
COMPLIANCE MONITORING

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1 INTRODUCTION

A brief overview was presented by the co-facilitators that covered available reference materials such as the recently prepared Compliance Monitoring Protocol manual, Volume I of the Budapest proceedings, the Multi-media Inspection manual, and UNEP's institution building training manual's module on compliance monitoring and inspection, as a starting point for further development of this topic.

2 GOALS

An exploration of the activities and requirements necessary to develop and implement a compliance monitoring program. The group was particularly interested in learning about new approaches and ideas that would aid them in either developing a new program or evaluating an existing one. As a group they were looking to increase the efficiency of their programs through multi-media training, approaches, and the number of single media inspections. They also wanted an overview of an actual compliance monitoring program.

3 PAPERS

A paper by Mr. Gudmund Nielsen entitled Institutional Strengthening and Capacity Building in the Field of Environmental Inspection and Enforcement in Denmark describes the physical, administrative, and legislative framework of the Danish inspection and control system, providing data on staffing, inspection frequency, penalties and other important compliance monitoring issues. A technical support document, Source Self-Monitoring Requirements: International Comparison, presents comparative information gathered from nine different countries on their use of source self-monitoring, reporting and recordkeeping and is based on key design issues that country officials should consider when developing compliance monitoring programs. Another technical support document, Multi-media Inspection Protocols: International Examples, describes key aspects of how and why multi-media inspections may be included in a compliance monitoring program with information gathered from nine different countries on present multi-media inspection approaches. A UNEP Training Manual on Institution Building was produced to help countries develop their institutional ability to ensure industry compliance with environmental standards by examining different approaches, identifying critical elements of success, and providing options if resources are limited.

4 DISCUSSION SUMMARY

4.1 Overview of key issues in developing a compliance monitoring program

As requested an overview was provided by the co-facilitators that focused on: (1) the need to define the responsibilities and authorities of each governmental agency involved in the enforcement process and use of compliance monitoring information (i.e., from national government to local police); (2) the need for adequate inspector training; (3) the set of issues dealing with whether to employ multi-media inspections, permitting and the use of multi-media checklists versus single program approaches for air, water, waste etc.; (4) the various self-

monitoring methods including emissions testing, record keeping and reporting and the whys and wherefor of each; (5) the use of certified, third-party compliance audits, (6) the issuance of a certification of compliance; (7) the need to maintain and make available background information on sources; (8) the use of an elite inspection group for complicated inspections; (9) the issue of how and when to use citizen complaints, hot lines and other public participation approaches to increase the number of inspectors in the field; (10) the role of an inspector - compliance, enforcement, technical assistance, environmental assessment; (11) how facilities are targeted for inspection- large emitters, risk, citizen complaints, geographical regions, sector-based; (12) safety training and medical monitoring for inspectors; (13) reducing the frequency of inspections as a reward for compliance; (14) mobile source emission inspection requirements; (15) the need for inspection, analytical and information collection quality assurance and quality control (QA/QC); (16) the use of special technologies to monitor compliance such as overflights, Lidar, FTIR, and analysis of other databases; and (17) the need to have and promptly prepare inspection reports.

4.2 Defining responsibilities and authorities of each governmental agency

One question brought up was whether or not any new authority was needed to conduct multi-media inspections. Most responded that it was less a matter of authority than of an administrative effort to coordinate inspection activity at a single facility.

4.3 To what extent are countries conducting multi-media inspections?

Most participants stated that wherever possible they are already conducting multi-media inspections or are planning to do so in the near future. The reasons were as varied as the countries represented at the session. One country uses this approach to promote a more professional presence at the facility. Others stated the commonly heard complaint from industry that on one day the air inspector would show up, the next day the water, and so on. One mentioned the need to present an image of cost savings by sending all its inspectors in one vehicle to cut travel costs. Others talked about the potential for training and the frequent need to inspect complex sites and that if there were several inspectors there was a greater chance that at least one could withstand the temptation to accept a bribe. Still others were concerned that if only one inspector was sent out the tendency for bribery would increase. All of the participants talked about the difficulty and expense of cross-training and maintaining a multi-media inspection staff.

