

COMPLIANCE INCENTIVES AND OTHER ASSISTANCE

MASLANY, THOMAS¹ and DROLET, RENE²

¹ 1405 Perkiomenville Road, Perkiomenville, PA, 18074, tmaslany@nni.com

² Director, Compliance Assurance, National Programs Directorate, Environment Canada, 351 St-Joseph Blvd., 17th Floor, Gatineau, Quebec, K1A 0H3, Canada, rene.drolet@ec.gc.ca

SUMMARY

The primary goals of a compliance assurance program are to change human behavior so that people choose to comply with the environmental requirements and to force compliance on those that choose not to comply voluntarily. Both goals are important. To achieve these goals, a good understanding of the different sectors of the regulated community is required, as well as what makes them change their compliance behavior towards environmental requirements.

1 UNDERSTANDING COMPLIANCE BEHAVIOR

Few people will obey a law simply because it is a law. There may be multiple reasons why people obey laws and rules. For example, complying can be linked with professional ethics or moral duty. It can ensure good reputation with others. But there is also a different and competing set of reasons why people do not comply with laws and rules. Costs of complying can seem high compared to the sanctions, especially if the risk of being detected is low. People may also be motivated to disobey a rule simply because they disagree with it for personal or professional reasons.

Knowledge of the factors that drive environmental performance and non-compliance behavior of firms and individuals is critical to designing and applying regulations or other control instruments to stimulate the desired behavior. A deeper understanding of human and organizational behavior is required in order to better match rules and requirements to the desired behaviors.

A frequent mistake from regulatory

agencies is to assume that a target group will be aware of, and understand how to comply with, a rule when it is published. However, increases in the complexity and volume of new rules can make this basic assumption unrealistic. New rules need to be accompanied by information and appropriate development programs to ensure they are made comprehensible to the target group. A focus on the feasibility of compliance is also needed.

To secure compliance, the target group must be:

- aware of the rule, and understand it and why it is necessary (clarity and transparency);
- willing to comply;
- able to comply.

The regulated community can be divided into three general groups. The first group is those that will comply regardless of what the government does. They comply because they believe in the rule of law and/or the benefits of environmental goals. This group just needs to know that a requirement exists and what the expecta-

tions are. On the opposite side of the spectrum, another group consists of those in the regulated community that may not believe in rule of law, do not support the need for environmental goals, and/or have financial business concerns that they believe will not allow them to consider the expenditures for environmental compliance. For this group, direct enforcement by the government to compel them to comply is the only path for government to change their behavior.

In general the largest group in the regulated community is the group that will choose to comply based on actions of the government and their awareness of these actions. Some will only comply out of fear of the consequences of violating the law. They are deterred from violating the law by the actions of the government against other violators. This undecided group will also comply more readily if they see positive incentives to comply or if they can get the necessary technical assistance.

2 COMPLIANCE INCENTIVES AND OTHER ASSISTANCE

Compliance incentives and compliance assistance relate to all activities and programs, excluding enforcement actions, which promote compliance and/or contribute to securing compliance with legal environmental requirements (laws and regulations) and other risk management tools such as pollution prevention planning, voluntary measures, economic instruments, environmental management systems, environmental taxes, etc. In some countries, compliance promotion (i.e. building recognition that a requirement exists, and that there are benefits to complying with the requirement and potential consequences for not complying) is considered a separate function or topic from compliance assistance and incentive programs. This paper will include compliance promotion as part of the continuum of tools that can be used to promote voluntary compliance.

2.1 Why is it Important for Governments to Provide Compliance Incentive/

Assistance Programs?

As was previously mentioned the behavior of the regulated community can be changed by both "carrots" and "sticks." The awareness of enforcement, with real consequences (the stick), will create a stronger desire in the regulated community to comply. However, since governments do not have resources to continually monitor all of the regulated communities or develop large numbers of enforcement actions that will strain the administrative and judicial processes of the government, it is important to create other tools that will take advantage of this increased desire to comply. Once government has their attention, they are more likely to respond to positive incentives and support (the carrot).

