
DECENTRALIZED AGENCIES WITH OVERLAPPING JURISDICTIONS – A PROBLEM FOR ENFORCEMENT

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SUMMARY

The establishment of the Environmental Management Authority represents a departure from previous models of environmental management in Trinidad and Tobago. The Authority is designed as a quasi-autonomous unitary agency, charged with responsibility for developing an articulated environmental management system through the coordination of a number of discrete laws and divided but coordinated agencies. The experience of the Authority, though brief, is demonstrating that effective environmental enforcement, no less than management, requires investment in the development of interagency partnerships for the delivery of coordinated programs.

1 INTRODUCTION

Trinidad and Tobago are the two largest of twenty-three islands comprising one archipelagic state situated at the southern end of the Caribbean chain.

The country qualifies as a small island developing state having a population in 1996 of 1,267,000 persons and a land area of 5,123 square kilometers. Petroleum extraction, refining, natural gas extraction and the manufacture of petrochemicals dominate the economy and consequently Trinidad and Tobago has enjoyed a relatively high per capita national income among developing countries.

Trinidad is different from the Caribbean islands to the north in that it is geologically part of the South American continent. The natural environment is rich in terrestrial and marine biodiversity but rapid industrial development, high population densities, and imprudent land use practices have led to environmental problems.

The environmental issues of greatest concern in Trinidad and Tobago are pollution control and waste management arising from industrial development. Integrated management of natural resources, particularly watershed and water resource management and conservation of biodiversity, is also a priority. Deforestation, due to land development and land use practices, has led to soil erosion, flooding, and loss of habitat and biodiversity and to the degradation of water resources. Wetlands and other coastal and marine resources have also been identified for remedial action.

2 ENVIRONMENTAL MANAGEMENT IN TRINIDAD AND TOBAGO

Trinidad and Tobago is a unitary state in which executive power lies with the Prime Minister and a Cabinet of Ministers of central government. Fourteen municipal corporations in Trinidad comprising nine regional corporations and five urban corporations administer local government. The island of Tobago enjoys a special constitutional relationship with Trinidad and Tobago by virtue of the Tobago House of Assembly Act.

Central environmental management responsibility was for a time assigned to the Ministry of Health and for a time to the Ministry of Agriculture. A separate Ministry of the Environment was established between 1989 and 1991. From 1991 to the present time environmental management oversight has been assigned to the Ministry of Planning and Development. In 1995 the Environmental Management Authority (“the Authority”) was established.

Responsibility for management of the environment has been fragmented among many agencies and legislative instruments. At this time there are seventeen Ministries of central government with responsibility for over thirty Divisions, Authorities or Corporations which execute environmental functions under over ninety pieces of legislation. At the local government level, the municipal corporations are charged with environmental functions under the Public Health Act, the Litter Act, the Water and Sewerage Act and the Municipal Corporations Act. The Tobago House of Assembly also has environmental functions under the Tobago House of Assembly Act.

The Ministry of Planning and Development now exercises oversight of environmental management functions through the Authority. However environmental management functions are still decentralized among coordinated agencies. These agencies execute laws, many of which are outdated, and many of which were designed with the dominant purpose of regulating the exploitation of natural resources. The foremost of these is the Ministry of Agriculture, Land and Marine Resources, which is responsible for renewable natural resources management such as forestry, wildlife and fisheries management. The Ministry of Energy and Energy Industries is responsible for the management of the exploration and production of nonrenewable resources such as petroleum, natural gas and other minerals. The Ministry of Works and Transport is responsible for controlling land and coastal erosion and some aspects of marine pollution. Other important Ministries are the Ministry of Housing and Settlements, which has recently been assigned responsibility for land use planning and land surveying, and the Ministries of Health, and Public Utilities.

The many statutes in Trinidad and Tobago related to the environment are concerned mainly with natural resources management, agriculture, land development and land management, or public health. Prior to the Environmental Management Act (“the Act”), there was no coordinating body of environmental legislation and little coverage of pollution control. There were, and still are, overlapping jurisdictions, as well as contradictions among policies and regulations. Some aspects of environmental concern such as watershed management fell within the responsibility of more than one agency and other areas such as air pollution control did not fall within any agency’s mandate.

Though many, the environmental laws were indifferently enforced. The following are among the causes of under-enforcement that have been suggested:

- archaic legislation;
- low penalties;
- lack of enforcing rules and regulations;
- insufficient trained investigative personnel, equipment and other facilities;
- lack of legally trained personnel within the responsible agencies;
- insufficient priority placed on environmental issues in the wider society; and
- overlapping jurisdictions.

