resides with a board or committee. Within the Division of Environmental Health, there are four such committees covering air, water pollution, drinking water, and solid and hazardous waste. These boards are composed of people representing the regulated community, the general public, local governments and myself as a voting member. The structure of the Air Conservation

Committee is typical:

- a practicing physician and surgeon licensed in the state not connected with industry;
- a registered professional engineer who is not from industry;
- a representative from municipal or county government;
- a representative from agriculture;
- a representative from the mining industry;
- a representative from manufacturing;
- a representative from the fuel industry;
- three representatives of the public not representing or connected with industry; and
- the director.

These committees are intended to provide a balanced point of view in rule making and enforcement but also represent an important factor in how an environmental program will be managed. For enforcement, the executive secretary of a committee has the authority to initiate enforcement actions. Any actions of the executive director can be appealed to the committee. Any final action of the committee can be appealed to the appropriate court. Although the process may appear to create additional time delays in taking enforcement action, in reality it moves very fast. The process is kept as simple as possible. If we choose, we can file a complaint within a few days of a violation.

Judicial actions must be filed by the State-Attorney General. The attorneys general of most states are independently elected. An effective enforcement program is dependent on a good working relationship between the Attorney General's office and the state

environmental agency. Violations warranting penalties can be quickly negotiated prior to filing a complaint. In the last five years, we have gone to court only a few times to actually compel the payment of a penalty. More than 100 actions involving penalties have been completed through negotiations during the same time period.

III RESPONSIBILITIES

Most states have utilized their authority to develop and to protect the environment. States also have the option of seeking federal delegations or authorizations to manage federal environmental programs. States have taken different positions on whether or not it is to their benefit to seek these federal delegations. All have sought and received authorization to manage one or more federal programs. Utah has taken the policy that it is better for both the environment and the regulated community for the state to manage environmental programs. We have authorizations for basically all federal programs within the State. States see their role as the primary enforcers of environmental laws. The bulk of the inspections, permit writing, monitoring, and compliance activities are performed by the states. In fact, more than 80 percent of all the resources and activities in enforcement are at the state and local level. States see EPA being responsible for:

- Performing research;
- Setting standards for compliance and enforcement;
- Providing constructive oversight;
- Providing training and technical assistance; and
- Insuring consistency among states implementing federal programs.

IV. DIFFERENCES IN PRIORITIES

State priorities are established by the people within each state while EPA's reflect a more national perspective. States must be responsive to those issues that the people of a state see as priorities. These issues are usually identified by the Legislature, the Governor, the public directly, or by individual complaints. Any set of priorities must be based on the comparative environmental risks within a state. For example, a Utah mining company which moves 70,000,000 tons a years of material operates a dump leaching operation which has had significant impacts on ground water. The ground water contamination study has covered a 200 square mile area. Federal priorities at the time did not recognize that ground water priorities existed. Meeting federal priorities meant protecting limited surface water quality at the expense of valuable ground water. Resources at the state level were diverted toward the ground water issue and enforcing state priorities. Fortunately, ground water protection is now considered a federal priority.

Because of EPA and State efforts, most of the state/federal issues over priorities have been resolved. State and federal strategic planning at both a national and state basis is being done. Annual work plans are jointly negotiated. Real environmental issues within a state are identified. Goals and objectives are developed based of those real environmental issues. Enforcement priorities are developed in the same way. In the Resource Conservation

Recovery Act (RCRA) for example, it was determined that certain closure plan violations were more important than identifying new generator violations, although a national priority was being placed on generator inspections.