Lack of awareness and understanding of the requirements is the first obstacle that needs to be addressed. The regulated community needs to understand the relevance of the requirements to their operation, the specific interpretation relating to their unique operation, and the expectation on new interactions with government resulting from these requirements. Many in the regulated community may not have the necessary devoted resources to understand and interpret new government requirements. Also company management may not appreciate why these requirements are important to their long-term business interests (liabilities), their impacts on the communities in which they operate, and the importance of healthy environments to the well-being of society. For many, their first impressions are driven by this lack of understanding, failure to recognize the importance of the requirement, and the fear of change (which is heightened by this lack of understanding). Compliance promotion by the government can address many of these concerns.

Many in the regulated community are unaware of the types and amounts of discharges and emissions they are generating and the nature of the environmental damage they are creating. This lack of awareness, while varying greatly from business sector to sector, can be seen in even

large sophisticated corporations that have not yet made environmental management part of their business plan. Creating this pollution awareness (especially with the added awareness of enforcement consequences for lack of action) can in itself stimulate environmentally sound behavior change. During the late 1980s, the United States Environmental Protection Agency (US EPA) conducted intensive audits of the major chemical industries and presented their results to the corporate leadership of the companies. Many of these officials expressed disbelief and shock about the information that was being presented to them. They were alarmed by the potential impacts on the communities in which they operated, unaware of potential loss of product and inefficient operations, and concerned about their corporate image. Once many of these corporate officials understood the environmental damage that they were creating, environmental management became an important part of their corporate management planning. When the United States adopted the Emergency Preparedness and Community Right-to-know Act (EPCRA) which required annual reporting and disclosure to the public of releases to the environment, the corporate attention to environmental management was greatly improved.

Even if the regulated community is aware of the environmental damage that they are creating, lack of knowledge in environmental management and technical solutions can still be a problem. This is especially true for many of the medium to small industries. They are unlikely to have in-house staff that is devoted to environmental management. If they do, it may only be a very limited commitment which must address not only environmental but all non-production regulatory affairs. In these situations the government cannot only make them aware of the requirement but can help provide technical services to the regulated community. The government is assisting by imparting technical knowledge about methods or equipment that will ensure compliance with the requirement – compliance assistance.

By providing technical information in a matter that they can quickly and easily understand, the government can build on their willingness to make the necessary changes. Therefore, both the format and forum that is used to transmit this information is important if the transfer is to be successful. Each regulated sector has a certain common knowledge base and jargon, and receives information in ways that are unique to them. The presentation of information must be tailored to conform to these. Their human resource constraints must also be considered in the design of the delivery system. The government can not afford to build a larger or more complex program than the audience can use.

Incentive programs provide additional “carrots” to help promote the behavior change and achieve compliance. If there is an awareness of the requirements but there is still reluctance due to financial constraints, the regulated community may respond to incentives that the government creates. Even minor incentives to their business or operations may be enough to persuade them to comply, especially when this is balanced against the cost of defending against an enforcement action by the government and any penalties that may be imposed. There are both positive and negative incentives that the government can create to help motivate compliance.

Providing compliance incentives, technical assistance, and promoting compliance will not only relieve pressure on the enforcement program, reduce non-compliance, and achieve pollution reductions quicker, but also provide credibility to the environmental agency and government. The agency and government will be viewed as a more full-service authority that focuses on its mission and not just on performing legal functions. The regulated community will become more receptive to working with the government and less to challenging their authority and public reputation. This will be especially true if the government’s compliance assurance program is viewed as willing to first work with the regulated community to achieve compliance and then force compliance where cooperative sup-

port has not resulted in a compliant behavior change.