The topic of integrated or multi-media inspections was brought up again in the context of why it is used on a technical level. Most thought that as a screening tool it was helpful in gaining an overview of a facilities total releases to the environment. It can also be used to develop a historical database for future comparative usage. Many were concerned about the cost to cross-train inspectors and the time to conduct such an effort. Others spoke of resistance on the part of the inspectors themselves to be cross-trained. One comment was raised as to who was a better inspector, "a generalist or a single media specialist?" The group did not have an answer, but the use of a checklist was viewed as a compromise that can work.

4.4 Source self-monitoring

Another question raised centered around the issue of self-monitoring and what each country is doing in this area. Hong Kong stated that it had no legal basis to process or use self collected information against a facility for direct enforcement response, however third-party audits are conducted to verify self-monitoring data and companies can be made to pay for control equipment if the need for such is identified. One problem is that so much information is currently

collected that it has overloaded the system's ability to handle the volume. Sierra Leone and Honduras did not currently use self-monitoring. The Slovak Republic, Latvia, and Poland all depend on self-monitoring information as do Kenya and the Netherlands to assist them in setting priorities for inspections, but all were very concerned about the quality of the information collected. A common approach was to verify this information through the use of inspections. This practice is also used in The United States where the major self-monitoring program in place is the one associated with wastewater discharges. Other programs underway include those for the RCRA, the pesticide manufacturing industry, and air emission sources. Most if not all of the self-monitoring information collected in the United States can be used against a facility in a court of law. Mention was made of the "citizen suit provision" wherein, a citizen, a group or and NGO can file suit against a company for noncompliance based on information submitted by the company under the self-monitoring requirements. The companies must certify under the penalty of law that materials contained in their submittal is accurate and complete.

4.5 Citizen complaints

The next issue raised concerned the policies, use, and practices of citizen complaints. Kenya has a system in place, but industries always point the finger at other companies or say "why don't you go inspect them?" Hong Kong uses its complaint system to target offenders but needs a clear pattern of violation or an extreme case to prove noncompliance. This is based on the reasoning the court places on facilities that can show compliance histories of 90-95%. Malaysia also has a similar approach to complaints and targeting. There is much mistrust of the information submitted via self-monitoring and from complaints and therefore inspectors must use great discretion to determine the next course of action. The Antilles uses a call in number and the offices of all governmental agencies to collect citizen complaints. As Honduras does not have an inspection staff, most if not all violations come to the attention of the government via citizen complaints. The U.S. has a network of local, county, state, and federal hot-lines and other communication links through which individuals can report potential violations. There is also a network of NGOs that citizens can call or contact.

4.6 Data collection and management

On the issue of data collection, many talked about the volume of information but the lack of actual data being available for agencies to base decisions on. Countries like Latvia, the Slovak Republic, and Poland gather information from three or more sources. National information collected and verified via inspections, economic and production information gathered by a separate governmental agency, and the fees levied by the tax offices on projected discharge levels. While they are cross-checked as much as is possible, most have found that there was little connection between these systems. Most countries can not use this information to penalize, fine, or sue companies who report excess emissions. A few talked about the limitations in their regulations that only allow them to obtain one sample from a source that must then be used to represent the conditions of the entire production schedule. All talked about the need to increase their Quality Assurance/Quality Control/ efforts but were at a loss as to how this could be accomplished within the framework of limited resources.

4.7 Targeting inspections

The next issue discussed was on how targeting of sources was conducted in each of the countries. While most countries had a systematic approach to inspect the largest or most risk assessed facilities, many rely heavily on citizen complaints. Most spoke of limited resources

- the necessary number and adequacy of trained inspectors, inspection, sampling, and analytical equipment, and other financial support. Many of the developing countries spoke about the need to develop a legal and regulatory framework before any serious attempt could be made in targeting facilities. Some talked about the concern of industrial lobbying and the potential for bribery, others about the internal competition for resources that made consensus targeting difficult to reach. Many are simply “planning by doing”.

5 CONCLUSIONS

The group identified five (5) common points of interest/need that should be addressed by those concerned about promoting the issues of compliance monitoring and multi-media inspections. They are as follows:

1. The need for multi-media inspector training in developing countries.
2. The development of a network/database to exchange information on multinational companies.
3. The use of multi-media inspections to deter bribery.
4. The need for ISO 14000 training and a finding on its effect on a countries laws and regulations.
5. The lack of an existing Quality Assurance/Quality Control (QA/QC) system to verify self-monitoring information and the need to establish a reliable and enforceable reporting mechanism.

