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## **PROMOTING VOLUNTARY COMPLIANCE: ENVIRONMENTAL AUDITING, OUTREACH, INCENTIVE PROGRAMS**

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### **GOALS**

The sessions addressed the following questions:

- Can banks and insurance companies create special incentives for companies that promote voluntary compliance?
- How can voluntary compliance reduce compliance costs to the regulated entity and the regulatory agency?
- Does voluntary compliance work better in some sectors than others — i.e. large / small, high/low-tech, sectoral, locational?
- How can EMAS/ISO work with traditional regulation?
- Does an audit program affect the type and number of inspections or the type of permit?
- Can voluntary compliance work for small and medium enterprises or cottage industries?
- What drives voluntary compliance?

### **1 INTRODUCTION**

Given the level of interest in programs to promote voluntary compliance, engage in and foster environmental auditing, and to design incentive programs, two workshops were held at the conference. The group discussed whether there is such a thing as voluntary compliance, some of the creative programs governments have developed, and keys to success. In particular, the participants discussed the issue of accountability on the part of both the regulated community and the government for achieving compliance with such programs, and the fact that enforcement is essential to drive voluntary compliance.

There is substantial interest in the potential impact of ISO 14000 and EMAS in promoting compliance, but some uncertainty as to the specific impacts of the program.

### **2 PAPERS**

Six new papers add to the growing literature on the subject of promoting voluntary compliance. The papers evidence a greatly increased level of sophistication in governmental and nongovernmental programs designed to promote voluntary compliance and their relationship with traditional enforcement programs. Mr. Calderon wrote about Mexico's experience using a voluntary program of government audits to assess both compliance and pollution prevention opportunities, and to delay consideration of penalties to provide some time for correction. The program preserves and establishes enforcement consequences for failure to come into compliance. He discusses the resource implications of the program and a review underway to explore options for the future. Mr. Staats and Mr. Hurrdeeman each provide individual papers on two sectors in the Netherlands that have entered into industry-wide covenants with the government to reduce pollution voluntarily, to be incorporated also as permit conditions. The papers explore experience with petrol stations and wood preserving industries respectively. They conclude that

in the absence of other actions, compliance with voluntary industry agreements was mixed, sometimes not as timely or complete as it should have been. Factors contributing to voluntary compliance with the terms of these agreements included, incorporation of covenant terms into licenses and permits, the strength of the enforcement program of the locally responsible authority, and participation in the relevant trade association which helped to formulate the agreements with government. Mr. Lee Paddock of the United States reviewed current trends in complementing U.S. enforcement programs with compliance promotion programs including, education, free telephone access to assistance (Hotline), technical assistance programs, experimental programs for defining new relationships with industry leaders, and economic incentive schemes to support the regulatory agenda. Mr. Joseph Cascio prepared a paper on ISO 14000 and its relationship to industrial compliance with environmental requirements. His paper supports the need for continued government role in environmental regulation and enforcement but advocates a special relationship with companies committing to environmental management through ISO certification and registration. Finally, a paper prepared by Mr. Eric Schaeffer describes how US EPA's penalty policies have been amended to encourage voluntary self-detection, prompt self-correction and disclosure of violations. Mr. Nabel Makarim's paper describes Indonesia's public rating scheme which is used to assess compliance and beyond through the use of a five color coded ranking. Documentation of results describe some early successes.

### **3 DISCUSSION SUMMARY**

#### **3.1 Is there such a thing as "voluntary" compliance?**

All the participants agreed that there is no such thing as voluntary compliance without regulation or requirements with which all must comply. In addition, there need to be other drivers of compliance besides regulation for "voluntary" compliance to take place such as:

- The costs of waste management must be sufficiently high to prompt action;
- The risks from bad publicity must be a real factor; and
- The companies must face long-run liability for damages and non-compliance.

The fundamental reason for government activities to promote voluntary compliance is that those firms that audit and take actions to comply free up resources of regulatory agencies to focus on firms that either do not audit or take steps toward compliance.

#### **3.2 What drives voluntary compliance?**

The group identified six factors that drive voluntary compliance:

1. public opinion;
2. global competitiveness;
3. enforcement;
4. self-motivation and awareness;
5. improvements in internal accounting systems that identify higher than expected costs of waste management; and
6. requirements of suppliers and buyers.

