

---

## **PROMOTING VOLUNTARY COMPLIANCE: A VALUABLE SUPPLEMENT TO ENVIRONMENTAL ENFORCEMENT**

STAHL, MICHAEL M.

Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 USA

### **SUMMARY**

The purpose of this paper is to examine how promoting voluntary compliance can contribute to environmental enforcement programs. The paper suggests that environmental enforcement agencies need to embrace voluntary compliance as an important tool which supplements deterrence-based enforcement. Further, the paper describes the efforts of various enforcement organizations (some environmental, some not) to redirect their mission and strike a balance between promoting voluntary compliance and using traditional enforcement actions. Finally, the paper discusses the prospects for increased emphasis on promoting voluntary compliance in EPA's enforcement program.

### **1 INTRODUCTION**

The fundamental purpose of enforcement organizations is to bring about behavior which complies with legal requirements. Parties subject to these requirements can be compelled to comply through formal enforcement action, assuming their non-compliance can be detected and provides a basis for legal sanction. Alternatively, parties can comply voluntarily, assuming they are aware of the requirements, understand them and have the resources needed to comply.

Assuring compliance requires establishing a credible enforcement presence with the regulated community. Enforcement actions are the primary means for assuring compliance because they demonstrate to the regulated community that noncompliance can be detected and punished. These actions induce broader compliance by deterring noncompliance. The deterrence-based approach is the foundation of environmental enforcement efforts in the United States.

Achieving the real mission of enforcement organizations—assuring compliance with legal requirements—can be greatly aided by employing a mix of voluntary and compulsory strategies. Unfortunately, most enforcement organizations limit their scope to activities which correct violations after they occur and spend little, if any, resources on activities that would prevent violations. These organizations confine themselves to punishing regulated parties for doing the wrong thing and do not develop their capacity to assist these parties to do the right thing in the first place. This preference for compulsory over voluntary approaches has caused many enforcement organizations to view their mission as the production of enforcement actions and to define success according to the volume of such actions (i.e., the more actions taken and penalties collected, the more successful the program).

### **2 WHY PROMOTE VOLUNTARY COMPLIANCE?**

Environmental enforcement agencies need to examine the mix of voluntary and compulsory strategies they employ to assure compliance. There are at least three forces which argue for increased emphasis on promoting voluntary compliance: the disparity between the regulated universe and the resources available for enforcement; the advances in corporate environmental management; and the move toward a prevention ethic in environmental protection.

## 2.1 Regulated universe vs. available resources

The gap between the scope of the regulated universe (i.e., the growing number of requirements and parties subject to them) and the resources available to assure compliance through enforcement actions is widening. The volume of environmental laws and regulations continues to expand while the resources available to assure compliance with them is shrinking as budgets for federal and state governments generally are reduced.

Formal legal mechanisms are by nature adversarial and very resource-intensive. At current or reduced resource levels, these mechanisms cannot create the degree of deterrence necessary to achieve widespread compliance. There will simply never be enough inspectors and attorneys in the employ of environmental enforcement organizations to achieve full compliance through enforcement actions alone.

By contrast, effective voluntary compliance efforts such as educating regulated parties about how to comply with specific environmental requirements have the advantage of reaching large numbers of these parties without engaging costly legal mechanisms to compel compliance.

## 2.2 Corporate environmental management

In recent years, a growing number of United States' corporations and industry groups have moved toward more active programs of environmental management. One of the forces behind this movement has been an active and visible environmental enforcement program which deters non-compliance. Some corporations, particularly those with sufficient resources have advanced beyond compliance to establish other practices which benefit the environment and the corporation.(1)

Another force behind the movement toward improved corporate environmental management was the passage of Title III of the Superfund Amendments and Reauthorization Act (SARA). Title III created the Toxics Release Inventory (TRI), which required manufacturing companies to report annually to the government (and thereby disclose to the public) the amount of toxic chemicals emitted to the environment. This action greatly increased the visibility of corporate environmental impact and has been a major motivation for environmental improvement.(2)