These overlapping jurisdictions, many of which were under-resourced, have led to uncertainty and confusion concerning jurisdiction, and in the event, to inaction.

3 DECENTRALIZATION

The complexity of managing the environment through many central government agencies and jurisdictions is compounded by the allocation of environmental responsibilities at the local government level.

Under the Municipal Corporations Act of 1990, the municipal corporations have among their statutory responsibilities:

- the construction and maintenance of all drains and water courses except main water courses and highway water courses;
- the maintenance, control and enhancement of the physical environment including monitoring of water courses, beaches and water front areas, swamps, forests, game sanctuaries, savannas, parks and other open spaces; and
- the disposal of garbage from public and private property, the development and maintenance of sanitary landfills, and abatement of public nuisances.

The municipal corporations therefore have concurrent jurisdiction with the Ministry of Agriculture, Land and Marine Resources over the control of forests and game sanctuaries. There is concurrent jurisdiction with the Ministry of Health for abatement of public nuisances under the Public Health Ordinance, and for control over littering of public places and premises under the Litter Act.

The Tobago House of Assembly Act includes the environment among the areas for which the Tobago House of Assembly has responsibility to formulate and implement policy within Tobago. However detailed implementing laws and regulations have not as yet been developed setting out the procedures for the administration of these functions.

Despite this devolution of responsibility, the local authorities have neither the human resources nor the financial resources to carry out these responsibilities fully; many of which are still performed by central government agencies.

4 THE ENVIRONMENTAL MANAGEMENT AUTHORITY

The Authority is a relatively new entity established under the Act as a quasi-autonomous central statutory authority to coordinate environmental management in Trinidad and Tobago.

The Act has a threefold conceptual thrust. Firstly it introduces framework legislation encompassing all aspects of overall environmental policy and management at central government level. An Authority, a Trust Fund and a Commission are provided for. The Commission is designed as a court with authority to enforce administrative and civil sanctions against violations of the Act and to hear appeals against certain decisions of the Authority.

This legislation commits the public and private sectors to common environmental management principles such as sustainable development and the polluter pays principle, among other internationally accepted principles of environmental law.

Coordination is effected through the formulation and declaration of a National Environmental Policy and through consultative mechanisms to incorporate the views of stakeholders in the public and private sectors. Coordination is also effected through the formulation of interagency agreements between the environmental agencies and the Authority. These agreements include the appointment of Environmental Officers within the specialized

agencies and the development of joint programs between the Authority and the specialized agencies. Consistency between these environmental programs and the National Environmental Policy is to be sought at all times.

Secondly, the Act retains the existing environmental laws and institutions, while providing for the phased rationalization of this framework through the development of an Environmental Code. The Code is intended to consolidate into one enactment, rationalize and update, the many laws dealing with environmental matters.

Thirdly, in order to fill the institutional gaps in the area of pollution control, the Act introduces air, noise and water pollution regulation and waste management provisions. The powers provided in the area of pollution control are being detailed through the development of the required enforcing standards, rules and regulations. The Authority has direct executive power over pollution control as averse to the function that it carries out in relation to natural resources management which involves designating environmentally sensitive areas and species and establishing limits on the wise use of these areas and species.

The Act also provides for the development of public education programs, the voluntary introduction of environmental management systems within facilities, and the introduction of economic incentive measures.

5 ENFORCEMENT PROVISIONS OF THE ENVIRONMENTAL MANAGEMENT ACT

The Authority is empowered to enforce directly the environmental requirements of the Act by issuing Notices of Violation, and Administrative Orders which may include Administrative Civil Assessments. These Assessments are charges levied on the violator on the principle that the polluter ought to pay compensation for environmental damage caused by his acts or omissions.

The Authority has the power to appoint inspectors to monitor and investigate compliance with the Act.

The jurisdiction of the Act is largely administrative and civil. However the Act creates two indictable offences of knowing or reckless endangerment of human life or health through the handling or release of a pollutant or hazardous substance; and knowingly or recklessly undertaking/permitting activity in an environmentally sensitive area or with respect to an environmentally sensitive species which may have an adverse impact on the environment in that area or on that species. The prosecution of these offences will be undertaken by the Director of Public Prosecutions or with his consent.

The Authority is being staffed with in-house legal counsel and personnel who will monitor and investigate violations. However commercial and industrial enterprises will be required to undertake self-monitoring, and the decentralized agencies will monitor and enforce the legislation for which they are responsible.

6 ORGANIZATIONAL TYPOLOGY

The Authority does not fit easily into any single environmental organizational typology.¹ It most closely resembles the unitary type of agency in that it encompasses both resource management and pollution control functions. It exists at central government and

Cabinet level and has enforcement, compliance and regulatory functions under one common authority. It will conduct administrative and judicial law enforcement when the Commission is established.

