
LEGAL MARKETING OF ENVIRONMENTAL LAW: THE PHILIPPINES EXPERIENCE

OPOSA, ANTONIO A. JR.

Attorney, Philippine Ecological Network, 1807 Tower One, Cityland 10, Ayala Ave. Cor. H. V. Dela Costa St., Salcedo Village, 1200 City of Makati Philippines

"Nature, to be commanded, must be obeyed."

- Francis Bacon
Novum Organum

"Marketing sells a product; Law sells a mode of conduct."

- Anonymous

SUMMARY

The Philippine environmental law is replete. The level of implementation, however, suffers in the sickbed of non-compliance. This paper seeks to present an evolving hypothesis for an alternative mode for effective law enforcement. For lack of a better term, it is tentatively called "legal marketing."

The paper will seek to examine ways and means by which the social product of the law — the 'ratio legis' — can be more effectively sold and promoted to the target market. It will try to posit a few theoretical principles distilled from the field of experience. Thereafter, it will present a situational analysis of current environmental flashpoints and suggest a practical approach to address them. This technique uses not the 'force of law' as Western legal systems give emphasis; rather, it seeks to use the social and cultural characteristics inherent in Filipinos, and values which they, and perhaps all Asians, hold true and dear.

Since it is only an evolving theory, any comments and suggestions, especially practical examples in communities, will be most appreciated.

1 INTRODUCTION

Law is a tool of understanding by which human society conducts itself. The goal and objective of the law is the betterment of the general public, the public interest, or the common good. However, the provisions of the law, per se, are ineffective unless the target market of the law, the consumers so to speak, are aware of the provisions of the law. More important, the consumer of the law must be convinced of the need for such law and must be "sold" to the policy objective of the law, i.e. the reason behind the law, *the ratio legis*.

Under the current legal regime, the method which this marketing exercise relies is solely on "enforcement" rather than on "voluntary compliance and implementation". It depends heavily on the sanctions and methods of the use of "force" to coerce, albeit legally, the modification of behavior. Thus, to discourage a manner of behavior, "criminal" penalties are imposed, for example, fishing by dynamite, the burning of forest land, or the indiscriminate dumping of wastes.

The Philippines has one of the most voluminous set of environmental laws in Asia. The presence of these laws, however, has not prevented the reduction in forest cover from about sixty percent (60%) fifty years ago, to the now critical state of ten percent (10%). Neither has it prevented the destruction of our coral reefs to the now terminal state of only five percent (5%) in

good condition. Illegal fishing methods continue to be practiced and so is slash-and-burn farming. With the heightened economic pace of the Philippines, industrial pollution is and will continue to be a problem in the country.

The Philippine government has enacted approximately 118 environment related laws in the country.¹ Evidently, the legal framework of Philippine environmental law is sufficient in substance and in form, even superfluous. The primary legal basis for environmental protection may be found in the 1987 Constitution. Article II, section 16 provides: "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature²."

Underlying all these laws is the "trust doctrine". The trust doctrine proceeds from the premise that humankind, allegedly the most intelligent being in the animal kingdom, are only the trustees of the earth's natural resources. As a species, we hold these God-given gifts in trust not only for future generations of humankind, but also for the "lesser" forms of animals of which we are supposedly their guardians and stewards. They — future generations of humankind and other life forms — are, in law, the beneficiaries of our trust. If our generation misappropriates for its exclusive use and benefit the natural resources of the earth to the permanent prejudice of future generations and other life forms, we breach that trust.

This misappropriation, if done in bad faith and with knowledge aforethought, is tantamount to "generational swindling", i.e. swindling future generations of what rightfully belongs to them. And because what is damaged is the very life-support system of the rightful beneficiaries, this misappropriation can even result in generational genocide. Finally, the act of misappropriating life-support systems of future generations of life forms (humankind included) violates the highest law of Nature. It offends every living being's right and instinct of self-preservation and self-perpetuation.

2 PRINCIPLES OF EFFECTIVE ENVIRONMENTAL LAW IMPLEMENTATION

If one carefully examines the innumerable provisions of formal and informal laws (i.e. statutory and traditional or customary laws), the potential for creativity to make sustainable development work effectively is contained in or in-between the very lines of the Law. Voluntary compliance is more socially desirable than coerced compliance. Put a little differently, the best form of law enforcement is that where the law does not need to be enforced.

In the course of years of environmental law practice, both in the public interest and private sectors, the author has identified several principles of effective environmental law implementation.

