
ENFORCEMENT STRATEGIES OF THE ISRAEL MINISTRY OF THE ENVIRONMENT

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SUMMARY

Enforcement of environmental legislation is a top priority at the Israel Ministry of the Environment. Environmental compliance and enforcement techniques are not goals in themselves, but rather means to an end. They are based on a variety of components which include proper legislation addressing administrative, civil and criminal aspects. Thus, effective enforcement is a tool to achieve prevention and deterrence rather than punishment. As such, enforcement requires administrative measures, effective inspection, pre-criminal proceedings and an efficient prosecution system — all of which are geared towards reducing litigation in court and achieving desirable environmental solutions. These measures should be further enhanced by more active public participation in environmental enforcement.

1 INTRODUCTION

The problem with being an environmentalist is that sometimes you stop seeing the view, and only see the garbage. Similarly, at the Ministry of the Environment, in our constant efforts to prevent and control pollution, we run the risk of losing sight of the many who do abide by environmental laws—and change their practices: fill out forms and reports and secure the appropriate permits and licenses to run their businesses. For every one of us who sees the cup half empty and fears that our limited resources do not allow for sufficient enforcement of the laws, there are others who see the cup as half full — even too full.

In fact, the Ministry was recently paid a backhanded compliment. The Israel Association of Industrialists expressed concern that under new conditions created by the newly established Palestinian Authority, Israeli goods and services will face undue competition from Palestinian competitors, due in part to the increased costs to Israeli industry caused by the need to comply with the high level of environmental requirements and enforcement. While we at the Ministry sometimes fear that our impact is not felt strongly enough, others apparently feel differently.

However, achieving this level of compliance and awareness has involved years of effort — and we still have a long way to go. Not every potential polluter is willing to abide by our demands. Thus, enforcement of environmental legislation remains a top priority issue of the Ministry of the Environment.

The prevailing approach to enforcement is of those who see enforcement merely in terms of criminal prosecution. Often the image in the public eye is that of an officer of the law taking a polluter to court, and a judge imposing criminal penalties. Environmental enforcement as practiced by the Ministry of the Environment, however, is a much broader issue and is comprised of a wide range of components.

2 ENFORCEMENT COMPONENTS

2.1 Legislation

Enforcement begins with, and is based on, effective legislation. To be effective, environmental legislation must aim for achievable standards, and have practical application. Where legislation is realistic, compliance is greater; and if prosecution is necessary, it is then that much easier.

Israeli environmental legislation is wide-ranging. It includes the application of national and municipal legislation as well as international law. It affects many national and local authorities and forms an integral part of the system of government. On the local level, nearly every aspect of municipal responsibility is related to environmental concerns—whether it be sewage, roads, garbage collection or general sanitation.

Environmental legislation is comprised both of laws that deal with specific environmental issues, and laws of a general nature which cover environmental matters. For instance, there is specific legislation concerning air, water, sea and noise pollution, litter and the use of hazardous substances. In addition, more general laws, such as the Planning and Building Law and the Licensing of Businesses Law, provide not only a framework but also an important legal base for controlling the use of resources and promoting sustainable development.

Regulations under the Planning and Building Law require the preparation and presentation of Environmental Impact Statements which constitute an integral part of the planning and building process.

The Licensing of Businesses Law, despite its apparently general nature and the fact that it was legislated in 1968 before environmental issues were on the agenda, is a most central and vital tool in environmental enforcement. It provides efficient tools, both on national and local levels, for the supervision of industries and businesses, by stipulating special conditions to a license and by allowing for the administrative or judicial closure of businesses not abiding by the law, its regulations and the above mentioned special conditions.

A very important characteristic of Israeli environmental legislation is that it is enforced through administrative, civil and criminal measures. For instance, within the Abatement of Nuisances Law, all three remedies serve as tools of enforcement. Under this law, administrative action is taken through special directives (known as “personal decrees”) which order an individual polluter to take specific cleanup action. Issuing a personal decree allows the introduction of professional and technical requirements. Such decrees also ease enforcement, since it is easier to prove a breach of technical or administrative requirements in a decree than to prove the cause of a nuisance, or the level or extent of pollution.

Civil law is employed through the application of the Torts Ordinance. A breach of the Abatement of Nuisances Law would be considered a nuisance under the Torts Ordinance, making available all civil remedies, including the payment of damages.

