

COMPLIANCE PROMOTION IN THE UNITED KINGDOM

LEINSTER, PAUL,¹ GRAY, JIM,² HOWES, CHRIS,³ and CLARK, ROSIE⁴

¹ Director of Operations, Environment Agency (England and Wales),
paul.leinster@environment-agency.gov.uk

² Head of Regulatory Development, Environment Agency (England and Wales),
jim.gray@environment-agency.gov.uk

³ Enforcement Policy Manager, Environment Agency (England and Wales),
chris.howes@environment-agency.gov.uk

⁴ Policy Adviser, Modern Regulation, Environment Agency (England and Wales),
rosie.clark@environment-agency.gov.uk

1 INTRODUCTION

Society demands high environmental standards and expects companies, and individuals, to behave responsibly. The Environment Agency is the leading public body protecting and improving the environment in England and Wales. ...

Traditional regulatory approaches have achieved much to reduce environmental impacts. However, the nature of regulation has to change to keep pace with changes in the economy and society. The Environment Agency has responded to this challenge through its “Modernising Regulation Change Programme”.

This article describes some of the approaches adopted by the Environment Agency to promote compliance with legal requirements and to encourage the environment to be at the centre of business thinking.

2 PRINCIPLES OF MODERN REGULATION

The Agency believes modern regulation focuses on outcomes and is risk based. ... Modern regulatory systems should encourage businesses and individuals to improve, rewarding good performers, while remaining tough on those who do not meet acceptable standards. In order to achieve this, modern regulation must be:

- proportionate, allocating resources and implementing systems according to the risks involved;
- transparent, with clear rules and processes for industry and local communities;
- consistent, within and between sectors, and over time;
- targeted on the environmental outcome to be achieved, taking into account environmental needs, best practice, sector specific and geographical circumstances;
- cost effective.

This means that we will concentrate our resources where the risks to the environment are highest, including the highest hazards or the poorest performing operators. We will focus on systems to improve environmental quality. Consistent with this principle, we will adopt a proportionate approach where we see good performance. We have developed a screening method to assess risks to the environment in a quantitative fashion.

Transparency and trust are also vital aspects of our relationship with communities and society as a whole, and we must at all times be seen to maintain a neutral, open and fair stance. Accordingly, we make information on the environmental performance of business and our performance as a regulator widely available.

3 TOOLS FOR MODERN REGULATION

Adopting a risk-based approach to regulation, matching intervention measures to

environmental performance, has implications for all involved in the regulatory process. ...

Direct regulation is the traditional approach to controlling emissions or abstractions, with permits specifying what a company can and cannot do at a particular site. As a modern regulator we are also developing risk based assessment methods and actively promote voluntary schemes. A number of these approaches are described below. ...

4 OPERATOR POLLUTION AND RISK APPRAISAL

The Agency aims to target its resources on those companies that pose the greatest risks to the environment. Two schemes for Operator and Pollution Risk Appraisal (OPRA) have been developed to assist the Agency in its regulation of the Integrated Pollution Control (IPC) regimes for major process industry and the Waste Management Licensing regime. With the implementation of two new European Community Directives in England and Wales,⁸ elements of the waste industry and the large manufacturing sectors are brought under one regulatory regime for the first time.

In keeping with our aim to introduce common approaches to regulation across a range of regulatory regimes, the new Environmental Protection Operator and Pollution Risk Appraisal (EP OPRA) methodology has been developed as an important step in developing a unified approach to risk assessment across our regulatory regimes. The EP OPRA scheme fits within a recognised national framework for environmental risk assessment and management.⁹ It incorporates an element of professional judgement, but the method itself is simple to apply and objective in nature and a public consultation on the scheme was held in 2002. Details of responses are on the Agency's web site.¹⁰

EP OPRA will help the Agency target its regulatory effort on those activities that present the greatest risk to the environment. Outputs from this scheme are being built into the proposed charging scheme for the PPC regulatory regime. As noted previously, charges for regulation are set to reflect the level of regulatory action required. EP OPRA has four attributes. Three reflect the environmental hazard of the operation and the fourth measures Operator performance. In general, the higher the score, the greater the regulatory level of activity required. ...

5 HOW THE AGENCY PROMOTES COMPLIANCE

Companies need to accept responsibility for their actions and this should be reflected in business culture as well as in their operational targets. The principle of 'polluter pays' is now well accepted, whereby businesses should be held to be accountable for their actions. As noted previously, the Agency's OPRA system supports the polluter pays principle through a cost recovery charging framework which can provide a financial incentive to operators to reduce their environmental risks and impacts. By identifying, managing and reducing key risk areas, businesses can reduce their OPRA (risk) profile, which will then be reflected in lower compliance activities and, consequently, charges. In addition, businesses can benefit, in some circumstances, from cost savings in reduced waste and minimisation of resource use, and avoid costs associated with pollution incidents. Promoting corporate responsibility can improve corporate image with an associated positive impact on shareholder value, as well as impacting for example on a Company's credit rating or insurance premium.

