

SUMMARY OF WORKSHOP 1B: COMPLIANCE INCENTIVES AND OTHER ASSISTANCE

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GOALS

To explore the following questions:

- How can government agencies motivate those who decide to comply with or to violate the law based on the government's actions (“the Reactive Group”)?
- What are some unique programs that accomplish this motivation?
- Who can the government partner with (and how) to implement these programs?
- How do you address issues associated with these programs?

1 INTRODUCTION

Compliance assistance and incentives are only effective if they are backed by a strong threat of enforcement with sanctions.

To secure compliance, the regulated community must: (1) be aware of the rule; (2) be willing to comply; and (3) be able to comply.

The regulated community may be divided into three groups, which change over time based on how the agency interacts with the community, the type of community, and the type of regulation. These three groups are: (a) compliant group; (b) reactive group; and (c) resistant group.

2 DISCUSSION SUMMARY

The regulated community divides into three groups:

- Compliant Group: complies irrespective of what the government does; believes in rule of law; believes in environmental protection; incorporates environmental regulations into their business plans (Note: government behavior can change the size of this group).

- Reactive Group: decides to comply or not comply based on the government's behavior/actions (usually the largest group).
- Resistant Group: refuses to comply with environmental laws and regulations, and enforcement actions must be taken to compel them to comply.

Government agencies can help motivate the Reactive Group by using the carrot and the stick (e.g. assistance and incentives offered against the backdrop of enforcement).

2.1 Some Types of Compliance Assistance

Some types of compliance assistance include compliance assistance centers, workshops/training, printed material, audits and inspections, skill transfer programs, and training of compliance assistance providers.

2.2 Some Types of Positive Incentives

Positive incentives include awards, green labels, tax incentives, low-cost loans or grants, tax incentives, and legal time extensions for compliance.

Legal extensions can be informal or written into the law. In the early 1980s, the United States passed the Steel Extension Compliance Act in order to encourage investment in modernization. This legislation allowed members of the steel industry to postpone their investment in pollution prevention if they agreed to a long-term compliance schedule for all their violations.

2.3 Some Types of Negative Incentives

Negative incentives include public disclosure of non-compliance, financial disclosure of environmental liabilities, and pollution fees.

2.4 Issues Associated with Compliance Assistance Programs

One issue that may arise with compliance assistance programs is that industry may fear communicating non-compliance, as facilities in violation are usually unwilling to disclose this fact to the government.

Another issue is that there can be tension between compliance assistance staff and enforcement staff within government. There is a need for good communication between compliance assistance and enforcement staffs because sometimes the enforcement staff views compliance assistance as a step backward. There is also a need to make it clear to enforcement staff that compliance assistance makes their jobs easier because they lack resources to prosecute every instance of noncompliance. Additionally, documenting attempts to offer compliance assistance to firms that refuse to accept them provides justification for enforcement actions, which can help when the decision to prosecute raises difficult political issues.

Finally, compliance assistance is not effective without enforcement.

2.5 Reducing Cost of Government Programs

Working with trade organizations and other groups to help spread govern-

ment compliance assistance messages can lower the costs of compliance assistance programs.

2.6 Reliance on Government Advice

Reliance on government advice can be used as a defense for non-compliance when firms follow a detailed compliance assistance program and still fail to come into compliance.

There is a need to limit how much detail a compliance assistance program provides. The position of the United States Environmental Protection Agency (USEPA) is to point firms in the right direction, but not give professional engineering advice, etc. The USEPA will only identify types of technologies, places to acquire it, etc.

2.7 Tailoring Programs

Compliance assistance must be adapted to fit the targeted industry as different industry and corporate cultures will respond differently to forms of compliance assistance. Choosing the most effective format requires understanding a business sector's behavior regarding compliance, including at sociological and psychological levels. Each business sector has its own unique ways of receiving information, levels of resources to devote to government requirements, and interaction with the government.

For example, in the U.S. in the early 1990s, the USEPA announced regulations for the dry cleaning industry. Half of all dry cleaning facilities in the U.S. were owned by Koreans, who got most of their information from Korean trade associations. Initially, the USEPA did not have a working relationship with these trade associations, and so the new regulations did not reach large parts of the regulated community until the USEPA created such a relationship.

2.8 Key Questions & Issues

Question: Working with the private sector can lower costs of compliance assistance programs, but how can regulators

maintain their independence when working closely with industry?

Answer: Providing public information to a trade association and/or non-governmental organizations (NGOs) opens lines of communication. Regulators are not asking the trade association or NGO to report violations to them.

Question: How should regulators respond when a firm contacts the agency because the firm wants to do something that is not required, but meets many of the same regulatory goals?

Answer: Regulators should reiterate the regulatory standard and provide the firm with advice and interpretation of the standard. The agency should have a common message that all personnel can use, such as that they are willing to work with firms, but the bottom line remains the same.

Question: If a firm accepts compliance assistance, should the regulator waive penalties for noncompliance?

Answer: The regulator should not provide government-backed guarantees regarding enforcement.

