
SUMMARY OF PLENARY SESSION #1: MAKING IT HAPPEN – APPLYING THE PRINCIPLES OF ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT

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1 INTRODUCTION

Moving from principles to practice takes time and often some driving force. Programs evolve at their own pace responding to both domestic and international commitments to environmental protection, demands of fair and free trade, public pressure, market forces, crises, and other opportunities to garner support for building and implementing compliance and enforcement programs. The Fifth International Conference opened with an exploration of driving forces, challenges, and impediments to making effective environmental compliance and enforcement programs happen.

2 PRESENTATIONS

Mr. Yassar Sherif, Director, Egyptian Environmental Affairs Agency, Egypt, discussed a new environmental management tool that was piloted in Egypt, the Compliance Action Plan (CAP). The CAP was initiated as a cooperative effort to address special industry needs at the end of a three year grace period for complying with Law 4 of 1994, Egypt's most recent environmental law. While the grace period had been granted to allow existing companies to come into compliance, it became clear that the majority of the regulated community would still be non-compliant by the end of that period (February 1998). Companies that developed and submitted a CAP could be granted a further two year extension by demonstrating three things: the actions taken and progress achieved towards compliance and supported by documentation; the state of compliance expected by February 1998; and the activities planned to achieve compliance by February 2000. Commitments to specific actions were to be reflected in a clear implementation schedule and progress reporting; the identification of sources of financing for compliance actions; and the establishment of a company CAP implementation task force with clear authorities and responsibilities. While the concept of the CAP is a good one, its implementation was hampered by tight time constraints, scarce human and material resources, and weak political support. However, the tool has been successfully tested, proven its usefulness and versatility and is now a standard component in environmental management courses for industry.

Justice Michael F. Saldanha, Karnataka High Court, Bangalore, India, discussed the role of the judiciary in achieving environmental reform through judicial activism. At the end of 1998 a critical audit in India indicated that environmental enforcement levels are low because the Courts have been playing a minimal role. The subordinate Courts which deal with environmental transgressions have "failed miserably" in achieving respect for the laws or in creating fear of any consequences for breaking it. Judges have been criticized for levying "flea-bite" sentences. While there has been some deterrence in punishing environmental offenders, there are two other important means, namely the power to prohibit and the power to direct, are two of the quickest and most

effective means, and need to be used more frequently. Compliance will be forthcoming only when the message goes out from the Courts that it is no longer safer or cheaper to break the law than to obey it. Concrete steps toward ensuring judicial activism include: a well defined program aimed at providing Judges with environmental compliance literature; a sustained media campaign directed toward bringing home the message that the Courts and Judges will intervene in environmental enforcement efforts; and an immediate directive from the Chief Justice of India that a Green Bench be set up in the Supreme Court and in every high Court to handle environmental cases expeditiously and efficiently.

Mr. Armando Shalders Neto, Director of Environmental Pollution Control, Companhia de Tecnologia de Saneamento Ambiental (CETESBE), Brazil discussed the broad program goal in San Paulo State, Brazil -- which has about 40% of Brazil's population's industrial base pursuing enforcement efforts but also promoting pollution prevention. For many years, CETESBE has implemented a strong traditional enforcement program with inspections and fines. Now, pollution prevention is an expectation as well.

Ms. Nancy Bircher, Director, Ministry of Environment, Lands and Parks, Province of British Columbia, Canada, discussed how compliance with environmental law by British Columbia pulp and paper mills has evolved through four distinct phases. Each phase has been driven by growing public awareness of environmental issues and government response to public demand. Phase 1 was characterized by low public awareness, almost no regulation, and even less enforcement. The industry was free to grow and operate, unencumbered by environmental concerns. This phase was characterized as one where the British Columbia government spoke softly to the pulp and paper industry but carried no stick to speak of. In Phase 2, growing public awareness of the health hazards of pollution drove government to set emission standards. Still, no significant enforcement was carried out and industry complied with the law at its discretion. This phase was characterized as one where government had a stick but didn't use it. In Phase 3, the public demanded and government delivered tighter emission standards and tough enforcement. Industry at first resisted and paid dearly in fines which finally led to improved compliance. The turning point in industry compliance occurred during this phase when the government implemented an aggressive enforcement program. This phase was characterized as one where speaking loudly and using its big stick government finally got industry's attention. In Phase 4, the industry is substantially in compliance with stringent emission standards, the public continues to press for a cleaner environment and the government encourages industry to move "up the pipe" to a new environmental management regime. This phase was characterized as one where the government is back to speaking softly to industry but is carrying a big stick in plain view.