However the Authority does not have all enforcement, compliance and regulatory functions at the central government level. This distribution of responsibility poses a challenge to the coordinating powers and skills of the Authority. Environmental management in Trinidad and Tobago may be conceived of as distributed among divided agencies of equal rank and independent in their functioning. Each sectoral agency, which operates under an environmental statute, has some responsibility for investigating violations and enforcing compliance with the law e.g. the Town and Country Planning Division; the Forestry Division; and the Public Health Inspectorate of the Ministry of Health. In addition, the specialized criminal law enforcement agencies namely the Police Service and the Director of Public Prosecutions are responsible for the investigation and prosecution of summary and indictable offences.

There are also elements of the “traditional agency” model apparent in the Authority in that the powers of the Authority include both environmental management and administrative enforcement functions while judicial enforcement will be conducted by the Office of the Director of Public Prosecutions with regard to environmental crime.

The Authority therefore can be said to exhibit aspects of all three types of organization model. It may be conceived of as a matrix organization, functioning as a unitary agency of central government where it is entirely devoted to both resource management and pollution control functions and to the inspections and administrative enforcement functions empowered by the Environmental Management Act. At the same time, the specialized agencies are charged with the execution of programs in harmony with the National Environmental Policy and the enforcement of the laws for which they are responsible. Specialized enforcement agencies such as the Police Service and the Director of Public Prosecutions are responsible for the enforcement of summary and indictable offences.

7 COORDINATED ENFORCEMENT PROGRAMS

Without coordination and programming, fragmented and overlapping jurisdictions are likely to lead to contradictions, inconsistencies and inaction, in management as well as in enforcement. This paper submits that uncoordinated overlapping jurisdictions are one cause of under-enforcement.

A small state such as Trinidad and Tobago is perhaps ideally positioned to devise and implement coordinated environmental strategies and programs through the machinery of the Act. Coordinated investigations and enforcement policies and programs may be devised among the Authority, the Police Service, the environmental agencies and the Office of the Director of Public Prosecutions. Such policies and programs will require the establishment of common objectives, priorities and strategies and the application of resources to these strategies.

Designing these policies and programs through partnerships will require the identification of roles and assigning tasks to these roles, namely:

- surveillance, investigation and prosecution of summary environmental offences under various statutes – the Police Service;
- monitoring, investigating, and identifying violations of the Act - the Environmental Inspectorate created by the Act; and

- enforcement of the more serious criminal offences in the criminal courts and of environmental violations before the Commission - the Office of the Director of Public Prosecutions and the Authority respectively.

A pilot program to examine the feasibility of establishing an environmental force within the Police Service is in the process of being detailed. This program proposes the development of a dedicated squad, trained to investigate, identify and prosecute environmental crimes under existing sectoral statutes.

The Authority also proposes to develop an Operations Manual which will establish guidelines, policies and procedures that will guide the Authority and other Environmental Officers and Inspectors of participating agencies in the investigations and enforcement function. The purpose of the Manual and the training programs that will be developed is to ensure that the conduct of investigations and enforcement is swift, transparent, fair and consistent, in order to provide an effective deterrent.

The approach to improved enforcement must be multifaceted. When the Commission is in place and subsidiary legislation sufficiently developed the provisions of the Act permitting direct citizen suits may be activated. This will provide for direct enforcement against violations by private citizens before the Commission.

When the existing environmental legislation is updated it would be desirable, to provide where appropriate for the enforcement provisions of the Environmental Management Act to be applied to these other statutes. This will provide for more robust penalties, promote deterrence and lend the civil jurisdiction of the Commission to those statutes. The Commission will be a specialized bench of adjudicators both legal and technical, in which forum administrative and civil sanctions of the Act will be enforced. This dedicated and specialized bench is expected to deal expeditiously with the increased environmental caseload.

8 CONCLUSION

The radical initiative taken through the Environmental Management Act is demanding of management and programming expertise, vision, and communication skills. It is yet premature to evaluate the results of the attempts at interagency partnerships and coordinated programming, particularly since the administrative and legal infrastructure is still being put in place. However the organizational models that have been identified reveal that coordination through interagency partnerships is always part of any organizational option for environmental management. This is perhaps inevitable since the alternative, that is, to attempt to design monolithic centralized agencies to perform all policy, coordinating and executive management and enforcement functions, would be neither feasible nor effective.

ENDNOTES

1. See William Eichbaum's "Alternative Organizational Structures for a Compliance and Enforcement Program", in ICEE Proceedings, Budapest 1992.