
OVERVIEW AND VISION: ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT AND INTERNATIONAL NETWORKING

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Thank you Pieter. This is now the third of the five international conferences on environmental compliance and enforcement at which I have had the pleasure and privilege of sharing the role of day-chair with my colleague Pieter Verkerk. I could have no better partner. I also would like to recognize the members of the Executive Planning Committee and Associates to INECE who have contributed immeasurably to bringing this Conference about, and also to defining the ambitious program for the first two years of the International Network for Environmental Compliance and Enforcement.

Let me start by adding my own warm welcome to the United States, and to California. In the past, I have been touched by the graciousness of our hosts at the conferences in Oaxaca, Mexico and Chiang Mai, Thailand. They set a very high standard, which we in the U.S. are anxious to meet. I have very little doubt that we will succeed, if for no other reason than the quality of the people who are attending this conference. You were all hand picked by our Executive Planning Committee as individuals who can and will make a positive difference in the lives of your countrymen and women, and also our natural world. You come from over 100 different nations and 30 international organizations; from countries large and small, developed and developing. You practice distinct disciplines and professions. We have learned however, that the differences notwithstanding, we face similar challenges and issues and can best achieve our individual and global objectives by collaborating, teaching and learning from each other.

The Steinbeck Forum in which we are seated is named for John Steinbeck, a Nobel prize winning American author. He wrote a famous novel – *Cannery Row* – centered around the sardine canneries which once thrived in Monterey. These waters, once teeming with sardines, were decimated by the pollution and overfishing. The economy of the area was wrecked. However, you look around today and you see a thriving community whose major industry is tourism. Tourism is dependent on a clean and healthy environment. This is a community that learned a lesson. For those of you who will be joining us on the site visits on Saturday, you can witness a community committed to state of the art control of both sewage wastewater and solid waste. And the Monterey Aquarium — which you will all get to see on Thursday evening — is associated with a major global effort to study and preserve marine life.

Our Executive Planning Committee members specifically charged Pieter Verkerk and me with the task of opening this Conference with an overview of where we have been and a vision of where we are going in environmental compliance and enforcement and the role an entity such as INECE plays in this effort.

First, of course, it is important to remind ourselves of why building national and international enforcement and compliance capacity is so important to environmental protection. As Bill Nitze said, virtually all of our nations have laws; some are very strong and very protective of human health and the environment. However, without effective enforcement the laws are worth little more than the pages they are written on. In fact, without enforcement laws are an empty promise to our citizens who look to the law to protect them.

Study after study has shown that the primary motivation for industry to comply with anti-pollution laws is enforcement – fear of being fined, fear of being exposed to the public as a polluter – as a dirty company, and in the case of individuals – fear of being put in prison. With strong, aggressive and fair enforcement, other approaches such as voluntary programs and economic incentives can also be employed. But, they are no substitute for effective enforcement as the foundation upon which environmental protection can be realized.

A fair and effective enforcement program will serve several purposes:

- 1) It will punish those who do not comply with the law.
- 2) It will require cleanup of polluted resources and it will assure repair of the damage caused by the pollution.
- 3) It will deter those who may be thinking of breaking the law – of cutting corners.
- 4) It will ensure that those industries and businesses who obey the law are not put at a competitive disadvantage to those who violate the law; put another way, effective enforcement assures that polluters do not profit by their non-compliance.
- 5) It will prevent the creation of pollution havens.
- 6) Enforcement will ensure the protection of human health and the environment; and
- 7) It will encourage healthy and sustainable national and international economies.

Enforcement assures us that individuals and companies will be held publicly accountable for their behavior. They will pay the price of their actions. Polluting cannot be permitted to be another cost of doing business.

1 NETWORKING AT ALL LEVELS

Environmental enforcement requires many different disciplines and types of organizations. At the national level, we must include not just environmental agencies, but also prosecutors, police and sector ministries, justice officials, customs officials and trained judges to implement environmental policy issues. Collaboration is also needed among levels of government. In many nations, enforcement is highly decentralized. Without effective communication and cooperation between local institutions and a national program dedicated to environmental compliance and enforcement, national laws are likely to be unevenly, and thus ineffectively, enforced. This has ramifications locally, nationally, regionally and globally.

Many of you are constrained in your efforts to achieve compliance because authorities and functions are spread out among so many ministries, departments, agencies, and regions, that, in a sense, no one is in charge or responsible. Authority is so dispersed that effective action is stymied. During this conference you will hear from colleagues about how they have used in-country networks at all levels to make rational even the most difficult organizational settings so that environmental compliance and enforcement happens. Whether it is the United States, the Netherlands, Ghana, Poland or Vietnam, there are ways to overcome these barriers. There are no perfect solutions, but there are ways to move ahead.