First, recall that a law is an agreement of minds, a social contract. As an agreement, the participants must fully understand and appreciate the reason behind — and the need for — the law. In legal language, this is the *Ratio Legis*, the reason for the law. In sociological terms, this is the "social product" and the "common good" which the law seeks to promote. And voluntary compliance is possible only when those whose conduct is sought to be regulated or modified fully understand the reason for the law and appreciate its value. If their understanding is secured that the social product and policy are desirable, then their mental and emotional "agreement" is reached. In addition, the body politic must also participate in the making of the law. When the social policy is generally agreed upon, there is consensus, a characteristic mode of reaching an agreement in Asian societies. Then, the law is nothing more than the informal agreement formally crystallized into words.

Second, legal marketing, or selling the law, may be used to promote voluntary compliance. The legitimacy and effectiveness of a law is in large part dependent on publicizing the law. As ordinary marketing sells a product; law sells a mode of conduct. Thus, in like manner

that active marketing, advertising and promotions are techniques used to sell a consumer product, so must creative marketing use proactive methods to “sell” the social good and the mode of conduct desired.

Third, the manner of implementing the law must be socio-culturally sensitive. It must take into account the social and cultural characteristics of the people who are the target market of the law. This is particularly true in situations and countries and regions that may have some commonalities in their socio-cultural traits such as Asia.

Fourth, the law must contain an aspect of punishment in order to modify behavior and serve as a deterrent. That is, people must be aware that deviating from the conduct which promotes social good carries a penalty. Penal law must, however, be reserved only for the hard-headed. And it is effective as a deterrent if, and only if, its application is swift, painful and public.

Human conduct is such that it responds to the stimuli of pleasure and pain. To promote behavior, therefore, it must promise a pleasure, and to discourage it, it must present the possibility of extreme pain.

Technically, the term used is “incentives-and-disincentives.” It is also called the “carrot-and-stick” market-based incentives (MBIs). For this discussion, however, a more graphic term shall be used: “candies-and-needles”. Candies are so irresistible that unless one has severe dietary restrictions, it is generally accepted, taken and ingested. On the other hand, the prospect of a sharp and long needle being pierced into one’s flesh is so squirmingly painful by its mere appearance that one would generally not want to tangle with it.

The following will illustrate some approaches and examples by which the candies-and-needles technique may be applied to address environmental law non-compliance.

3 CANDIES AND NEEDLES APPLIED

In the application of this approach, care must be taken to consider the socio-cultural characteristics of the target market. Among Filipinos, as among many Asians, the following cultural attributes are significant:

Highly personal. Filipinos are a highly personal people. They would rather “talk things over” than issue or receive written orders. When people have problems with one another, they are more inclined to approach the person concerned.

Debt-of-gratitude. One value the people hold dear is the debt-of-gratitude. When a favor is owed, it is the source of great shame when one will refuse to requite it.

Face value sanction. “Loss of face” is a sanction of the highest order, higher than ordinary legal sanction. A man can pay a big fine quietly and be done with it. But even a small fine if well-publicized will inflict much greater pain. And the pain extends not only to one’s self but also to his family. Thus, the sanction is imposed also on the strongest social tie and ultimate psychological crutch of the wrongdoer. It is so painful, one would not even want to think of it.

3.1 Commercial illegal logging

One of the problems that has hounded the Philippine Government is the issue of illegal commercial logging. The laws on the matter have existed since the inception of government in the Philippines. The consolidated Forestry Code³ lays out the cutting methods, silva-cultural and protection techniques, prohibition of slash-and-burn farming and provides heavy penalties of up to 20 years imprisonment for the violation thereof.

Fifty years ago, the Philippines, an archipelagic country of 7,100 islands with a land mass of 30 million hectares, was estimated to have a virgin forest cover of 16 million hectares, or more than 50% of the land area. The topography of the Philippines is such that at least 50 per cent of the land area must be devoted to forest lands. Being of volcanic geology, the islands generally have central highlands and gradually sloping down to sea level. Thus, the law requires that all lands with at least 10 degrees⁴ in slope must be devoted to forest land and kept in "vegetative condition sufficient to prevent erosion and adverse effects on the lowlands."⁵

In 1988, a satellite imagery was taken of the country. It was determined that the virgin forest cover had been reduced to a mere 800,000 hectares, a mere 2.6% of the land area. The period from 1970 to 1985 showed that notwithstanding the strict laws on the matter, forest degradation was at its most severe. Among the catalyst culprits is commercial illegal logging.

The same situation is observable in the country's marine resources sector. Presidential Decree 704⁶, otherwise known as the Fisheries Code, provided for the policy legal conduct being promoted in the fisheries sector, and also provided for heavy penalties therefor. This has not prevented the destruction of our coral reefs, for example, from being degraded so badly that only 5% of the country's wondrous coral reefs remain intact.