But undoubtedly the most effective enforcement tool of the law is that of criminal prosecution. Under the Abatement of Nuisances Law, it is forbidden to cause strong or unreasonable air and noise pollution or odors, and the offender is subject to criminal punishment.

Criminal prosecution has some obvious enforcement merits. It is an effective deterrent tool, especially for those in high positions, such as managers of major industries, who are prepared to do a lot in order to avoid the stigma of criminal proceedings.

As much as we at the Ministry recognize the importance of criminal proceedings, we are also aware of its weaknesses. The main weakness in this context is that while it can be a deterrent for future crimes, criminal prosecution deals with an accomplished act—pollution that

has already occurred and caused damage. Criminal procedure is intended mainly to punish an offender — it is usually not effective in preventing crimes. For environmentalists, this is a very important consideration.

2.2 Prevention

A top priority issue for the Ministry of the Environment is the enforcement of preventive measures within the laws under its jurisdiction, as we all know that it is almost impossible to compensate for pollution and environmental damage after the event. Therefore, our main goal is to prevent the occurrence of pollution and damage, rather than to punish the offender and to impose fines. Prevention may therefore be considered as the ultimate goal of our environmental enforcement strategies. In order to achieve this goal, we utilize various methods.

2.3 Administrative measures

Administrative measures constitute a most important link and one of the bases of prevention. Thus, the granting of licenses for businesses is made conditional upon the fulfillment of certain stipulations aimed at preventing environmental damage. Among about two hundred thousand businesses which are licensed in Israel, the administrative and professional staff of the Ministry of the Environment intervenes in about five thousand cases per year, inter alia, by imposing "special conditions."

Likewise, the possession and use of hazardous substances is subject to approval by the Ministry through a permit system. Since the end of 1993, when the relevant law was amended and the Ministry started to implement this permit system, about fifteen hundred permits were dealt with and issued, out of an estimated potential of about seven thousand. Permit systems are operated at the Ministry of the Environment also in other fields, such as dumping at sea, but in much smaller numbers.

We at the Ministry consider that the very existence of such requirements in itself constitutes an enforcement measure.

Administrative and professional inspection and follow-up reveal that a vast majority of the public subject to particular requirements will abide by them and by the conditions stipulated in license or permit granted specifically to them. Out of the huge amount of regulated activities, only a relatively small number (a few hundred) of businesses are subject to further enforcement measures, as described below. As already mentioned, administrative enforcement has procedural advantages and it provides a more efficient method of enforcing environmental legislation.

2.4 Inspection

Of course, the mere existence of legislation and licensing requirements is not enough: close supervision is necessary to ensure strict compliance with legal stipulations. Executing inspection and surveillance is an essential expression of the Ministry's seriousness and rigor in performing its enforcement role. Without proper inspection mechanisms the Ministry cannot carry out the enforcement procedure, and with a lack of surveillance, even the most law abiding person may consider noncompliance.

On the administrative level, the Ministry operates a number of inspection bodies to enforce legal and administrative measures. These bodies are staffed by professionals in their respective fields who are also trained to perform inspection procedures and conduct investigations. In order for supervision to be effective, not only must the personnel have the necessary knowledge and qualifications, but they must also be legally authorized to carry out

their tasks. In fact, we place much effort into strengthening their powers with regard to entry, investigation and detention, as well as for an increase in their number and professional skills. Supervisory functions (inspections) are carried out in coordination with the scientific professional staff of the Ministry and its regional offices.

On the criminal supervisory level, a well equipped and highly mobile “environmental patrol,” staffed by trained personnel authorized with police officers’ powers, operates within the Ministry of the Environment. In addition, the Ministry also operates some specialized supervision units in specific areas: the Marine and Coastal Inspection Unit, and the Monitoring Unit for Poisonous Substances. Other bodies, such as the Nature Reserves Authority, the Drainage Authorities and various ministries (among them the Ministries of Health, Agriculture, Transportation and the Interior), also carry out supervisory duties and assist directly and indirectly in the enforcement of environmental matters as part of a so-called “Green Police.” Furthermore, the local authorities have their own supervisory infrastructure, with thousands of inspectors who play a most important role in the supervision of business licenses, and in enforcement of municipal legislation. We recognize the need to improve the cooperation and coordination between the various bodies in order to avoid duplication and to increase their efficiency.

The role of effective professional inspection cannot be overestimated. A large number of cases of noncompliance are solved at this stage — after a “visit” from an interrogating inspector, who demonstrates the Ministry’s strict intention to ensure that its directives and requirements are fulfilled.

