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## **ENFORCEMENT AT GOVERNMENT-OWNED OR -OPERATED FACILITIES**

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### **GOALS**

The session addressed the following issues:

- How are governments made accountable for environmental requirements?
- What enforcement responses are effective in achieving compliance? What enforcement instruments/authorities are particularly effective?
- Intergovernmental relationships: How important is the independence of the enforcement official? What relationships and organizational linkages are useful for success?

### **1 INTRODUCTION**

More than 35 participants from over 29 countries discussed in two separate workshops, challenges and approaches for enforcing environmental requirements at government owned or operated facilities. Participants represented countries whose industries were primarily state-owned and operated as well as countries whose economies were mostly privatized except in certain sectors.

### **2 PAPERS**

Edwin Lowry, Deputy Attorney General for the State of California, United States, prepared an introductory paper entitled, "Enforcement of Environmental Laws at Government-Owned Facilities: Some Theoretical and Practical Considerations". Mr. Lowry asserts that the federal government is capable of, and does commit, as large and as serious environmental violations as private industry, and that these violations should be treated in a manner similar to private industry. He also asserts that state and local governments should be treated the same way. The Federal Facilities Compliance Act, passed in 1992, now subjects the federal government to the same fines and penalties faced by private industry. Implementation of this Act has highlighted some of the different constraints faced when working with government-owned facilities, however, as examples from the state of California demonstrate. Budgeting for the payment of penalties remains a significant obstacle, but the threat of going to court to achieve compliance with the statute has encouraged government facilities to increase their efforts at compliance with environmental laws.

Additional papers which address enforcement issues at government-owned or -operated facilities can be found in Volume 1 of the Proceedings from the second International Conference on Environmental Enforcement under Theme #5, "Economic and Ownership Issues".

### **3 DISCUSSION ISSUES**

#### **3.1 How are governments made accountable for environmental requirements?**

In several countries, recent legislation has made it possible for the government to enforce environmental laws against government-owned or -operated facilities. In some cases, either the payment of penalties or injunctive relief may be allowed. The argument presented is that government

should function and be treated like private business and that, therefore, the same regulations and penalties should apply. However, the government agencies themselves often argue that they are public service organizations, without profit motives, and that they should not be subject to the same regulatory schemes. The need for an independent judiciary is essential for this approach to work.

In the United States, legislation has also been passed which requires federal facilities to do more to prevent environmental problems, to report their emissions, and to disclose the types of materials used. Holland has also placed more emphasis on environmental care programs, not litigation. Although this takes more time and resources, the results have been better.

Most countries have some provision for citizen suits as a means to enforce compliance at government-owned or -operated facilities. In some cases, however, standing was limited to having an interest. Canada has proposed to identify an environmental commissioner to hold government accountable. A computer registry of cases has been developed and is accessible to the public and any two citizens may request a review of a case.

Some countries have established inter-agency steering committees to review environmental violations and to try to work out mutually agreeable solutions, while preserving intergovernmental relationships.

Heightening public awareness was cited by several participants as an essential factor in an enforcement program. Media publicity, education, and awareness were all seen as effective enforcement approaches. Reliance on public pressure is often more effective than other kinds of actions.

### 3.2 What enforcement responses are effective in achieving compliance? What enforcement instruments/authorities are particularly effective?

Suits filed by government agencies against government agencies is one way to try to enforce environmental laws. In some countries, however, when one agency sues another, the Attorney General can quash the suit. The agency must then try to achieve the same result through hearings and discussion. In some cases, when legal action is difficult, the state can take over the function of the agency or close it down.

In some countries, penalties may be assessed for environmental violations. However, this often creates the situation where the government takes money from one pocket and puts it in the other. In some cases, a government agency is not allowed to pay a penalty unless it has been approved in that year's budget, which makes it difficult to collect. Another approach is to go to the legislature and request that that agency's budget be reduced or to enact new legislation allowing the payment of penalties.

Interagency agreements between the regulatory agency and the regulated agency can provide a mechanism for the negotiation of administrative orders to compel compliance and develop compliance schedules. Many countries prefer to place the emphasis on injunctive relief as opposed to the assessment of fines.

In some countries, one of the barriers to enforcement is that inspectors do not have the authority to inspect at government military installations, due to national security issues.

The lack of an independent judiciary is another significant barrier to enforcement. Judges need to be independent to stand up to agencies and make them comply.

### 3.3 Intergovernmental relationships: How important is the independence of the enforcement official? What relationships and organizational linkages are useful for success?

Tension can be created when one agency tries to enforce against another—both political tensions and personal tensions between colleagues. Political constraints were identified as a significant barrier to enforcing against government-owned and operated facilities. Colleagues at sister agencies are loath to embarrass their friends and will often let a case languish or refuse to bring it. Cases may also be quashed due to political influence and interference. For example, states may not

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be very successful trying to compel local governments to take action because the local prosecutor may be biased.

The regulatory agency has to play the dual role of regulator and provider of environmental management assistance. It is often difficult to play both roles effectively. Interagency policy groups were identified as important to maintaining intergovernmental relationships. However, for these groups to be effective, it was suggested that someone who controls the budget be part of the process. These types of groups can also provide useful forums for standardizing the environmental management practices of federal agencies and encouraging the use of environmental audits and EIAs to prevent future problems.

#### **4 CONCLUSIONS**

Effective enforcement at government-owned and -operated facilities requires a combination of targeted legislation, policy, publicity and public involvement. Government industries should be treated like private businesses and the same regulations and sanctions should apply. An independent judiciary is essential to enforce effectively and the establishment of interagency committees to effectively address problems and preserve relationships can be effective.