3.1.1 The candies

In a democratic system of government, participation by the sector concerned in the law-making process is essential. Thus, the requirements of due process, public hearings, and investigations in aid of legislation have been provided as an outreach mechanism of the legislative procedures. When a law is however *fait accompli*, i.e. when the law has been made and all it needs is enforcement, the participatory technique can be applied to the aspect of creative implementation.

The first step is to identify and invite all lumber/wood dealers, loggers, and others involved in the industry to individual meetings.⁷ These persons all have a stake in the sustainability of the supply of trees. They are the so-called "stakeholders."⁸ This meeting must also be attended by top-level inter-agency officials and citizens groups (NGOs). The agenda is to: a) enlighten; b) excite; and c) en-act.

The critical nature of our present forest resources must be explained with great patience and clarity. Then, appeal is made to them as fellow Filipinos and as fellow human beings. After all, they too have a stake; they too are concerned with the future of their country and of their own children.

The meeting must be attended by other top officials of the Department of Environmental and Natural Resources (DENR), the National Bureau of Investigation (NBI), the Department of Justice, the Bureau of Internal Revenue (BIR), the Multi-Sectoral Forest Protection Committee, Non-Governmental Organizations (NGO), Local Government Unit (Governor or Mayor) (LGU), and the media. It is a subconscious message and an exhibition of political will, not only of government but also, and importantly so, of the citizenry, the People. With the presence of these personages, the message is sent, subtly and most powerfully: These are the people they will have to contend with. The medium is the message.

The stakeholders must be enticed with incentives that answer the question, "what's-in-it-for-them." Human nature is such that self-interest is higher in rank than public interest. The mark of a good negotiator is when one can find the right blend between self and public interest to achieve the desired end.

The Department of Environmental and Natural Resources (DENR) can offer many different incentives. For example, it can offer organized and profitable tree-planting. The lumber/wood businessmen can form a consortium and can be given an Industrial Forest Management Agreement (IFMA) over several thousand hectares of denuded land. Under this

tree-farm concept, the planters will be given the privilege of harvesting the planted trees. With the growing awareness on the profitability of tree-planting, many are considering the venture. The hindrance appears to be in the bureaucratic requirements to avail of the program.

Administrative assistance must be extended and must include the facilitation of a long-term soft loan to cover the heavy capitalization needs. Also, the DENR can help register the project with the Board of Investments for other fiscal incentives. The idea behind this is that since the lumber businessmen want to cut and sell wood, let them take care of its supply. There will be no substantive debate on this basic point and everyone will be in general, if not unanimous, agreement. This option is so attractive, it will be difficult to refuse.

The DENR can offer a grace period for "ecological reconciliation." The government has relied heavily on raids and confiscations. But the target market must be allowed to manifest a gesture of their sincerity and commitment to the common goal. Within say, 30 or 60 days, they may be allowed to report and surrender, and thereafter dispose of, their illicitly-sourced inventory at public auction supervised by the DENR. With a public auction, the lumber/wood "surrenderees" are assured the best prices. After the sale, government gets its 25% share in forestry charges, and the businessmen are allowed to begin anew with a clean slate, a *tabula rasa*.

The DENR can offer technical assistance such as in the mapping or surveying of the area allotted for utilization by the lumber businessmen. Also the DENR can advise them as to what trees are most compatible with the soil and topography of the area and even the cultivation and harvesting system appropriate to the locality. Support can also be extended by the government in the difficult initial stages of community-organization and social preparation.

3.1.2 The needles

For those who fail or refuse to modify their behavior, there are many suggested sanctions, actual and imaginary. It may be suggested to them (the lumber and wood dealers) that within the grace period allotted and thereafter, monitoring and surveillance will be conducted by a joint task force of the National Bureau of Investigation, DENR, Bureau of Internal Revenue and NGOs. Good faith compliance is better advanced when "one speaks softly yet carries a big needle."

For the willful violators, lightning raids must be conducted after the grace period. These special operations can be carried out by a composite elite team from the above mentioned sectors (as well as Media). It has been proven that legal proceedings such as an immediate inquest can be done with almost-surgical precision. In the unprecedented raid of the Super Mahogany Plywood Corp. in Butuan City, Agusan del Norte on 13 August 1992, a raiding team of the above mentioned department including the Justice Department and the media struck with pinpoint accuracy well armed with a notebook computer, printer, photo-video equipment, and conducted on-site inquest proceedings. Instead of the arrested suspects, high-ranking officials of the company, being brought to the investigating magistrate, it was the latter that arrived on-site and, there and then, conducted legal proceedings. In a matter of five hours from arrest, the respondents were in jail, legally. Their picture, taken behind bars, was widely published in national newspapers. This demonstration of swift and painful justice has been repeated since in more dramatic air-land-and-sea operations. It can be done.

