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## SUMMARY OF WORKSHOP: ADMINISTRATIVE ENFORCEMENT MECHANISMS: GETTING AUTHORITY AND MAKING IT WORK

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### GOALS

To explore the use of administrative enforcement mechanisms among the participants and to formulate recommendations for INECE actions.

### 1 INTRODUCTION

Questions presented by facilitators:

- How might “administrative enforcement mechanisms” be defined
- What differences exist among the different administrative regimes
- Taking into account the differences among the different administrative regimes, what are the strengths and weaknesses of various administrative tools
- What recommendations might we make for further INECE study?

### 2 PAPERS

INECE Secretariat, *Administrative Enforcement Mechanisms* (Workshop Summary)(5th Conference, page 283, Volume 2).

### 3 DISCUSSION SUMMARY

Administrative enforcement can be defined, initially, by what it is not. It is not criminal enforcement or civil judicial enforcement, both of which involve a court system that is independent of the environmental enforcement agency. The distinguishing feature of administrative enforcement is that it does not involve such an independent court system, although all administrative enforcement systems within the experience of the participants provide

access to the judicial system at some point in the process.

Whether or not an administrative enforcement system yields findings of fact and law that are recognized by the independent judicial system is a characteristic that separated the various systems discussed by the participants. For example, in the United States, administrative judges make findings of fact and law that are recognized by the judicial system as absent of procedural errors. In other countries, such as Indonesia, Australia, Holland, Argentina and Jordan, administrative orders or complaints trigger a process that at the discretion of the respondent, and if not settled, move to the judicial system for resolution. In Holland, administrative enforcement is conducted in a special administrative judicial branch, apart from the civil and criminal court system.

The variety of tools available in the administrative enforcement systems that were discussed included virtually all of the enforcement tools available to judicial systems, except for incarceration, which in each case was available only to the criminal judicial system. (It was noted, incidentally, that criminal systems also appear to have available most of the tools available to the administrative and civil judicial systems.)

Given that many of the same tools are available among the administrative systems, in each country the tools provided to that particular administrative system varied

enormously. At extremes, some countries provide their administrative system with punitive monetary sanctions but limited, or indirect, injunctive sanctions. (eg. U.S.). Other administrative systems are provided strong injunctive sanctions, such as the ability to shut down facilities for violations, but limited ability to apply monetary sanctions, (eg. Jordan and Mexico).

Most administrative enforcement systems provide, through procedural characteristics or policy decision of the environmental agency, the opportunity to reach negotiated settlements with responding parties. In fact, most agencies presume, and in fact find, that the majority of actions they take do settle before there is any recourse made to the judicial system.

The choice of making recourse to the administrative system typically lies with the agency. The reasons by each agency to decide which path to take vary radically depending on the system. One set of characteristics that recommend choice of the administrative route is speed, cost and efficiency. Most agencies reported that their administrative processes were faster, cheaper and, therefore, more efficient than judicial options. Several participants noted, however, that in cases of emergency, for example in a circumstance in which continued operation of a facility exposed neighbors to an unacceptable health risk, recourse to the judicial system might be faster and more certain because in their systems only a judicial order can ensure compliance.

There was a split of experience regarding the advantages of administrative systems where the agency's goal is remediation or restoration. The arguments over this point were too nuanced to have done justice in this report.

#### **4 CONCLUSION**

There is surprising convergence

regarding a minimal definition of "administrative enforcement." However, there is a truly remarkable variety in the powers and procedures used by various administrative regimes. A critical assessment of the strengths and weaknesses of various combinations of these powers and procedures will need a more careful analysis than can be accomplished merely from the sharing of anecdotal evidence.

The ideas expressed as recommendations are noted in the order discussed, without regard to priority.

Explore opportunities to enforce administrative/civil judgments across national borders.

Consider conducting an inventory and analysis of existing administrative "tools" to the end of creating a more useable categorization and analyzing their effectiveness. It was noted unanimously that such a project would: 1) have to consider tools that were more usually reserved for civil judicial systems as well as those typically offered to administrative systems: and 2) have to recognize that the effectiveness of "tools" is dependant upon specific procedural contexts and, therefore, can only be analyzed in relation to those specific contexts.

Recognizing the usefulness of an international inventory of civil environmental violators (Is it fair to assume that there already exists an actual, or inchoate, inventory of criminal violators?), we might want to consider somehow making the various national inventories more easily available and searchable.

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