### 3.3 Where does compliance promotion fit into the continuum of enforcement approaches?

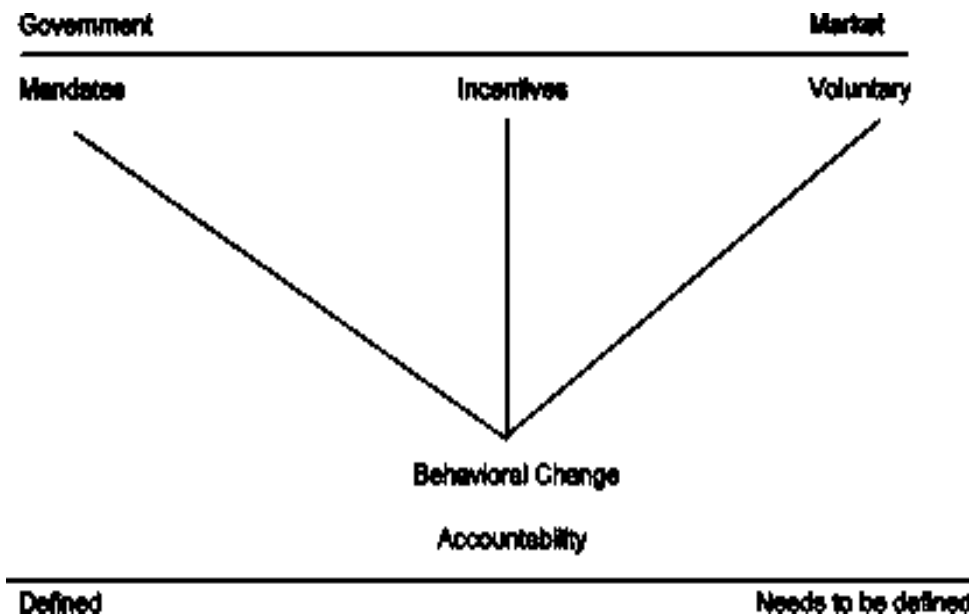
Participants discussed whether voluntary programs can work in the absence of regulatory requirements. There was general consensus that a regulatory program is, indeed, needed to drive voluntary actions. Many participants asserted that voluntary compliance would not occur without high costs of waste management, bad publicity, or long-run liability.

One participant suggested that an international police force, which acts as an enforcing arm in developing countries without enforcement programs could be a driving force for voluntary compliance. Other participants disagreed that an international force could be appropriate within any sovereign nation.

The group agreed that a voluntary program such as EMAS or ISO could free up resources of regulatory agencies to focus on firms that either do not audit or take steps toward compliance.

Participants formulated Figure 1 that describes the continuum of enforcement approaches. It describes the fact that the market place can drive voluntary action to protect the environment but may not adequately send the right signals. Government mandates establish norms, but to change behavior it is important that mandates be backed up with the right kinds of incentives to act in the right way, and that they use, to the extent possible, market forces to achieve behavior change that is mandated.

What became clarified by the discussion is that each approach to getting behavior change requires some accountability. Government establishes accountability with its mandates through compliance monitoring, including self-monitoring, and enforcement responses. The market mechanisms, incentives and other schemes similarly require accountability to the public and officials if they are to blend in with the entire regulatory scheme.



New voluntary standards for environmental management such as ISO 14000, responsible care programs, and EMAS have some provisions for accountability but it is still unclear whether these will clearly relate to how well these industries, companies or facilities will measure and report on their compliance status.

3.4 What is the difference between ISO 14000 and EMAS? What difference might it make to compliance and enforcement program implementation?

ISO and EMAS constitute somewhat different approaches to voluntary programs. ISO 14000 series standards are related to environmental management systems. EMAS is a European Community regulation which mandates voluntary programs in each of the member states for public accounting, auditing, and environmental management systems with specific provisions which contain more substantive provisions than does ISO.

#### 3.4.1 Performance versus systems

Whereas ISO is simply a management process toward the goal of continuous improvement of the management system itself, EMAS is performance oriented, with environmental improvement as the goal. ISO is simply a management process, which is one step removed from environmental results.

#### 3.4.2 Prevention of pollution versus best technology

Whereas EMAS has as an objective improved environmental performance including the application of Economically Viable Application of Best Available Technology (EVABAT), ISO will allow less than this as long as the firm has a commitment to prevention of pollution, which can include pollution control as well as prevention.

#### 3.4.3 Demonstrated compliance versus commitment to compliance

Whereas EMAS requires that firms demonstrate progress toward compliance with applicable regulations, ISO has no similar requirement. ISO does require a policy commitment to compliance, periodic evaluation of compliance, but does not go so far as to require measurement and the setting of compliance objectives and targets as would EMAS. This is one of the open questions concerning ISO implementation in practice versus a minimalist reading of the text of the standard.

#### 3.4.4 Public disclosure versus consideration of public disclosure

Whereas EMAS require that audit results and other information be directed to the public (public register) and a public statement summarizing the environmental management system, environmental releases and significant environmental events including significant noncompliance, ISO has no provisions for public disclosure. It only mandates that it be considered by the business seeking certification.

#### 3.4.5 Relationship to regulation

Both ISO and EMAS encourage compliance and depend upon regulation and regulatory requirements to establish norms. They also provide a means of going beyond requirements of compliance.

### 3.5 Use of awards and public rating of compliance

Editor's note: Participants in the session on strategic targeting identified several other country programs utilizing a categorization scheme that is made public as a means of encouraging compliance such as those now in use in Indonesia and the United Kingdom.