Unfortunately, the Israel Police Force, which is nationally responsible for enforcement of the law, is involved in the enforcement of environmental laws only to a limited extent, partly because of a shortage of manpower and mainly because of their priorities in which the enforcement of environmental legislation is placed very low. In addition, it should be noted that the police lack professional skills regarding environmental issues.

In light of this, it would be correct to say that generally in Israel the role of enforcing environmental law is carried out by professional environmentalists trained and empowered as police officers, rather than by police officers equipped with technical and professional skills.

2.5 Public participation

As part of our efforts to strengthen the enforcement of environmental laws and to increase the number of people participating in the process, we have also recruited the general public.

Not without considerable opposition, but with the consent of the Knesset (Israel’s parliament), we succeeded in introducing some years ago an innovation in the field of Israeli law enforcement procedures — the appointment of individuals from the general public as “Cleanliness Trustees.” These volunteers participate actively in the enforcement of the Maintenance of Cleanliness Law by filing complaints against offenders of the law. The law has granted these volunteers the power to request a person, who in their sight commits an offence against the law, to identify himself. The complaints are the basis for a subsequent “finable offense” procedure. By the end of 1995, more than 120,000 “Cleanliness Trustees” were recruited from the general public, and about 10,000 tickets and court actions per year are initiated by their activities — not to mention the educational and preventive value of this widespread public activity.

2.6 Pre-criminal proceedings

As already mentioned, it is our policy at the Ministry to exhaust administrative and deterrent means of enforcement to the fullest extent possible. Unfortunately, however, there are those who are not deterred by any of the early stages of enforcement. Some people will continue

to violate the law, even after they have been caught, until they are prosecuted in court and stopped. In such cases, we are left with no choice but to prosecute; a course we undertake without hesitation when it is unavoidable.

Sometimes, the actual threat of prosecution is sufficient, and can also be used to solve an environmental problem. For instance, before filing a case with the court, the relevant administrative or professional authority in the Ministry conducts a "hearing process" where the details of the case are presented to the suspect; he is called upon to respond and offer an explanation for his violations, and to suggest remedial steps he intends to undertake within a reasonable time period. This process has proved to be efficient: at this stage many of the violators find themselves embarrassed and threatened as they realize the severity of the Ministry's intentions, as well as the unpleasant consequences of the criminal proceedings they face.

Another example of a pre-criminal proceeding process is connected to the request to attain the consent of the Attorney General in order to prosecute a local authority (municipality) or the head of a local authority. In one case concerning pollution emanating from the waste disposal site of a small village in the Galilee, merely applying to the Attorney General caused the otherwise stubborn head of the local authority to carry out the required improvements.

2.7 Prosecution

Of course, at the end of the line are the truly determined violators, for whom the courtroom is the only option. Thus we reach the final stage of enforcement, which in the public eye is the principal image of enforcement.

The cases brought against polluters are handled within the general criminal system. Again, as in the case of the police, the State prosecution system rarely handles environmental issues due to an absence of both resources and awareness. The Ministry, therefore, prosecutes without going through the State prosecution system. The Ministry has taken on the services of private law firms that have been empowered by the Attorney General to represent the State in criminal proceedings. These legal services are financed through a special budget that has lately been allocated in order to finance the prosecution of environmental pollution offences, with special emphasis on prosecution in cases of pollution of water resources and pollution by solid and liquid wastes; or otherwise financed by the Maintenance of Cleanliness Fund and the Marine Pollution Fund — which are operated within the Ministry.

The budgets of these funds are based upon fines imposed in breach of the respective laws, from fees levied on manufacturers and importers of beverage containers (in the case of the Maintenance of Cleanliness Fund) and from a "Marine Environmental Protection Fee" imposed on owners or operators of vessels or certain shore installations. To a limited extent, the budgets of these funds are also derived from the State budget and from contributions. In each case, it is stated in the relevant law that the purpose of the fund is to concentrate monetary resources for the combat against and prevention of the related type of pollution, for cleanup operations, as well as for encouraging environmental education and awareness activities, and for financing the inspection and enforcement of these laws. Both the Maintenance of Cleanliness Fund and the Marine Pollution Fund are administered by committees composed of representatives of the Ministry of the Environment, the Ministry of Finance and the public (two mayors), within the framework of the Ministry of the Environment under specific operational regulations and within a separate budget.