Question: How effective is the European Union's strategy of publishing all available technologies and requiring that the regulated community show that the technologies they use are the best option for them?

Answer: Regulators must be careful not to give one firm any information that provides a competitive advantage over other competing firms.

Question: How can it be made clear for inspectors and other regulators to distinguish between when they are providing advice and when they are describing the law or standard?

Answer: Some enforcement personnel have extensive training regimens, but the compliance assistance personnel do not. Compliance assistance personnel should get similarly extensive training. Clear policy on providing compliance assistance should be developed.

Question: What role does planning and cost play in compliance assistance programs?

Answer: Every agency will approach this differently, but there are a few basic guidelines:

- capacity-building and compliance assistance programs should involve all agency personnel and not just the enforcement staff;
- there can be constitutional limits to programs that involve taxes and tax funds, which require everyone to be taxed in the same manner;
- funds collected from environmental enforcement actions (via penalties and fines) can be applied to different compliance assistance programs, but this often requires special training for judges or provisions in the law;
- it can be useful to work with other government agencies when pursuing compliance assistance programs; in the U.S., the USEPA will work with state agencies because they have different constitutional and other legal limits on how they can use penalty money.

Question: Are there any unique compliance assistance programs? With whom and how can the government partner to implement these programs? How can you address issues associated with these programs?

Answer: NetRegs is a program in the UK that is geared toward small and medium-sized enterprises (SMEs). NetRegs makes environmental legal requirements accessible to SMEs via the internet, tailoring specific standards to specific industries. It has proven to be more cost-effective than inspections. Making a website useful to SMEs requires marketing research, asking SME owners and operators what they think of the website, measuring how many people use the site, and other factors such as what SMEs' needs and key issues are. For example, for developers, the key issue is time because they want to start building right away. Some programs will allow for developers with a long history of compliance to have an expedited permitting time.

Question: What types of funding

can be used for compliance assistance programs, and is it possible to get funding from the private sector?

Answer: It depends on the laws and constitution of the country. However, many non-government groups such as trade organizations or citizen groups have a similar mission (i.e., to improve the environment or to service the regulated community) and are willing to devote their resources in partnership with the government to provide compliance assistance. Also, in some situations it is possible to use collected penalties for compliance assistance.

Question: What are some controversial approaches (i.e. approaches where participants were not in universal agreement as to their effectiveness)?

Answer: (1) Allowing local/state governments to administer compliance assistance programs; (2) Amnesty programs. In the U.S. pesticide program, when widespread non-compliance was determined, the USEPA allowed a six-month period for self-reporting with significantly reduced penalties but followed it with a vigorous enforcement period. In India, firms are given an amnesty for past violations if they sign up to a compliance plan and a legal action was not already initiated against them.

Question: Where do you find money to pay for incentive programs?

Answer: The United States had a milk program where a small percentage of each sale (1-2 cents) went to a fund to promote drinking milk. The USEPA has been working to create an industry-managed tax along similar lines that can be used for compliance assistance or pollution abatement. Additionally, in the United States, some environmental laws have tax incentives programs. The United Kingdom has a series of environmental taxes, some of which are set aside for the development of alternatives.

Question: How should agencies allocate resources between enforcement and compliance assistance programs?

Answer: It depends on the politics

of the day; different administrations have different trends in terms of whether they favor enforcement or compliance assistance. However, the balance between compliance assistance and enforcement is not zero-sum – the job of the agency is compliance assurance. This is a balance between enforcement and compliance assistance, not just emphasizing one or other.

The participants here made two observations: (1) if you are starting a program, it is good to emphasize both, and (2) you should not talk in terms of numbers of enforcement actions, but in terms of pollution reduction or behavior changed. A successful compliance assurance program is not based on number of cases, because if the number of cases goes up, then you are really not succeeding. Rather, the number of violations should go down.

Question: The Multilateral Fund (MLF) is providing funds for compliance assistance to comply with the Montreal Protocol. What will success depend on: incentives or deterrence? Is there a way to ensure that the money is spent for compliance assistance to ensure compliance?

Answer: Compliance assistance and incentives will not work without an enforcement program.

Question: Will rewarding firms with good track records work from the outset, or only after you have gone through ugly enforcement battles?

Answer: Some developing countries that receive compliance assistance help from foreign sources do not have success because compliance assistance usually requires the firms to spend some money up front. Without the threat of enforcement, they are not likely to spend the money.

3 RECOMMENDATIONS FOR INECE

- Develop a section of the website that links to other compliance assistance programs.
- Form a compliance assistance expert working group to produce policy guidance and papers.

- Explore ways to make more information available, but balanced against some of the risks and legal liabilities in doing so.
- Consider how a firm that has won environmental awards can be prosecuted for violations and whether the awards make it more difficult to succeed.
- Develop compliance assistance programs for green issues, as well as brown.
- Find ways to demonstrate the costs and savings of compliance assistance programs, relative to the cost of inspections and their effectiveness.
- Link compliance assistance programs to indicators projects in order to measure their effectiveness.