Multiple criminal charges may be filed for: 1) illegal logging⁹; 2) tax evasion¹⁰; and 3) anti-fencing¹¹; (for selling or otherwise dealing in things that were the products of a theft of government property, i.e. forest products from the national and natural patrimony). Administrative sanctions may include: 1) cancellation of the lumber dealer's license; 2) cancellation of the Mayor's permit to do business; and 3) revocation of the business license or corporate franchise (with the Bureau of Domestic Trade / Department of Trade and/or the Securities and Exchange Commission) on the ground of "violation of law". In addition, there may be civil suits brought by the government, Non-Governmental Organizations (NGOs), or both, seeking multi-million dollar

environmental damages for the loss of wildlife habitat, loss of the water and carbon dioxide absorption, erosion, siltation, loss of agricultural productivity, loss of marine productivity, aggravation of the greenhouse effect, global warming, climate change, etc.

The DENR can make arrangements with the government and private media networks to block off a short period of time or newspaper space to publicize illegal logging offenders on a regular basis, say three times a day for three months. As previously discussed, Filipinos dread the loss of face. The constant repetition of one's name and the publication of one's picture is more than enough to cause the utter loss of face. Truly, the prospect of the series of penalties inflicted wholesale or in seriatim, can make one desire to avoid its occurrence.

3.1.3 Advantages of the Proposal

There are important social and cultural values that come into play in this exercise, such as: 1) inter-personal relations; 2) face-to-face consensus; and 3) the face value sanction.

The use of non-adversarial and non-confrontational methods in the resolution of societal issues is a reality in Asian culture and must be played up for maximum utility. We are a highly personal people and would rather talk than fight. Conflicts are attempted for mediation, conciliation and informal arbitration by and among members of the extended family system and of friends.

However, because of the super-imposition of the American legal system into the Philippines, the adversarial litigation has become overly relied upon in the more recent history of the country. With the tendency of "students" to surpass their "teachers", the Filipinos are now probably the most litigious people in Asia. But then this is not inherent in our culture.

Moreover, the adversarial litigation model cannot be used with optimum effect for environmental law issues in the Philippines. The judicial system is still relatively weak. Litigation is also time-consuming as well as emotionally and financially aggravating. Thus, even the Americans, the teachers of the litigation model, are beginning to consider alternative dispute resolution (ADR) methods especially in addressing environmental issues.

There is a Filipino saying that some things are better done sitting down than standing up¹². The very Filipino way of face-to-face negotiation to arrive at a consensus—"ang pinag-uusapan"¹³ must be used. As a highly personal people Filipinos value face-to-face agreements more than the written "legal" document.

Corollary to this is the "loss of face" (*napapahiya*) that results from the non-observance of what has been agreed upon. The "higher and more painful sanction" is, in Filipino, called "hiya" or shame. Indeed it is so valuable that it is generally considered better for a person to lose everything else except face, honor, or name.

The ultimate objective of this exercise and campaign is to get the target market to move and act on their own volition. When people understand and internalize the purpose and the reason for the necessary course of action, they will act on their own steam. Information, education and consciousness are not enough. The target market must take the necessary action to "buy" the product.

With all the irresistible and attractive benefits of the "packaged product", only the very stubborn will refuse. For them is reserved a special operation in legal surgery.

The agreement thus reached by the stakeholders must be preserved in printed memory, documented in both print and photo-video, as a public gesture of commitment of all the parties to abide by its terms in good faith. This news must be widely disseminated to local and international networks. The public dissemination will serve two functions: 1) it is a public declaration after which there is no turning back (otherwise "face" is lost); and 2) it is a subtle act of contrition not only by the parties but also by the Philippines as a country.

3.2 Soil and water conservation

The marketing of environmental law may also find application in land tenure problems. In this case, the product is the social good of soil and water conservation and the afforestation of denuded mountains. The Forestry Code mandates that lands of 18% slope must be kept in sufficient vegetative condition to prevent erosion. Yet the country is losing an estimated 1 billion tons for topsoil every year. The central Philippine island of Cebu, a long and narrow land mass of 500,000 hectares, suffers from the most severe water shortages and saltwater intrusion. It has a zero forest cover notwithstanding the fact that as early as in the 19th century, by Royal Decree of the King of Spain, logging was already totally banned on the island.

3.2.1 The candies

It is a psychological reality that people do not make long-term investments on land for soil and water conservation measures unless they have secure land tenure. If one is insecure about being evicted from the land he is working on, he is not likely to plant long-term trees and spend time and effort to configure the land in a manner that will protect the topsoil from erosion. This psychological reality can be used for ecological advantage.