This atmosphere of heightened environmental responsibility among influential segments of the regulated community offers an opportunity for environmental enforcement agencies. Programs designed to promote voluntary compliance are now received by a receptive audience that recognizes the benefits of environmental management. By establishing such programs, enforcement organizations can capitalize on the momentum building behind improved corporate environmental management, accelerate their progress toward fulfilling their mission of assuring compliance, and expand their contribution to protecting the environment. This was the premise behind an EPA Policy Statement in 1986 which was intended to promote voluntary environmental auditing by industry. (3)

## 2.3 The prevention ethic

Environmental protection is currently in the midst of a paradigm shift. Among environmental professionals from industry, government, and environmental advocacy groups there is increasing recognition and support for the principle that preventing pollution has significant advantages over end-of-pipe remediation. For industry, support for this principle is based on the view that pollution is waste and preventing it can save costs in materials and reduce potential liability. Environmental protection agencies at all levels of government have embraced pollution prevention as a more efficient and effective means of reducing environmental degradation than reactive end-of-pipe clean-up. These agencies are redirecting more of their activities toward pollution prevention.

Environmental enforcement organizations need to align with and contribute to the pollution prevention movement. Case settlement policies that encourage pollution prevention projects in exchange for penalty reduction have shown promise. (4) Inspection strategies that target facilities

or industries with greatest pollution prevention potential are another route by which traditional enforcement activities can contribute to pollution prevention.

But there is a niche of the prevention movement which environmental enforcement organizations have largely overlooked even though it presents a significant opportunity for advancing pollution prevention. The niche is preventing violations through promoting voluntary compliance. When enforcement organizations prevent violations they are, in reality, preventing pollution.

### **3 EXAMPLES OF PROGRAMS THAT PROMOTE VOLUNTARY COMPLIANCE**

A wide variety of enforcement organizations at federal, state, and local levels of government have invested in promoting voluntary compliance. Described below are examples from the U.S. EPA, Massachusetts Department of Environmental Protection (DEP), the U.S. Occupational Safety and Health Administration (OSHA), the U.S. Internal Revenue Service (IRS), and local police departments.

#### **3.1 The Clean Air Act Small Business Compliance Assistance Program**

In developing the Clean Air Act Amendments of 1990, Congress realized that many more small businesses would be subject to air quality requirements as a result of implementation of Federal and State air programs. Since many of these small businesses had never before been regulated by air programs, they have little knowledge of air quality regulations and thus little technical expertise to determine how to comply with them. Congress designed Sec 507 of the Clean Air Act Amendments to address this potential problem. Specifically, it requires states to establish compliance assistance programs that will provide technical and compliance assistance to impacted small businesses.

In particular, Section 507 requires the establishment of a state Small Business Ombudsman to act as an advocate of small business needs and concerns; the establishment of a small business assistance program for providing technical and compliance assistance to small businesses; and the creation of a compliance advisory panel for determining the overall effectiveness of the small business assistance program. In assuring that there are adequate mechanisms for informing small business stationary sources of their obligations under the CAA, these programs will refer sources to qualified auditors or provide for state-sponsored audits of the operations of such sources.

Realizing that many small businesses would be interested in learning about and complying with more than just air quality requirements, EPA is establishing a "Leadership State Grant Program" that will provide incentive grants to seven to ten state small business assistance programs to encourage these programs to provide assistance on all environmental requirements from all media.

#### **3.2 Massachusetts DEP—waste prevention first**

In 1988 the Massachusetts DEP launched a comprehensive review and assessment of its compliance and enforcement effort. The review was undertaken because DEP, while recognizing that pollution control and clean-up are necessary for environmental protection, had determined to shift its focus to prevention and preservation.

DEP recognized a "compliance triad", a range of approaches to encourage changes in human and corporate behavior, and ensure compliance with state environmental rules. (5) The triad included: 1) promotion of compliance using education and outreach, technical assistance, and economic incentives; 2) monitoring compliance through inspections, self-reporting, and response to complaints; and 3) enforcement through issuance of notices of non-compliance, negotiated consent decrees, or administrative orders.