A final benefit relating to government compliance incentives and assistance programs is seen when part of the regulated community is not responding to these supportive government actions and enforcement becomes the necessary behavior change tool. Once enforcement is undertaken there are many political and emotional pressures that may be initiated by the violating companies. Internal agency decision-makers, political officials, and even judicial officials will be faced with hard decisions relating to social-economic concerns and potentially relationships with the business community. The argument for enforcing the law, with the consequences that will result to the individual company or regulated sector, will become more understandable and accepted when it is understood that other supportive efforts have failed to motivate compliance. The agency will not only be prepared to present its factual case that a violation exists but also its political case that enforcement is now the necessary tool. This is especially true when the agency can lay out a supportive compliance assurance timeline and show that other competing companies in the regulated community have responded

2.2 What is the Role of Government versus Other Stakeholders?

The prime function of the environmental agency is not usually associated with support of the regulated community. The environmental agency interacts with the industry in a more formal manner such as developing standards, issuing permits, monitoring for compliance, and ensuring compliance through formal legal mechanisms. The nature of these functions leads to a more adversarial relationship than a cooperative relationship.

Government resources are limited, and most environmental agencies have trouble with the workload required to meet their statutory obligations. In many countries, time periods for completing these statutory obligations are facing tight restric-

tions by the courts and/or politically driven schedules. Hiring additional staff is usually not an option. Committing to additional functions relating to management of incentive programs and providing compliance assistance is a difficult choice.

The role of the government in this area is also questioned by some. No other body can develop standards, issue permits, and carry the bulk of the enforcement responsibilities, but other bodies can provide compliance assistance. Private consulting services, trade organizations, general commerce organizations, national, regional and local non-governmental organizations, and to some extent academia can and do provide compliance assistance. These services can do a good job in this area because their existence and profit depends on them providing this service. Free market systems have also shown that good production practices go hand-in-hand with good environmental management which creates a built-in incentive. The ISO 14001 system reflects this relationship.

While governments can create incentive programs that only they can create, such as reduced compliance monitoring for well-operating operations, reduced permit processing time, or tax reductions for environmentally beneficial process changes or installation of control equipment, governments do not have significant technical advantage when it come to providing compliance assistance. While the government may have an understanding of control equipment and methodologies, it is not their business to design and build environmental control systems. The private sector can also respond to the timing needs of the regulated community since the private sector has the ability to pay for highly specialized individuals and can change their workforce as the needs arise. They also have established communication networks and, many times, a better understanding of the regulated communities' needs. With the private sector, the regulated community also perceives the advantage of being more in control and that the information they share will not be used against them. The advantage the govern-

ment has is in the understanding of the requirement, any unique interpretation, and implementation policies. The government may also have a better understanding of the compliance picture across the regulated community. The best compliance assistance system should try to combine the best attributes of both the private sector and the government.

Why would the government want to work with the private sector in the delivery of compliance assistance? The prime reasons are that the private sector services have the established delivery systems, the additional resources, and an understanding of the unique characteristics of the different regulated communities. For example, when the US EPA adopted regulations for drycleaners, they realized that approximately half of the drycleaners were owned by Korean speaking families. These drycleaning operators did not understand the government requirements or environmental management, and did not get information in the same manner as other sectors previously regulated. The agency found that it was advantageous to work with trade organizations that were specifically established for Korean drycleaners. Information about the requirements were translated into Korean and sent via their newsletters. The trade organizations and the agency were also able to hold workshops. The agency, on its own, would not have been able to reach this portion of the regulated community.

Why would the private sector want to cooperate with the government? Since the private sector must deliver the best product in order to profit and survive, being able to deliver government information that may not be as readily available can help improve their services, and therefore, their success. They also know that the regulated community is more willing to discuss their problems and issues with them because they know that this information will not be communicated to the government. This communication shield enhances the worth of their service.

Non-government organizations can also be a mechanism for delivery of

compliance assistance information. They differ from trade organizations or general commerce organizations in that they generally provide information and services to communities, not industrial sectors. Another difference is that non-government organizations are usually funded by contributions and therefore do not bring significant resources to the partnership. Their strength is in the connection they have in the community. It is usually necessary to provide them with already published material and more support than with business organizations. In Canada, community groups (including aboriginal communities) are trained by the government to provide compliance promotion and assistance on behalf of the government. In some cases these individuals are certified.

In general, the function of providing compliance promotion and assistance can be divided between the government and other groups in the following manner:

- Government – Production of authoritative documents relating to the requirements, implementing policies, and interpretation.
- Government or in partnership with other groups- Delivery of information and general technical support to the regulated communities.
- Private Sector – Design and operations of pollution control equipment or methodology necessary to meet the requirements.