Assistance can be extended in expediting the surveying and issuance of the appropriate land tenure instrument (e.g. certificate of title, 50-year certificates of stewardship, tree-farm lease, etc.). Much can be done by the DENR's logistical resources especially with the new surveying means using the Global Positioning (GPS) and the Geographic Information Systems (GIS). These tenure instruments must however contain an ecological encumbrance or an environmental lien, an 'eco-lien.' Using the innocuous provision of the law requiring lands 10 degrees in slope or higher to be in sufficient vegetative condition¹⁴, an annotation can be made on the tenure instrument mandating that the appropriate portion of the land be afforested and/or subjected to the sloping agricultural land technology (SALT) and contour farming. Like a mortgage lien, the State must have an "eco-lien" on the land over and above all liens and encumbrances.

Support can also be offered in the propagation of seedlings and a food-for-work program utilizing the "bayanihan" system to undertake area-wide SALT or afforestation activities. The Bayanihan system is a Filipino social practice of community action and mutual help. In the rural areas, the practice is common especially when someone's house is being transferred to another place. In such a case, all the men in the village gather around for half a day or so to physically carry the house on their shoulders to the point of destination. It is lifted by tens of men without any compensation except for a simple fare of rice, beans and fish provided by the houseowner. The prospect of using this cultural value in reforestation/land contouring activities presents many positive possibilities.

Another incentive is a tax exemption from real property taxes of the planted trees. Under the present state of the law, each and every single tree standing on private land is levied a realty tax on the theory that it is an "improvement" on the land in much the same manner as a house or a building¹⁵. It is submitted that this is contrary to the articulated public policy of encouraging tree planting. It is proposed that the DENR, in coordination with the Local Government Units (LGUs) and the Department of Finance, work for the abolition of this burdensome and ineffective tax. A preliminary analysis of the revenue stream derived from this tax is a minuscule 0.001% of the LGUs income. Instead of levying a tax on standing trees, these trees should be granted a tax credit or rebate applicable to, but not to exceed, the realty tax due on the land. It is a form of reward to the consumers for their compliance with the mode of conduct being encouraged.

Given the popularity of lotteries and other games of chance in the Philippines, the government can conduct regular raffles in order to promote the goal of soil and water conservation. Raffles are promotional gimmicks effectively used in marketing campaigns. There is no reason

why they could not be used in legal marketing. For example, government can assign numbers to trees or to lands which have been well-vegetated. These numbers can be periodically raffled and the winners will be given very valuable prizes. Thus, individuals would have a greater stake in the preservation of their trees because each tree would be of greater value to the planter than just its seemingly unseen ecological benefits.

Another promotional technique may be to assist large landholders to exempt their lands from coverage of the Agrarian Reform Law. Under the Comprehensive Agrarian Reform Law¹⁶, all private lands of more than 5 hectares owned by one person shall be acquired by the Government for distribution to the tenant farmers. Under a more recent law, Rep. Act 7881 (1995), private lands devoted to reforestation or those with a slope of 10 degrees or higher¹⁷ are exempt from the land reform law. Unfortunately, hardly even the Department of Agrarian Reform (DAR) personnel know about this law. The ignorance of the general population is symptomatic indication of the failure of the education and communication component of the legislative and legal system.

3.2.2 The needles

Even if the land is classified as alienable and disposable and is covered by a Torrens Certificate of Title (TCT)¹⁸, the Forestry Code mandates that it must still be kept in "sufficient vegetative condition"¹⁹ to prevent erosion. This provision, implemented creatively, can be the basis for the abovementioned ecological encumbrance/environmental lien. It is the general impression of Government functionaries that when land is titled to a private person, the Government loses all control of it. This is not so. Under the provision above cited, the State retains an ecological encumbrance.

The law also provides that "when the public interest so requires, steps shall be taken to expropriate, cancel defective titles, reject public land applications, or eject occupants thereof"²⁰, i.e. of private lands whose owners fail to keep the same in sufficient vegetative condition.

The threat of eviction from one's land, troublesome legal cases and the filing of multiple criminal charges such as for arson (in the case of slash-and-burn "*kaingin*" activities)²¹, intentional destruction of government property, malicious mischief, unlawful occupation of public forest lands, with a prayer for injunction, and multi-million environmental damages *in seriatim*, will legally rattle any would-be environmental malefactor.

3.3 Industrial pollution

Industrial pollution should be the easiest environmental issue to address for the following reasons: 1) the point sources and owners of industrial establishments are easily identifiable; 2) industry has some financial capacity; 3) profit enterprises are sensitive to economic incentives and penalties; and 4) the owners/CEOs are highly vulnerable to legal surgery.