The results of the DEP's blending of the pollution prevention ethic and the range of approaches in the compliance triad is their program known as Waste Prevention Facility-wide Inspection to Reduce Sources of Toxics, or Waste Prevention FIRST. The program was based on the idea that the

effectiveness of traditional compliance and enforcement tools can be enhanced by inspecting whole facilities instead of individual waste streams.

The program conducts air, water, and hazardous waste inspections simultaneously instead of one at a time and then points companies in the direction of toxics use reduction, taking advantage of a new Massachusetts law which mandated plans for toxics use reduction. The program provides significant efficiencies for traditional compliance and enforcement activities. For example, the 700 whole-facility inspections conducted in 1993 would have required 2,992 visits to accomplish the same amount of work done in the conventional single-media way. In addition, the program also provides resources (through referrals to the State's Office of Technical Assistance) to help violators not only come back into compliance, but go beyond it to achieve meaningful and cost-saving reductions in their use of chemicals and discharges of pollution.

### 3.3 OSHA's Employer Consultation Service

Recognizing that the interpretation of complex standards and the ability to identify hazards in the workplace are often difficult for small employers, OSHA provides free consultation services to small, high hazard facilities that request it. In 1992, OSHA made 22,709 consultation visits during which more than 120,000 hazards were identified and corrected. (6)

Consultants are federally-funded state employees that are trained to help employers identify and correct specific hazards. In order to receive these services, the employer first agrees to allow the consultant to confer with workers and to correct any imminent dangers and other serious job safety and health hazards in a timely manner. Consultants also provide guidance in establishing or improving an effective safety and health program and offer training and education for employers and employees. After the visit, the consultants furnish the facility with a written report of recommendations and agreements. Often, they will conduct follow-up visits to assure that any required corrections are made.

Information on facility hazards will be turned over to OSHA for enforcement follow-up only in cases where there is imminent danger or when a facility fails to eliminate or control an identified serious hazard or imminent danger in accordance with the agreed upon plan. Facilities may be eligible for a one-year exemption from generally scheduled compliance inspections. The exemption is applicable for employers that receive a comprehensive consultation visit, correct all serious and non-serious violations, post notice of their corrections, and institute the core elements of an effective safety and health program. Inspections prompted by an employee complaint or a catastrophe are not exempt.

### 3.4 The OSHA Voluntary Protection Programs

The purpose of the Voluntary Protection Programs (VPP) is to encourage and recognize excellence in employer-provided, site-specific occupational safety and health programs. It is premised on the belief that facilities need comprehensive management systems to not only meet OSHA's standards, but to go beyond compliance to provide the best feasible protection at that site. In 1992, there were 150 recognized worksites. Injury incidence rates at these facilities average from 35% - 65% below the expected average for similar industries. Similarly, lost workday injury rates were over 60% below the expected average in similar industries. (7)

When employers apply for and achieve approval for participation in the VPP, they are removed from programmed inspection lists. This frees OSHA's inspection resources for visits to establishments that are less likely to meet the requirements of the OSHA standards. In addition, VPP participants work cooperatively with OSHA in the resolution of safety and health problems. Employee complaints to OSHA, significant leaks or spills, and all fatalities and catastrophes, however, are handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

There are three levels of participation in the program. The Star Program is based on the characteristics of the most comprehensive safety and health programs. Star participants are evaluated

on site every three years, with annual injury rate reviews. The Merit Program is aimed at employers who do not yet meet all the qualifications for the Star Program but who wish to work toward Star Program participation. Merit participants are evaluated onsite annually. The Demonstration Program provides companies the opportunity to demonstrate the effectiveness of alternative strategies for safety and health improvement, particularly in unusual worksites (e.g., logging).

### 3.5 Internal Revenue Service

As the agency responsible for processing millions of tax returns and related documents, administering refunds, responding to requests for assistance, and conducting examinations and collection actions, the IRS has an enormous job to do. In recent years, the IRS has invested a great deal of time and energy to identify more effective ways to increase compliance with tax laws and regulations. Among the reasons for this investment are two facts: first, the difference between the amount of taxes due and the amount paid is estimated at more than \$113 billion; and second, for each 1% increase in voluntary compliance, approximately \$5 billion in additional revenue is produced.