5.1 Optimising environmental improvement

The Environment Agency is developing sector plans and guidance, which address the specific issues associated with particular sectors. Sector plans relate to a coherent, recognisable, target group and define the national and local outcomes and risks that we believe should be addressed for that group. The sector may be a particular industry (such as nuclear or agriculture), or a recreational area (such as angling). This approach allows us to prioritise the regulatory workload between and within sectors. The overall objective is to optimise achieving

environmental improvements.

Key to optimising environmental performance is to identify current good practice relevant to the sector, to educate and advise businesses and individuals and to communicate information to the public.

5.2 Identifying Good Practice

Good Practice includes reviewing techniques and experience from within the sector and across other sectors where similar environmental problems and processes may be encountered. Such reviews are not restricted to England and Wales and the Environment Agency is keen to learn from the experience of other countries. Good practice also includes the reduction of unnecessary bureaucracy which may inhibit the introduction of innovative solutions to poor environmental performance. In addition, we encourage full life cycle ('cradle to grave') analysis of processes to promote good environmental management throughout the whole supply chain.

5.3 Education

Businesses and individuals need to be more aware of how their actions impact on the environment and human health. Education and advice can help raise awareness of the issues by providing clear information relevant to specific audiences, demonstrating potential improvements (including cost savings) through case studies, and highlighting national, regional or sector initiatives. We also seek to raise awareness of regulatory requirements, so that businesses and individuals understand fully their responsibilities.

Education campaigns can be more resource effective than traditional regulation in situations of high volume low environmental risk. For example, the Agency runs targeted educational initiatives such as the "national tyres campaign" to promote recycling and minimise illegal tipping.

5.4 Information

We regularly publish environmental performance information for England and Wales, making use of communication tools such as our *Pollution Inventory*, *What's in Your Backyard* and *Spotlight on business environmental performance* to provide information about environmental performance to a wide audience. These publications are updated annually and are available on our website.¹¹ "*Spotlight*" both publicly praises good performers and names and shames poor performers. This we believe helps companies internalise their environmental performance. *What's in Your Backyard* publishes details of IPC OPRA and Waste OPRA scores for local facilities. ...

We also encourage individual businesses to make information on their environmental performance accessible to stakeholders, including local communities and investors, and we know that this information is used to guide investment decisions. ...

5.5 Compliance assessment

The Environment Agency has developed a range of tools which are being progressively implemented to help to assess risks. These include Compliance Assessment Plans (CAPs) and the Compliance Classification Scheme (CCS).

CAPs are used to ensure that compliance against all requirements of permits and other regulatory instruments are checked within a defined period. The CCS assesses the performance of a site against the conditions set in Agency issued permits. It is recognised that some non-compliances will present a greater environmental risk than others. The CCS is used to classify non-compliance with permit conditions according to potential impact on the environment and provides information to support consistent and proportionate responses to non-compliances. This also allows national profiling of sectors and companies. The potential risk categories used within the CCS are ranked from 1 (the highest potential risk arising from a non-

compliance) to category 4 (where no immediate risk of harm to the environment is likely). These categories are then used to inform our enforcement activities, and are linked clearly to our Enforcement and Prosecution Policy.

5.6 Stakeholder involvement

Stakeholder involvement can take many forms, and embraces many types of stakeholders. Consultation at the outset of introducing new regulatory tools is perhaps the most obvious form of stakeholder involvement. Typically, we seek to identify affected businesses and local communities and other interested parties (industry or sector representative groups, non-governmental organisations, local liaison bodies, etc) and approach each of these individually. We also publish an invitation to provide comment on our web-site, with provision of a clear route to seek further information. For more broad ranging consultations we publish documents for national distribution.

The use of environmental information to guide investment decisions is also a form of stakeholder involvement and feedback suggests that companies, as well as environmental groups, respond positively to the opportunity to discuss issues with the regulators.

5.7 Performance review

Activities which potentially impact on the environment require monitoring so that the risk of adverse effects can be evaluated and appropriate action taken. The development of minimum criteria for environmental inspection is a Recommendation from the European Parliament which the UK has agreed to implement. This requires environmental inspections to be planned in advance and the Agency sees its policy of developing Compliance Assessment Plans as a means of fulfilling this obligation.

The role of the operator is to:

- carry out monitoring and analysis to suitable standards;
- assess and act upon the results within their own EMS;
- make information available.

The role of the regulator is to:

- specify the standards for monitoring and analysis;
- ensure the operator complies with monitoring requirements;
- act upon the results in a proportionate manner;
- publish information on performance and response.

Through internal review, businesses should be encouraged to take responsibility for ensuring that they are not having an adverse impact on the environment, or on people.

5.8 Enforcement

Regulatory regimes need to be backed up by penalties or disincentives to non-compliance. Where businesses do not comply with legislation, the Environment Agency will use its enforcement powers firmly and fairly to prevent pollution or environmental damage, or to require remedial action. ...

REFERENCES

⁸ Integrated Pollution Prevention and Control (IPPC) and the Landfill Directive (LFD), introduced in England and Wales through regulations made under the Pollution Prevention and Control Act 1999

⁹ Department for Environment Transport and the Regions, Environment Agency and the Institute of Environment and Health. Guidelines for Environmental Risk Assessment and Management. Stationary Office, 2000

¹⁰ <http://www.environment-agency.gov.uk/yourenv/consultations>

¹¹ <http://www.environment-agency.gov.uk>