The Pollution Control Law of 1976 provides for a comprehensive legal framework on industrial pollution. However, imperatives of economic development have overtaken its implementation. Further, the administrative bureaucracy which handles industrial pollution is ineffective. In addition to the domestic wastes, industrial pollution is the cause of the eutrophication of the rivers of Metropolitan Manila. While a law on toxic and hazardous wastes has been recently enacted²², the waste generators have not even bothered to register their establishments or wastes in accordance with the law. There is a near total failure in environmental law information, communication and implementation.

3.3.1 The candies & needles

Candies are to children what money is to a businessman. The candies must be economic in nature and must be made irresistibly palatable. Incentives may include a grace period for industries to resolve their environmental management/pollution control issues and achieve compliance within a reasonable period.

The first step in this socio-culturally sensitive approach is to identify point sources of solid and water wastes. This identification process must include not only the names of the companies/establishments but should also include the names and addresses of the Chief Operating Officers/ Presidents and Chairmen of the Boards²³. They are the persons most directly responsible and concerned. They too have the power and the authority to make big decisions. Moreover, they are the most sensitive to the legal needles.

Having been thus identified, the top officers of the DENR (Secretary, Undersecretary) and the respective Regional Directors may proceed to personally meet with the executives concerned individually or in small industry or sectoral groups. This will capitalize on the highly personal character of Filipino culture and social relationships. In addition, the meeting will also create a measure of psychological tension on the part of the executives. Being personally identified is both an honor, when one is doing right, and a source of apprehension, when it is otherwise.

It is a fact that many of the establishments, especially the small and medium scale industries and those in their infancy, will not be able to immediately afford waste treatment facilities. The owners and officers of the establishments must first be given evidence of their pollution load. It is impressed upon them that this issue has to be addressed one way or another. This gesture will also impress upon them the existence of a determined political will on the part of the government. With the overall awareness and concern for environmental protection, most, if not all, of the industrial establishments would like to address their pollution. The secret lies in giving them the opportunity to do it in a manner that they will find difficult to resist.

The executives are then informed that it is not the government's intention to close them down. Immediate closures are not only culturally inappropriate for being confrontational, it also results in economic dislocation which the country can ill-afford. Instead, they will be given time to install the proper equipment or otherwise minimize their wastes. They can be asked how much time they need. If it is one year, they can be given one and a half years or even two years. This will entice them into agreeing into a *modus vivendi*. It will also create a debt-of-gratitude ("*utang na loob*").

In order to sweeten the proposal, the concept of a revolving door environmental fund (REFUND) can be introduced. The fundamental premises by which the concept of REFUND operates are: 1) application of the "polluter-pays-principle". With the industries discharge of pollution loads, they must bear the cost of the clean-up which would otherwise be solely borne by others and/or the government; 2) application of the true-value system in the costing of environmental resources. Industries must price their products accordingly so as to reflect the true cost of the manufacturing process which includes the waste disposal and not treat the environment as a "free dumpsite"; 3) realization that industrial establishments are not immediately able to address their pollution. The technological and financial constraints are the stumbling blocks to full compliance. As an incentive to strive for compliance, the industries are not immediately penalized, rather they are given ample time to do it; 4) The governmental focus shifts from being regulatory to being developmental. With an insufficient bureaucracy where regulation often results in massive financial investments, gross inefficiency, or corruption, the private sector's resources must be harnessed to address their own pollution problems.

3.3.2 Operational framework of the REFUND incentive

The REFUND will be applicable to present industrial establishments, especially small and medium industries whose emissions, discharges, and/or wastes are in excess of the regulatory standards. They are afforded a period of time within which to reach the standards through the regulatory mechanism of variances. The following is the proposed operational framework for REFUND.

First, there must be an identification of common wastes. This is important so as to properly site and design an efficient Common Waste Treatment Facility.

Second, there must be an environmental user fee (ENUF) for every unit in excess of standard. Every unit in excess of the standard shall be given an equivalent amount. This can be roughly approximated using the methodology of environmental accounting. To make it more attractive, a discount can even be given. This is an added "utang na loob" on the part of the industry. The trend of jurisprudential authority indicates that where there are administrative agencies better equipped to resolve the technical issues, the Courts will generally keep its hands off²⁴.

Third, the funds collected can be deposited in a trust account. They must not be paid to the government coffers lest they be lost in the black hole called the National Treasury. It can be deposited in a trust account to be held jointly by the industrial firms concerned, a government representative and, for the purpose of transparency, a representative of the Philippine Chamber of Commerce and Industry (PCCI) or a reputable NGO.