The "Compliance 2000" Project is an attempt by IRS to fundamentally redirect its compliance effort. Fred Goldberg, Commissioner of the Internal Revenue Service from 1989-1992 described this redirection as follows:

"At present the focus of our compliance effort is principally after-the-fact, case-by-case enforcement. Examinations, collection actions, and criminal investigations are, and always will be, an essential part of what we do; indeed they should be expanded in the years ahead. But they cannot be pursued in a vacuum. We are changing the way we approach our compliance activities. We are devising, implementing, and assessing comprehensive strategies to improve voluntary compliance — strategies that combine traditional enforcement actions with education, outreach, and simplification of regulations and legislation. The ultimate objective is not to maximize yield through costly, intrusive and burdensome enforcement efforts. The objective is to enhance voluntary compliance." (8)

The IRS describes their previous compliance strategy as the "caboose rather than the engine approach to tax administration" because of its essentially reactive, after-the-fact nature. Under the "Compliance 2000" strategy, the IRS will use a proactive approach which maximizes voluntary compliance by maintaining current compliers through burden reduction, using nonenforcement means with taxpayers who are trying to comply, and using enforcement means with taxpayers who won't comply. By taking this approach, the IRS believes it will effect taxpayer behavior, minimize taxpayer burden, and minimize costs to the government.

### 3.6 Local police departments

Local police agencies are another segment of the enforcement community seeking to supplement the reactive, case-by-case methods of traditional enforcement with more innovative approaches. These new approaches fall generally within two movements which are driving many of the changes being made in local police departments—"community policing" and "problem-solving policing."

Community policing calls for a police department to form a partnership with its community to identify and address community safety problems through a collaborative process. This partnership is based on the view of police departments more as "contributing to the safety and quality of urban life, and less as the feeders of the criminal justice process." Problem-solving policing "stems from a conviction that police 'incidents' are symptoms of underlying problems, usually soluble, and that policing becomes more effective when it pays more attention to the problems rather than treating each incident in isolation." (9)

### 3.7 Common characteristics of these programs

The organizations described above have taken important steps to invest in activities which promote voluntary compliance. There are certain characteristics which seem to be common to all these organizations.

First, each was motivated in part by examining their mission and recognizing that they should serve a broader public purpose. The determined that old formulations of their ends and means were not adequate to serve a changing landscape.

Second, each of those organizations decided that they would do a better job of assuring compliance by intervening earlier in the causal chain which produces non-complying behavior. In doing so, they are attempting to bring about complying behavior without resorting to formal legal mechanisms.

Third, even though each of these organizations is placing more emphasis on promoting voluntary compliance, they are not de-emphasizing enforcement action as a means for assuring compliance. None of these organizations has defined the use of voluntary and compulsory strategies as an either/or choice. Rather, they are striving for a balance between these strategies and attempting to apply each in the most appropriate circumstances. The organizations realize that promoting voluntary compliance will be ineffective without a strong enforcement program.

## 4 EPA EFFORTS TO PROMOTE VOLUNTARY COMPLIANCE

Although EPA has devoted significant resources to promoting voluntary compliance by providing information, training, and other outreach about new or changing environmental requirements, these efforts have been piecemeal. Attempts to promote voluntary compliance have been largely organized around specific regulations designed to control pollution in a single media, i.e., air, water, or land. This single-media (and sometime pollutant-specific) approach to pollution control is an artifact of EPA's major statutory authorities and its organizational structure. One of the consequences of the single-media approach has been an inability to promote voluntary compliance in a comprehensive, whole-facility package that addresses the full range of requirements with which a facility must comply.

Two developments are likely to change the manner in which EPA will promote voluntary compliance in the future: EPA's newly-created "Strategic Enforcement Organization"; and the Environmental Leadership Program (ELP) in which pilot projects to promote environmental auditing will be conducted.

