
LEGISLATIVE TOOLS FOR INCREASING COMPLIANCE AND ENFORCEMENT

BAR-ON, BINA

Deputy Director General, Administration and Personnel, Israel Ministry of the Environment, P.O.Box 34033, Jerusalem 95464, Israel

SUMMARY

This paper presents some effective legislative tools for increasing compliance and enforcement which have been adopted in Israeli legislation. These tools include such measures as the clear formulation of prohibitions which are oriented at results, preventative measures, inspections, orders, penalties and public participation.

1 INTRODUCTION

Changing environmental behavior norms may be achieved in two main ways: education and legislation. To be effective and beneficial, environmental legislation should be focused, measurable and must serve a deterrent function. Several measures have been successfully integrated into Israel's environmental legislation in order to achieve environmental goals. These may be divided into several stages: prohibition, prevention, licensing and inspection, orders, restoration of previous conditions, penalties and public participation.

2 PROHIBITION

The prohibition stipulated in the legislation should be clearly and concisely formulated with an orientation on results alone. The prohibition should be absolute, dispensing of the need to prove intent, impulsiveness or negligence (MENS REA).

In cases of pollution violations (e.g., prohibition of water pollution, soil pollution, etc.), it should be emphasized that the condition of the area prior to contamination is not a factor in the considerations leading to conviction. The very act of pollution is prohibited, not the results.

3 ANTICIPATORY PREVENTION

Environmental legislation should anticipate, as far as possible, the weak points which may allow environmental damage to occur and should create the necessary planning tools to analyze the problem and prevent or mitigate it. For this purpose, it is advantageous to incorporate requirements for environmental reviews or environmental impact assessments in the legislation. In cases of high-risk projects, all alternatives should be reviewed at this early stage including a no-action alternative. Furthermore, the "polluter pays" principle should be integrated in this stage and potential polluters should be required to cover the costs of environmental reviews.

4 LICENSING AND INSPECTION

4.1 Licenses and permits

An especially effective means of ensuring compliance is the authority granted within the law to establish a system of licenses and permits. This grants the inspection authority the power to issue the license, revoke it, or incorporate conditions in it. In fact, the very act of managing a business without a license, even if no environmental damage was done, constitutes an offense under the law.

4.2 Hazardous Substances Law

Israel's Hazardous Substances Law prohibits the sale of hazardous substances by anyone holding a "poisons permit" to anyone not holding such a permit. This measure enables the authority to prevent the distribution of hazardous substances to anyone not authorized to deal with them.

4.3 Professional inspectors with full police powers

Several of Israel's environmental laws empower the Ministry of the Environment to appoint inspectors who are granted investigative powers commensurate with those of police officers. Such inspectors are professionals both in the realm of investigations and in the realm of the environment. Their very presence in the field plays an important role in increasing enforcement.

5 ORDERS

5.1 Personal decrees and personal consequences

The Abatement of Nuisances Law authorizes the Minister of the Environment to issue a "personal decree" to an owner of an industrial plant directing him to adopt specific measures in order to abate a nuisance. Failure to act according to the instructions of the Minister is deemed a personal offense of the owner of the plant irrespective of the impact of the action on the environment.

5.2 Cleanup order

The Maintenance of Cleanliness Law authorizes the Minister of the Environment to issue a Cleanup Order which requires a person who litters the public domain, an owner of a property in which the waste was disposed or a local authority in whose jurisdiction the waste was disposed, to remove the waste to an appropriate site in accordance with a set timetable and to require restoration of pre-existing conditions. The Minister may execute the Cleanup Order independently, if the person responsible for carrying out the order fails to do so. In this case, the person who received the order is to be charged with double the cleanup expenses. The entire process does not require judicial intervention.

Use of this order is especially effective and successful in overcoming the problem of the "midnight dumper" in cases where it is not possible to identify the person throwing the waste.

5.3 Mandatory or prohibitory injunctions

Several laws allow the authority to apply to the court, at the same time as submitting an indictment, to issue a mandatory or prohibitory injunction which instructs the defendant to act in a certain manner even prior to sentencing in order to prevent, stop or minimize the nuisance. This measure is most effective in achieving immediate results.

6 RESTORATION OF PREVIOUS CONDITIONS

6.1 "Polluter pays" principle

Restoration of previous conditions lies at the heart of the "polluter pays" principle. The law should allow the authority to require, in addition to the penalty imposed, also restoration of previous conditions, even in cases in which the specific polluter is not responsible for the pollution of the entire site and other polluters are known to exist as well.

6.2 Special funds

Provisions may be established within the law for the allocation of the moneys received from the imposition of fines and penalties to a dedicated fund whose purpose is to advance the aims of the law (e.g., maintenance of cleanliness, prevention of marine pollution, etc.) and to restore pre-existing conditions.

7 PENALTIES

7.1 Penalties to corporate managers and heads of local authorities

Many environmental offenses are committed by people who are not "criminals" in the normal sense of the word. Many are respected members of society such as plant managers or heads of departments and mayors in local authorities. It is therefore essential that appropriate penalties should be imposed accordingly.

7.2 Punishment through public service

In lieu of imprisonment or fine, it may be appropriate to impose "public service work" with an environmental orientation on the offender. This may include cleanup of a nature reserve, animal care, etc.

7.3 Publicity

An effective enforcement measure is the possibility of obligating a person convicted in court to publish, at his own expense, a clearly visible notice in the press in which he admits that he polluted the environment and expresses regret for his actions.

7.4 Personal payment of a fine

Israeli law prohibits a corporate body or an employer to pay a fine on behalf of an employee. Furthermore, conviction is accompanied by a personal criminal record, even if the employee acted on behalf of the company or according to the company's instructions.

7.5 Liability of a corporate manager and prohibition of a violation by a corporate body

Several Israeli laws stipulate that in cases in which an offense is committed by an employee of a corporation, and the corporation did not take all possible measures to prevent such violation, the corporate body and each of its managers personally will be legally responsible. This measure has the added benefit of encouraging corporate bodies to allocate the necessary budgets and skilled manpower to prevent environmental damages.

7.6 Additional penalties

In addition to the fine, the law may provide for the possibility of imposing incremental daily fines, doubling of fines for recurring violations and doubling of fines for corporations.

8 PUBLIC PARTICIPATION

8.1 Volunteer trustees

Public participation in the enforcement of environmental laws is achieved by special provisions within the law which allow for the appointment of volunteer "trustees" from the general public. Such trustees are authorized to file complaints against offenders of the law and to submit them to the relevant authority. In Israel, some 140,000 "cleanliness trustees" serve as volunteers under the Maintenance of Cleanliness Law.

8.2 Public participation in the review and approval of plans

Israel's planning and building legislation provides for a public notification and participation process. The Israeli public may participate in planning and building processes and in environmental impact assessments and may submit objections to plans.

8.3 Public participation in filing legal claims

Israeli law allows the public or green groups and non-governmental organizations (NGOs) to file private criminal suits in cases of environmental pollution or nuisances, when the authority chooses not to file a claim.

9 CONCLUSION

Since similar environmental problems are known to plague different countries, examples of successful environmental legislation from different countries may play an important role in increasing environmental compliance and enforcement. In all cases, it is vital to remember that effective environmental legislation must always be accompanied by increased environmental education and public awareness in order to achieve environmental protection and changes in behavioral norms.