
COMPLIANCE PLANS: CREATIVE NEGOTIATIONS FOR CORRECTIONS AND PENALTY

DABROWSKI, BOGUSLAW

Head of Inspection Section, Voivodeship Inspectorate for Environmental Protection in Opole, ul. Nysy Luzyckiej 42, 45-035 Opole, Poland

SUMMARY

This paper provides a status report on an experiment underway in Poland to try to introduce negotiations of compliance plans as a new enforcement tool for heavily polluting industries which are in violation of the law. In the Polish Environmental Legal System there is no place for negotiations with the polluters in a case of violation of environmental law. The only thing to do is to start the legal procedure just to force them to obey environmental law and established conditions for environmental use which often can result in little progress being made.

In order to change this situation a little bit negotiation procedure was adopted in Poland as an experiment for heavy polluters. The National Environmental Protection Inspection (from January 1, 1999 The Environmental Protection Inspection) in Poland produces "the list of most environmental nuisance plants in a national scale" called "The List 80." In the end of 1997 we have got 70 plants on that list.

In 1998 the four experiments with the polluters from "The List 80" were under way. The negotiations procedure is based on the free will of the participants (the polluters and administrative organs) and existing environmental law.

To make things easier "The regulations about conditions for removal from the list of the most environmental nuisance plants in a national scale" were elaborated.

The realization of the compliance program cannot exceed five years.

1 HISTORY OF "THE LIST 80"

In April 1989 the Chief Environmental Protection Inspector asked the Voivodes to bring up to date characterization of the most environmental nuisance plants. The first polish environmental one was enacted in January 31, 1980 and before that we had environmental issues in several separate acts (for example: The Water Act, The Air Protection Act). Taking into account environmental behavior of the environmental users the ranking list was created. The first lists were based on statistical data on environmental use as a main factor (amount of water intake, discharged load of pollutants into the surface waters, ground or air, amount of wastes produced by plants). The rank had three levels:

- A - the heavy environmental users.
- B - the medium environmental users.
- C - the lower environmental users.

In May 1989 characterizations were made and sent to the Chief Environmental Protection Inspector. It appears that about 200 plants should be recognized as heavy polluters so new criteria were set and after a verification procedure it was established that 80 plants should be on the list. So in the end of 1989 the up-to-date "The List 80" was created.

2 THE ECONOMIC CHANGES FORCED A NEW WAY OF THINKING

After the first free election in Poland a new democratic government initiated economic changes from so called "socialistic command economy" to a free market economy. A result of those changes there was a collapse of some industrial sectors mainly responsible for environmental pollution. We used to joke in Poland that Vice-Prime Minister Mr. Leszek Balcerowicz (who was responsible for economic changes at that time) is the best Environmental Protection Minister because the collapse of some industrial sectors caused a 30% to 40% reduction of total pollution load discharged into the environment. It is plain to see that recovery of the Polish economy would be a very hard task to do without foreign capital investment. During the negotiations procedure about potential investment a standard issue was about environmental problems in a plant in question. Part of the feasibility studies were environmental measurements carried out by potential foreign investors as well as environmental impact assessment. After that the conditions of the contract were negotiated. It is obvious that the price of the plant should be lower if the environmental problems were serious. In some cases the foreign investors withdrew from negotiations because of the environmental problems. After that lesson most of the plants have learned that it pays to be environmentally friendly.

3 THE COMPLIANCE PROGRAM EXPERIMENT

Cooperation between The Polish National Environmental Protection Inspection and US Environmental Protection Agency has a long history and one of the fruits of this cooperation was an idea about the compliance program experiment. The essence of that idea is that the plants with serious environmental problems have a chance to negotiate environmental improvement programs with the voivodes given that correction of their environmental compliance problems were complex and that negotiation would help to develop pragmatic schedules for remedial action and financing of pollution control, local self-government authorities and voivodship environmental protection inspectors. The basis for asking to take a part in this experiment was "The List 80." Very careful selection had to be done before four of the plants were chosen. They were:

- Czestochowa Iron Foundry.
- Zinc Foundry in Miasteczko Slaskie.
- Petrochemical Works in Plock.
- Nitrogen Fertilizers Works in Kedzierzyn-Kozle.