2 PUBLIC ACCOUNTABILITY AND PUBLIC PARTICIPATION IN ENFORCEMENT

Another major aspect of the vision for successful environmental compliance is public access to information and citizen participation in enforcement. We cannot underestimate the power of public knowledge of non-compliance and of facility performance to influence environmental performance in the business community. We will build on the principles articulated by participants at the Fourth International Conference. We know from many experiences and the papers contributed by our NGO colleagues from Ukraine to Nepal to the Americas that we have much work to do to make new international agreements on public access to information and to justice a reality. The new INECE document, *Citizen Enforcement: Tools for Effective Participation*, is also designed to facilitate progress.

Public information – and easy access to it — are needed for both effective citizen enforcement and to motivate business to comply with the law in the first instance. In the United States we have taken unprecedented steps to make information about facility compliance and toxics release to the environment available through the Internet. And we have seen substantial performance improvement. But we need to continue to seek to improve the form, content, reliability and availability of such reports to make them most effective.

3 NEED FOR FIRM, FAIR AND VISIBLE ENFORCEMENT

A third major aspect of the vision, as I have already noted, is the need to take firm and visible legal enforcement actions against violators. This is an essential prerequisite that never ceases, regardless of the state of a country's development. Enforcement must be pursued and maintained, but the levels and focus will always be in a dynamic state of change. We see new evidence of this in the reports from Peter Krahn in Canada in the Proceedings where he documents environmental gains resulting from using enforcement with promotion of, rather than exclusive reliance on, voluntary measures alone. We also see this evidenced in the numbers reported by Pieter Verkerk on the limitations of the voluntary industry covenants the Dutch have tried.

4 FINDING THE RIGHT BALANCE OF "CARROTS AND STICKS"

A fourth and closely related part of the vision is a broad recognition of the need to balance the carrots and the sticks – not choosing one approach over another. We hear in some quarters that we should adopt and rely upon the voluntary approach. To this, I say look around you. In most areas of the world we have concrete evidence of what voluntary approaches without enforcement has given us. Used smartly, strong enforcement, voluntary programs, and incentives will strengthen and compliment each other. The challenge is to find the right balance and sequence. The need for varying approaches is particularly apparent as we struggle with how to gain compliance at numerous small and medium sized enterprises. There are excellent examples for us in Sonoma County, California, in the Proper Program of Indonesia, and in the environmental audit program of Mexico.

Similarly, we have sometimes seen a reluctance to enforce because of fear of the costs of compliance. First, we must be always mindful of the larger long-term cost of tolerating non-compliance. We also know that inaction and delay leads to more inaction and delay. Countries like Poland and the Czech Republic and Egypt have taken great pains to construct

new enforcement authorities and policies which respond to the need for creative solutions which provide structured, affordable compliance schedules. The United States has developed several enforcement policies which preserve the principle of the polluter paying and not gaining an economic benefit, but which also advance opportunities to prevent pollution and correct environmental damage.

5 HARNESING NEW TECHNOLOGIES AND APPROACHES TO DETECT VIOLATIONS AND MONITOR COMPLIANCE

As we look to the future of environmental compliance and enforcement, we cannot overlook the possibilities opened to us by new technologies for getting more accurate, more comprehensive and more real time monitoring information. We can be inspired by Australia's creative use of satellite technology to monitor trucks transporting hazardous waste and by some of the real time monitoring relays in Japan and elsewhere. Remote sensing is also being used to help protect wilderness areas and sensitive ecosystems from illegal activities.

6 ACHIEVING THE POTENTIAL OF ENVIRONMENTAL MANAGEMENT SYSTEMS

A sixth aspect of the vision is fostering and harnessing the promise of internal environmental management systems, self-auditing and responsible care programs. We see increasing international focus on environmental management systems for environmental compliance and prevention of environmental problems. However, we must never forget that having a system is not a substitute for actually complying with the law. It is the environmental result that matters, not the "system."

7 ENVIRONMENTAL CRIME

Finally, a significant part of our vision for the future is creating a seamless web to stop environmental crime and to work together to combat international crime which violates national law and environmental agreements. Our national laws give us the ability to cooperate directly with one another in investigations and prosecutions, and international treaties mandate that we do so. Here we can build on existing law enforcement networks.

We have recently seen the fight against environmental crime taken up by national leaders and stressed as a priority in the conduct of foreign affairs. In the last year, the G-8 Group of Nations' Leaders and Environmental Ministers have directed their enforcement officials to collaborate more closely in detecting and prosecuting criminal violations of environmental law and in establishing more effective ties to traditional law enforcement. This last summer, the Council of Europe passed the Convention on the use of Criminal Law to Protect the Environment and just last month, our colleague from Mexico, Antonio Azuela hosted an Iberoamericano Congress on environmental crime. INTERPOL's organized crime group is now interested in taking up this problem.

Now, it is time for us to go to work. Your mission is truly a critical one. I wish you all well. Participate fully over the next five days and we will surely succeed in our efforts to make our world a better, healthier, more prosperous and beautiful place to live. Thank you very much.