Fourth, the funds collected from firms with common waste streams shall be used as seed capital for them²⁵ to put up a common waste treatment facility (CWTF). If the funds are not sufficient, the government can assist the firms in securing a soft loan from financial institutions. The common firms will be responsible for choosing the technology and equipment suitable to their needs. Profitable enterprises are often better than government in the selection of the appropriate and most efficient means to ensure the viability of the undertaking. To sugar the pot further, government can provide other investment incentives such as tax holidays, real estate tax exemptions, etc²⁶.

Fifth, the operation of the facility will be conducted by the firms concerned. The mode of cooperation may be in the form of a joint venture corporation, a consortium or even a cooperative. The services which can be offered by the waste facility may include the transport of wastes to and from their sites, actual treatment and disposal, environmental consultancy, and other like activities. The users of the facility, including others of common waste streams, shall pay a corresponding amount. This will ensure the financial sustainability of the enterprise.

To illustrate, assume that five companies (A-E) are now in excess of standards in varying degrees. Closing them down immediately is not a viable option because of the unemployment consequences and economic dislocation. Thus, an agreement is for a realistic period of time to arrive at compliance. In the meantime, they shall be required to pay a corresponding amount for every unit in excess of standard. This is simply an application of the polluter-pays principle. (See Figure 1.)

Another benefit of having those with greater pollution loads pay more is that they will begin to seriously consider "start-of-the-pipe" waste reduction measures. It must be recalled that pollution is often the result of the inefficient manufacturing process. A few common-sense techniques in materials management can reduce the waste significantly.

In a short period of time, the collected funds will build up into a substantial amount. This amount can then be used as seed capital for the construction of a common waste treatment facility. For example, for a period six months²⁸ the industrial firms will be allowed to: 1) build up

the fund; 2) explore the appropriate technology and financial mechanisms; 3) engage consultants for the common waste treatment facility design and construction; 4) select and negotiate for sites; and 5) undertake such other related activities.

For the purpose of monitoring, a time chart may be made and agreed upon by both parties. Existing DENR regulations allow for up to 24 months of variance. Thus, 1,500 x 30 days (or the appropriate number of working days) = 45,000 (per month). 45,000 x 6 months = 270,000. Assuming the cost of the facility is 1.0 M, the amount to be loaned is therefore only 730,000. It may be pointed out that during the construction phase, the amount will continue to accumulate, thus further reducing the financing required.

The penalties, while eroded by inflation, are still stiff when imposed properly. A fine ranging from U.S. \$50-\$200 per day can be imposed. In addition, imprisonment can be imposed upon the person, natural or juridical, responsible for the violation. The concerned industrial establishment can also be subjected to immediate closure.

The creative application of the principle of swift, painful and public justice, can be used to expose the owners of the industrial firms who persist in environmental misbehavior.

3.4 Advantages of the proposal

The advantages that arise from this proposition are as follows:

- a. Government ceases being a “policeman” and instead becomes a promoter of responsible environmental management.
- b. Government takes a back seat in the promotion of pollution control and is left only with the monitoring of compliance according to the time frame agreed upon by Government and the industrial establishments concerned.²⁹

Figure 1. Company Exceedance of Standard Environmental Cost

	(eg. P1.00 per mg/liter) ¹	
A	500 mg/liter	500/day
B	400	400
C	300	300
D	200	200
E	100	100

Total	1,500 mgP	1,500

¹ The very nominal amount of P1.00 is used to simplify the arithmetical illustration. Environmental accounting however, indicates that very substantial amounts can be assessed. P1.00 = US \$0.38

- c. Funds derived from pollution charges/environmental user fees are directly channeled back to environmental management. Moreover, private funds are harnessed to address a public sector concern. This is important for a cash-strapped economy.
- d. There is less confrontation and more cooperation between Government and the concerned sector. This is how Filipino society traditionally operates—by cooperation, “Bayanihan”, lending a helping hand.
- e. Polluters are converted into environmental managers.

The foregoing are some of the examples of how the approaches of legal marketing can be applied to several other environmental issues in lieu of conventional law enforcement. Law enforcement is necessary only when there has already been a violation. Environmental law however, must apply in a precautionary and/or preventive manner. This is because environmental damage is often permanent, irreversible, or extremely expensive to remedy. Thus, violations, and its resultant damage, must be avoided as much as possible.

4 CONCLUSION

It is said that the absence of alternatives clears the mind marvelously. Thus, in the implementation of the law, the candies must be so attractive and so sweet and the needle must appear, and be, so sharp and so painful that the consumer of the law is left with no options.

The law is not a dead language that should be understood only in the gobbledygook of lawyers, judges, legislators and the members of the arthritic governmental bureaucracy. The law, and the reason for the law, must be popularized in the same manner that particular brands of soft drinks are popular the world over. The law must be understood by, and be a common reality for, all of those concerned. They — the general public — are the “target market” and the “consumers” of what the law seeks to sell. In Environmental Law, the social product being sold is the ecological balance that results in general sanitation, food and water security, cleaner waterways, cleaner air, affordable supply of wood, reduced erosion and siltation, reduced flooding, etc.