Ms. Cheryl Wasserman, Associate Director for Policy Analysis in U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance, Office of Federal Activities, presented an overview of the "Principles of Environmental Compliance and Enforcement." Ms. Wasserman described in very clear and visual way what these Principles are and how they apply to everyone. She provided some historical background on the genesis of the Principles, defined key terms, and she described the basis and context for the principles — particularly the range of motivations that must be tapped to change human behavior. Ms. Wasserman introduced the framework including, ensuring the enforceability of requirements, promoting compliance, monitoring compliance, responding to violations, defining clear roles and responsibilities for dedicated institutions for environmental compliance and enforcement and establishing management accountability and evaluation of results. The presentation included international examples of country strategies for addressing each

element in the framework and for strategically pulling together “carrots” and “sticks” in the most effective way. She stressed that “The Principles” should not be seen as a model but rather as a point of departure from which any nation or locality may develop or enhance their own unique compliance and enforcement program or strategy in any legal, social or cultural setting.

3 DISCUSSION

In response to a question about the level of public participation regarding the Compliance Action Plan (CAP) pilot, Mr. Sherif said that public participation in decision making is not the norm in Egypt, even in issues less complex than industrial pollution. However, it was considered essential that industry inform the public of its efforts to comply, and in retrospect, the proposed model should have been made a public document. Mr. Sherif explained that the public was not involved in the compliance action plan although these plans had to be accessible to the public. There are of the moment 500 compliance action plans. Press was not amused by a grace period for companies that have been polluting for ages.

When asked how judges can be re-educated toward environmental issues in India, Justice Saldanha said that an environmental law institute has been started for this purpose. He said that although the judiciary has shown a high degree of resistance to date, the institute is beginning to generate enthusiasm to give priority to environmental matters. Also, the media is very sensitive to environmental issues and is highlighting every instance where there has been significant and worthwhile Judicial intervention.

One questioner wanted to know if there were any voluntary programs in Brazil. Mr. Shalders Neto said that there are a few pilot voluntary projects which started with the textile sector and now include the metals sector. These pilots are challenging industry to identify ways to avoid, reduce, and eliminate pollution at source rather than treating or containing it after it's been created. Through voluntary efforts, companies incorporate pollution prevention in their business plans and develop stronger ties to the communities in which they operate.

Another questioner asked how fines were developed in Canada. Ms. Bircher said that the government had to be convinced, and that strong public outcry helped. Awareness of public health hazards grew with the closures of commercial fisheries in the vicinity of pulp mills, announcements of consumption advisories for a number of coastal and inland waters, and the discovery of dioxins and furans in the marine environment. Also, environmental non-governmental organizations were effective at communicating public concern to government and back to the general public. This helped increase the maximum daily fine from \$50,000 in 1982 to \$1 million (\$3 million for intentional damage) in 1989.

4 CONCLUSION

Environmental pollution knows no borders. Despite many differences between our countries, we all face tremendous challenges to build an enforcement presence and to design laws in a realistic manner so that they are enforceable. Whether its striving to establish a compliance culture in Egypt, reorienting the judiciary to environmental enforcement in India, promoting pollution prevention in Brazil, or balancing the use of “carrots and sticks” in Canada, we agree that enforcement plays a critical role in

achieving environmental results. And we agree that as we move down the path of improving environmental compliance, it's the solutions, not the systems, that are important.

The presentations and the conclusions showed the different driving forces. It could be best concluded as done by Ms. Nancy Bircher who cited Theodore Roosevelt, "Speak softly but carry a big stick."