V. AGREEMENT

The U.S. state/federal relationship has come a long way towards being the partnership that it needs to be. There are still additional issues that must be resolved but the successes are many and the direction of the state and EPA is on target. The success of our improving relationship has been built through much effort. Some of those efforts include the State/Federal Task Force on Roles and Responsibilities, the Steering Committee on the State/Federal Enforcement Relationship, the State/EPA Committee, numerous regional EPA/state meetings and initiatives, opportunities that EPA provides to states to participate in policy making, recognition that states in general have developed tremendous capabilities and have the desire and the determination to get the job done, much individual effort, emphasis among top management to improve relationship, EPA people going to work for the state and state people going to work for EPA, innovations in EPA management such as state offices, and a lot of plain hard work.

VI. HOW IS THE RELATIONSHIP WORKING?

Typically, when a significant or unusual violation is found, the state people call EPA to seek their advice and support. EPA's input is valued and used. On routine violations, there is probably no contact. Regular reports are provided to show that Utah is identifying and resolving noncompliance quickly and appropriately. Compliance information is on a real time basis and has been a key to the success of the partnership. The state is responsible for maintaining the state/federal data base.

Specific enforcement agreements have been developed to provide ongoing communications. Efforts are underway to reward performance through the application of appropriate oversight, depending on the quality of the state's compliance efforts. Where expectations have been clearly documented, performance and relationships are excellent. As long as we have carefully agreed to what needs to be done on compliance and follow the agreed plan, it is easy. Most discussions and conflicts arise where the understanding is vague or poorly defined. Regular meetings are held to work through these conflicts. An informal dispute resolution process raises the issues to the appropriate individuals for action. As EPA receives reports, deviations from the state plan are discussed and resolved.

VII. DIFFERENCES

The best way to illustrate the difference between federal and state compliance activities other than enforcement is to look at bringing small communities into compliance. There is a real difference in enforcing regulations for major and even minor industries than there is for small municipalities or government units. For several years I was responsible for the water compliance program throughout a six-state area. One of the communities, Marmouth North Dakota, failed to submit information on monitoring and a schedule for improving their waste water treatment. Because of this failure, a form letter was sent out to the town asking them to explain why the information had not been submitted. One of the

routine paragraphs included in the letter explained that failure to meet a condition in the permit could result in a penalty of up to \$10,000 per day. The response from the town clerk in Marmouth is reflective of small town problems. She stated, "that for \$10,000 we could buy the whole town of Marmouth." The letter did not work in the Drinking Water program, small communities represent the majority of those facilities that have trouble complying. Elected officials or voluntary water managers just quit if a noncompliance problem cannot be quickly resolved or if assistance is not provided. Several years ago Utah's noncompliance in drinking water was over 30 percent. Now it is below 5 percent. This success has not been achieved through typical enforcement techniques but through education, hand holding, peer pressure, recognition of excellence, and cooperation of other agencies techniques. State and local programs seem to be much more successful in finding these alternative methods than do federal programs mainly because these entities are closer to the people and the problems. The Safe Drinking Water Committee is the committee responsible for regulating drinking water in Utah. The Committee has three mayors from small communities. These mayors understand the problems that small communities have. However, they also are very effective and credible in censoring the mayors who have not done what is necessary to meet the drinking water requirements.

VII. LESSONS LEARNED

The following are the keys to the success of a state/federal partnership on enforcement:

- A. Most important are the people. The individuals on both sides must be well trained and experienced. They must recognize and accept the identified federal and state roles. They must be knowledgeable and understanding of each entity's concerns and the realities of the constraints and interactions each must consider. They must have a respect and a trust for each other.
- B. Real time information systems must be in place. The states must be accountable for the information and the quality of their compliance program.
- C. EPA expectations must be clear and measurable.
- D. Performance must be based on environmental factors. We must not lose sight of the purpose of compliance and enforcement.
- E. Oversight should be based on performance. Excellent performance should be recognized.
- F. A thorough state compliance plan must be developed and implemented.
- G. Training of state and federal people must be provided.
- H. Compliance people must take ownership of compliance. Each person involved in compliance should be responsible for insuring that a facility returns to compliance and stays in compliance.
- I. Federal and state people must both be committed to improving the state's compliance program rather than replacing it.