It is not enough that the target market is made aware of the product. Awareness without action is not a “sale.” Thus, the objective of legal marketing must not only be to develop an acute awareness; it must also create a real need. Only when a real need is created is information transformed into action. Then, and only then, will the Law become a living reality in the minds and in the hearts of each and every member of the target market — every man, woman and child.

REFERENCES

1. The basic environmental laws of the country are:
 Presidential Decree No. 1151: The Philippine Environmental Policy, 12 Vital Legal Documents (VLD) 1
 Presidential Decree No. 1152: The Philippine Environmental Code, 12 VLD 3;
 Presidential Decree No. 984: National Pollution Control Law (PD 984);
 Presidential Decree No. 1586: Environmental Impact Assessment Law; Presidential Decree No. 704: Fisheries Decree of 1975, 6 VLD 36;
 Presidential Decree No. 705: Forestry Reform Code; Rep. Act No. 6969: Toxic Substances and Hazardous Wastes Law; Rep. Act No. 1786: National Integrated Protected Areas System; Presidential Decree No. 1067: Philippine Water Code; and, Presidential Decree No. 825: Sanitation Code.
 Republic Act No. 386: Philippine Civil Code, particularly the provisions on Nuisance, Torts and Damages and Human Relations also find application.

2. Section 16, Article II, 1987 Philippine Constitution.
3. Presidential Decree 705 (1975)
4. Also known as the 18% slope, i.e. 1.8 m. x 100m.
5. Sec. 15, *ibid*.
6. Enacted in 1975.
7. The mere fact that they are identified is enough to cause the necessary psychological tension.
8. The invitation to sawmillers, lumber dealers and other persons engaged in the industry is not premised on the suspicion that they are "illegal loggers". Rather, it must be premised on the fact that more than anyone else, they are in a better position to assist in the effort to curb illegal logging.
9. Violation of the penal provisions of the Forestry Code (Presidential Decree No. 705 & Executive Order No. 277).
10. For failure to pay forestry charges, an internal revenue tax equivalent to 25% of the value of the wood as provided for by Republic Act No. 7161 The Local Government Code of 1991.
11. Violation of the penal provisions of Presidential Decree No 1612, the Anti-Fencing Law.
12. It is a Filipino saying that goes, "Kukunin sa pa-upo, imbis na sa patayo." This saying literally means to take/do things sitting down rather than standing up. Figuratively, it means using persuasion and consensus instead of confrontation.
13. Meaning: "to talk things over." This is also a general trait in Asia.
14. Presidential. Decree. 705, section 15 (on topography).
15. Presidential Decree. 464, Sec. 40 (e.)
16. Rep. Act 6657 (1988).
17. The scientific basis of this criterion is that with 10-degree slope, land is already vulnerable to water run-off and erosion unless proper soil and conservation measures are instituted.
18. Proof of ownership of a parcel of land, the metes and bounds of which are particularly described therein, adopted under the Torrens system of land classification.
19. Sec. 15, para. 2, PD 705 (Forestry Code)
20. Section 15, Pres. Decree 705, final proviso.
21. *Kaingin* is a slash-and-burn method of farming which is a very destructive form of land use conversion, i.e. from forest land to marginal agricultural land.
22. Republic Act 6969 (1991)
23. The owners of industrial establishments, Chief Executive Officers, Chairmen of the Boards and other persons principally responsible are hereinafter collectively referred to as executives for brevity.
24. Technology Developers, Inc. vs. Court of Appeals, et al.(G.R. No. 94759, July 31, 1991) where the Supreme Court held that the Environment Management Bureau (Pollution Adjudication Board) with its technical staff is in a better position to examine whether there is in fact pollution in a given situation.
25. Common waste stream establishments are hereinafter referred to as "common firms".
26. Pollution control equipment is exempt from real property tax. (Sec. 234, RA 7160) This is a fairly new provision of law hardly known by the sectors concerned. Government can even extend the exemption to the land on which the treatment facility is constructed.
27. The very nominal amount of 1.00 is used to simplify the arithmetical illustration. Environmental accounting however, indicates that very substantial amounts can be assessed. P1.00 = US \$0.38¹

28. This can be longer depending on the level of complexity or cost of the technology required.
29. To stretch the analogy further, it is like government being driven in a chauffeured car. All it does is to set the direction, check halfway if the car is moving and on the right direction, and check again at the designated stop (time-frame) whether the destination has been reached.