2.3 What are the Different Types of Programs that Governments can Provide?

2.3.1 Compliance Assistance

- Virtual Compliance Assistance Centers - With the growing use of the Internet, this mechanism is becoming the most efficient way to disseminate information when the user wants it. One of the advantages of this mechanism is that it can provide practically endless amounts of information in a matter that allows the user to quickly get to the desired informa-

tion. It also provides some degree of anonymity to the user.

- Workshops or Formal Training - The main advantage of workshops is that they are interactive and the whole audience can learn from the questions of others. Sector specific workshops allow the government to bring experts to the discussions.
- Hotlines – Dedicated telephone numbers that the regulated community can call to get verbal assistance. If operated by the government, the service can usually only provide general information or be used as a referral service.
- Printed Material – Pamphlets and other printed material can be developed by the government or in partnership with other groups. If material is produced jointly with another group, the government must ensure the accuracy of information that others produce.
- Audit inspections or audit/compliance inspections – Since inspectors visit a significant number of facilities they can gain an important knowledge of how other facilities have solved their compliance problems. While inspectors can impart useful information to the facilities operators, it is important that they do not release any confidential information. Inspectors can also provide approved printed material.
- Skill Transfer Programs – Sometimes compliance problems relate to operator skill. The government can sponsor the internship of new operators with more experienced operators or experienced operators can go to a problem facility to train the operators. This type of program works best with municipal services such as sewage treatment or drinking water systems where there is no financial competitiveness.
- Training of Compliance Assistance Providers - Formal training programs offered to non-profit groups on compliance assistance. The objective of this type of program is to increase

the number of compliance assistance providers to groups that can not afford paid professional services.

2.3.2 Compliance Incentives (positive)

- Awards - Government awards with the corresponding recognition can be used to stimulate improved compliance in the regulated community. Criteria for the award should be established and made available. If the award is for a specific process within a facility, then general compliance of the whole facility or company is usually a factor in the award also.
- Green Labels – Recognition given by the Government for compliant (or beyond compliance) operation of a facility or the collection of facilities owned by a company
- Tax Incentives – Formally adopted tax laws that allow tax deductions for the installation of pollution equipment or process changes that reduce pollution and lead to compliance.
- Low Cost Loans or Grants – Government sponsored programs that provide for low cost loans for the installation of pollution control equipment or grants for pollution control equipment. Funding for these programs are either out of the general revenue, or a special tax relating to use of the environment or penalties collected from non-compliant facilities. Grants programs are usually established for special needs sectors or municipally owned operations.
- Legal Time Extensions for Compliance - Programs established by either law or policy that provide for formal time extensions if the applicant meets certain conditions.

2.3.3 Compliance Incentives (Negative)

- Public Disclosure of Non-compliance Information – Public announcements of non-compliant facilities through the news media or printed material. This program can be conducted either by the government or non-government

organizations. Public disclosure of this information can damage their reputation in the community in which they operate, or with customers they serve, and with investors. In some business sectors or communities this can be a strong incentive to comply.

- Financial Disclosure of Environmental Liabilities - In many countries, publicly owned companies must provide financial information to their stockholders. If potential environmental liabilities (both cost of control equipment and potential penalties) for non-compliance are required to be presented in these reports then greater market-based forces will be brought to the problem.
- Pollution Fees - In some countries where environmental user fees are established, the fees increase for the pollution generated beyond the compliance level.

2.4 What Issues are Associated with Compliance Incentive and Assistance Programs?

2.4.1 Fear of Communicating Non-compliance to Government Agents

The regulated community has an understandable fear of discussing their non-compliance situation when the government did not have prior knowledge of their violations. If they are considering investing in pollution control technology but have not yet made the corporate decision to do so, they do not want to be placed in a situation where their inquiries invite government enforcement actions. If governments wish to offer compliance assistance programs then steps should be taken to isolate these activities from other environmental agency responsibilities. This can be accomplished by separating compliance assistance programs from compliance monitoring/enforcement programs within the organization or in a different agency.