Out of the many administrative cases dealt with, as described above, only few reached the stage of criminal prosecution and had to be brought to court. During 1994/5 these amounted to twenty cases concerning pollution of water resources, fifteen cases on breach of terms of business licenses or hazardous materials' permits.

Different statistics characterize prosecution in the fields of solid waste and littering as a result of the work of the Cleanliness Trustees and the Environmental Patrol: about ten thousand “tickets” (fineable offences) are issued per year, and about one hundred cases are brought to court by the above mentioned prosecution system.

The conclusion of a successful prosecution is, of course, when it results in a meaningful punishment. Attaining this end is not easy in light of the handicaps of the court system which is overloaded and lacks proper environmental awareness. The majority of environmental cases are dealt with in the magistrates and local courts. Even so, some cases are deliberated upon at the district court level and by the Supreme Court, sitting as a Court of Appeal or as the High Court of Justice.

3 FINAL REMARKS

3.1 General observations

It should be reiterated that we would always rather prevent environmental damage than punish the offender. And where punishment is necessary, it is not a goal in itself, but rather a means to an end. All aspects of enforcement — from administrative action to supervision, court action, imposition of a fine or a prison sentence — are tools and not ends in themselves. Likewise, punishment is used as a deterrent not only against the actual offender, but against potential violators as well, and it has most important educational value.

Israel's system of punishment needs more muscle. Most notably, the level of fines should be increased to be more effective.

In conjunction with the Ministry of Justice, we are currently working to put forward a proposal that will raise the level of fines for the violation of almost all environmental laws. Also under consideration is increasing the use of the fine option (fineable offenses) where the offender has the option of paying a fine rather than going to court. In many cases, this is more efficient than court proceedings, and can be more effective.

In certain situations, however, a monetary fine is too weak a sanction. The stigma of a criminal sentence carries greater weight. For instance, although the head of a local authority or a manager of a large firm or industry does not care very much about the payment of a fine from public or otherwise non-private funds, even the potential threat of a prison term — and, of course, the stigma of criminal proceedings — have proven to be very effective.

Therefore, another aspect of the Ministry's prosecution policy and practice is that whenever legal proceedings are initiated against a company or authority, as a matter of regular practice measures are also taken on a personal basis against a high-ranking individual (mayor, manager, partner, etc.), even when it is clear that he has only indirect institutional responsibility; unless, of course, there is clear evidence that no responsibility or guilt whatsoever can be attributed to him.

3.2 The public's role

Last but not least, a component of the enforcement structure, which must be mentioned and which regrettably is still in its early stages in Israel, is the role of the public. As already mentioned, citizens play an important role as “Cleanliness Trustees” by filing complaints against offenders, which result in legal actions.

For many years, Israeli citizens have had the right to bring private criminal complaints, as well as to initiate civil proceedings in environmental matters under various civil and environmental laws. However, the amount of private environmental litigation has been very small (and this is not because we are a non-litigating society — quite the opposite).

Thus, the Abatement of Nuisances (Civil Claims) Law was passed in 1992 in order to encourage the public, and to ease the way for citizens to bring civil claims and secure injunctions against potential and actual polluters. Procedures according to this law provide a standing status to environmental groups and allow for a “group claim” — a rare phenomenon in Israeli legislation. The law also provides for special proceedings and grants the courts powers to issue immediate remedial decrees to prevent and stop pollution of various kinds (such as: air, noise, water, waste, hazardous materials, radiation and marine pollution, as well as nuisances caused by them) and to impose corrective measures.

When the law was passed, its main opponents claimed that the courts would be flooded by the number of claims of aggrieved citizens and environmental organizations. In actual fact, during the years since the law has been in force, we know of very few citizens' claims that have been brought under this law in all of Israel. Citizens direct an enormous number of complaints and requests to the Ministry, yet they fail to bring legal actions to court.

Nevertheless, it should be noted that in the past there have been several cases initiated by the public — by individuals as well as by organizations — which contributed greatly in the enforcement of environmental standards and improved environmental decision-making processes. Unfortunately, these cases are too rare, and the public's role is still the weakest link in the Israeli system of environmental enforcement.

It is therefore our opinion and belief that the challenge ahead rests not only with the legislature or statutory enforcement bodies, but also with the public. The Israeli public is expected to be the most effective enforcer of the law, both directly and indirectly.

As part of our enforcement strategies it is also our task to encourage the public, especially the young generation, and to inform and educate it on its right to a clean and healthy environment, to provide it with the technical data and legal tools to fight for that right and for a high quality of life and environment.