### 4.1 EPA's new strategic enforcement organization

On October 12, 1993 EPA Administrator Carol M. Browner announced her decision to reorganize the Agency's enforcement program and create a new "Strategic Enforcement Organization". A key feature of the reorganization was to "reorient the Agency's enforcement program to focus squarely on the compliance problems that pervade certain sectors of the regulated community." (10) This "sector approach" should allow EPA to develop whole-facility approaches to enforcement and compliance and augment enforcement strategies with appropriate compliance enhancement activities.

The vision statement for the new Office of Enforcement and Compliance Assurance (OECA) says it will "encourage strong environmental performance in the regulated community and use a broad range of tools to achieve compliance," and the operating principles for the new organization state that "compliance assistance activities should complement traditional enforcement efforts."

The redirection of EPA's enforcement program presents an opportunity to promote voluntary compliance using more integrated and effective approaches. The capacity to develop and deliver

comprehensive compliance assistance focused on facilities in an industrial sector or ecosystem should be greatly enhanced by the reorganization and reorientation of EPA's enforcement program.

#### 4.2 The Environmental Leadership Program

Motivated in part by the success of OSHA's Voluntary Protection Programs, EPA has been exploring the feasibility of developing its own program to promote and recognize voluntary programs for corporate environmental management. EPA's proposal, called the Environmental Leadership Program, has been the subject of a concerted public dialogue with industry, environmental groups, and states.

EPA has decided to proceed with one or more pilot projects to test the feasibility of a voluntary program to recognize industrial facilities. The pilots will explore ways to encourage facilities to develop innovative audit and compliance programs and to reduce the risk of non-compliance through pollution prevention. The ELP will be managed by the new Office of Enforcement and Compliance Assurance.

## 5 CONCLUSION

Promoting voluntary compliance offers significant benefits to environmental enforcement organizations as they confront the formidable challenge of assuring compliance. This challenge is best addressed through a mix of voluntary and compulsory strategies to bring about complying behavior. The gap between the regulated universe and available enforcement resources, the growing importance of corporate environmental management, and the movement toward pollution prevention are compelling reasons to invest in promoting voluntary compliance. Various environmental agencies have recognized these developments and moved toward new approaches which promote voluntary compliance. Continued progress toward developing effective voluntary compliance programs will depend on the willingness of government, industry and environmental groups to experiment with new approaches and share the lessons learned from their efforts.

## ENDNOTES AND REFERENCES

1. For a detailed description of companies making strong efforts to improve their environmental management programs. See Smart, Bruce (Ed.), Beyond Compliance: A New Industry View of the Environment, World Resources Institute, 1992.
2. *Ibid.*, pg.89.
3. See United States Environmental Protection Agency "Environmental Auditing Policy Statement; Notice" Federal Register vol. 51, No. 131, Wednesday, July 9, 1986, page 25004.
4. Examples of enforcement settlements which include a penalty reduction in exchange for conducting pollution prevention projects can be found in "Pollution Prevention Through Compliance and Enforcement," U.S. Environmental Protection Agency, December 1991.
5. A description of the Massachusetts program can be found in "Making It Count: DEP's New Compliance and Enforcement Strategy," Massachusetts Department of Environmental Protection, January 1994.
6. "Consultation Services for the Employer," U.S. Department of Labor, Occupational Safety and Health Administration, OSHA 3047, 1991 (revised).
7. "OSHA's Voluntary Protection Programs," U.S. Department of Labor, Occupational Safety and Health Administration, 1992.

8. "Tax Systems Modernization," Statement of Fred T. Goldberg, Jr., Commissioner of Internal Revenue, before the subcommittee on Commerce, Consumer and Monetary Affairs, House Committee on Government Operations, July 9, 1991.
9. These descriptions of community policing and problem-solving policing are from Sparrow, Malcolm, Pressing Duties: Government's Changing Approach to Compliance, Praeger Books, Spring 1994.
10. "New Strategic Enforcement Organization," memorandum from EPA Administrator Carol Browner, October 12, 1993.