Another mechanism is to have the compliance assistance programs operated

by a contracted service or in partnership with trade organizations.

In most countries, environmental laws prevent the government from providing assurances of no enforcement when the government learns of a violation. For that reason, it is desirable to ensure that specific information relating to the identity of the non-compliant facility or the exact nature of a violation is not required to receive compliance assistance. It is important that the regulated community understands that a compliance assistance program is a program to help them comply voluntarily and not a mechanism for the government to gain information for prosecution of the law.

2.4.2 Reducing Costs to Government for Implementation of these Programs

In many situations, if the government partners with another group, their costs can be greatly reduced. This is especially true when the partner's mission is also achieved by the partnership. For example, trade organizations (either sector based or pollution control based) were created to provide a service to their clients. If they can make it easier for their clients to receive information pertaining to government requirements that affect their business and operation, then their value as an organization is enhanced. Sometimes businesses that are selling a product to a certain community are willing to help distribute government compliance assistance information because they are providing a service to their customers in hopes that they will be viewed as a more valued company. However, the government should ensure that they do not create an unfair advantage for one company over another.

Costs can be further reduced by ensuring that only necessary services and material are created. It is therefore important that the government develops an understanding of what the regulated community needs and minimizes the duplication of material or services that may already exist. This can be accomplished by con-

ducting periodic dialogues with representatives of the regulated community and other compliance assistance providers.

2.4.3 Reliance on Government Advice and Determining the Degree of Advice Provided

Environmental laws require that the owners and operators of facilities in the regulated communities comply with the requirements. It is their responsibility to ensure that the control equipment installed or methodology used will produce compliance. It is the government's role to ensure that they meet this obligation. If the government provides assistance that goes into the detailed design of control equipment and the regulated entity does exactly what was suggested but does not achieve compliance, then it will be used as a defense against any action by the government to ensure full compliance with the requirements. This defense will be seen either in the courts or the political system of government operations.

Achieving compliance at an industrial facility requires an evaluation of the range of operating parameters, establishing maintenance and operating conditions, training of personnel, and other factors that are unique to the specific facility. This usually requires the assistance of an engineering firm with extensive experience in this discipline. The private sector can best provide this time-consuming service. The government's assistance should be geared towards providing a full understanding of the requirements, explaining the types of control options that have been successful, and pointing them to other services provided by the non-government sector.

For smaller simpler operations, especially where the regulated community does not have sufficient financial resources and their operations are more marginal, the decision on how much technical assistance is given is more difficult. However, these decisions should be decided up front in the design of the compliance assistance program. The debate on these issues should include such factors as complexity of the

polluting process and control options, the sophistication of the facility operators, general financial resources of the sector, if there are trade organizations for this sector, other technical resources available to them, and of course the level of confidence that advice provided will ensure compliance.

Regardless of the extent of the advice provided, it is useful for the government to provide a caveat that it is the responsibility of the owner/operator to ensure compliance.

2.4.4 Tailoring Programs to the Uniqueness of each Regulated Sector

Each regulated sector has its own characteristics that govern how they operate, communicate with each other, receive information, and relate to the government. The support needs and delivery system for each regulated sector will vary. Some sectors may have active trade organizations or professional societies and a well established sophisticated communication system of Internet, professional seminar, and collective research efforts. These sectors may have already established communication networks with the government. Other sectors may not interact formally with each other or have the resources to fund support organizations. They may be less trusting of interacting with the government. It is necessary for the government to develop an understanding of the sector as they design a compliance incentive or assistance program.

3 CONCLUSION

A major role of the government in implementing environmental laws is to ensure compliance with established requirements that are designed to protect the environment and human health. This requires changing the behavior of the regulated communities. Changing behavior is a complex process that requires understanding the reasons why a non-compliant behavior exists and addressing those barriers. While some in the regulated communi-

ty will always need to be forced to change their behavior, many will respond voluntarily to the potential threat of enforcement if the government can also reduce the barriers

contributing to their reason for not complying. Compliance promotion, assistance, and incentive programs can be an effective way to reduce the numbers of barriers.