The next step to implement the experiment was to train the participants in negotiation procedure. It was done with a help of US Environmental Protection Agency in June 1997 a training course about negotiation techniques involved in compliance with environmental requirements included the participants from:

- chief environmental protection inspectorate above mentioned plants;
- voivode offices;
- self-governmental offices; and
- voivodeship environmental protection inspectorates.

Because earlier the papers about accession to the experiments were signed so the negotiation procedure would be ready to start the negotiation procedures had different progress depending on the plant in question but all of them were crowned with final agreement about realization of the compliance program.

I had a chance to be one of the representatives from the part of Opole Voivodeship Environmental Inspector in negotiations about the compliance program involved in Nitrogen Fertilizers Works in Kedzierzyn-Kozle. The negotiations procedure was in an atmosphere of understanding and good technical knowledge. We had several meetings and during the one meeting in the middle of negotiation procedure there was one breaking point that the plant was about to break the negotiations but after a half hour pause they returned to the table and agreement was achieved. The results of the agreement have found their reflection in the administrative decision issued by a voivode on a legal basis of the polish environmental law.

The decision was issued in August 1998 and contained the following conditions:

- shut down outdated nitric acid, sodium nitrate and nitrite installation and construction a new nitric acid installation instead;
- urea installation modernization;
- shut down of two outdated phthalic anhydrite installation and construction a new one instead;
- oxo-alcohols installation modernization;
- waste water treatment plant modernization;
- ash heap reclamation;
- waste disposal stoppage and implementation wastes incineration;
- dewatering and conditioning installation construction for sewage sludge;
- sewage sludge dumping site reclamation; and
- sulfur dioxide emission reduction.

After that decision the plant will be taken off "The List 80." The measures mentioned above have to be done within five years if not the plant in infamy will return on "The List 80." The negotiations procedure and a final agreement have met a good public opinion response. Nowadays the monitoring process of compliance programs implementation in all four plants is under way.

4 THE COMPLIANCE PROGRAMS IN A NEW POLISH ENVIRONMENTAL LAW :W H AT WILL BE A STICK AND WHERE IS A CARROT?

In 1998 "The regulations about conditional taking off the list of the most environmental nuisance plants in a national scale" were corrected according to the experiences gained during the experiment with four plants.

According to the Polish negotiations about our accession to European Union we are obliged to adapt our environmental law to the Union requirements. A response to those requirements is a bill about new environmental law and the ordinance drafts to that bill which were elaborated according to The Program PHARE/TACIS No. EC/EPP/91/1.2.4. One chapter of that bill is about compliance programs. The negotiations procedure and compliance programs in the bill are similar to those which were used in our experiment about conditional taking off "The List 80" but the sticks and carrots are different.

Nowadays in Poland we have the following sticks:

- a fees system (one has to pay for water intake, waste water discharged into the surface waters or ground, pollution discharged into the air, waste disposal and cutting off the trees and greenery); and
- a fines or penalties system (for waste water discharged without a permit or with permit violation, exceeding allowable air pollutants or noise limits, illegal waste disposal).

One of our carrots is the possibility of postponing penalties or to arrange installments for penalties payments when the plant is going to make an investment involved in removing the reason for the penalty. Another one is a conditional taking off "The List 80."

In the bill a new possibilities appear.

The carrot are:

- postponing the environmental fees up to five years;
- agreement that 50% of environmental fees will be invested in the environmental protection measures; and
- conditional taking off the list of most environmental nuisance plants on a national scale.

The sticks in a case of failure of the compliance program realization are:

- the plant has to pay four times higher penalty;
- one year environmental fees calculated on the base of the day they were required; and
- the plant returns on the list of the most environmental nuisance plants in a national scale.

We hope that our new environmental law will be enacted before the end of the year 2000.