

TRACK B: DETECTING NONCOMPLIANCE

The workshops in Track B explored issues associated with detecting noncompliance. It examined the importance of citizen monitoring and reporting, strategic prioritization models for compliance inspections in different regulatory environments, protocols to address conflicts between organizations during events requiring collection and maintenance of forensics evidence, and techniques used to improve environmental inspections and investigations.

1B CITIZEN MONITORING AND REPORTING

Facilitators: Antonio Oposa, The Law of Nature Foundation, The Philippines

Daniel Taillant, Center for Human Rights and the Environment,
Argentina

Alex Wang, Natural Resources Defense Council, China

Rapporteur: Davis Jones, Environmental Protection Agency, United States

BACKGROUND

Because governmental resources for inspections and monitoring are limited, citizens can play an important role in detecting and reporting noncompliance. Citizens may be better placed to observe violations in their community and have greater motivation to protect their own community. In some circumstances, the direct involvement of citizens may lead to quicker changes in behavior by the regulated community who may be more responsive to neighbors' complaints and the resulting publicity than to a distant government ministry. Many regulatory enforcement agencies are facilitating citizen monitoring and creating tools for citizens to effectively report potential violations. However, mechanisms for public access to information and access to justice, either through responsive government enforcement or direct access to courts, are vital for citizen enforcement efforts to be effective.

THE WORKSHOP DISCUSSION

The facilitators began by introducing three examples of effective citizen monitoring and reporting. The first example was a simple, personal account of a father reporting a speeding driver to the driver's boss, who then reprimanded the chauffeur and changed his behavior, with no police intervention whatsoever. The second example was the citizen's environmental violation hotline in China, which provides citizens with a way to directly report possible violations to the government. The third example, from the Philippines, served to demonstrate how

local mayors can be motivated to improve compliance if informed of the problems in their community in a proactive manner.

For citizens to effectively monitor compliance, they must have a right to information. Effective use of information on pollutant releases and/or noncompliance can help with citizen enforcement actions, but can also motivate companies to change their behavior to reduce the public stigma associated with public disclosure of polluting activities. Sometimes, information collected for one reason can effectively be used for other objectives through public disclosure of the information. However, public disclosure is not effective in countries where people value the “outlaw” or “renegade,” and shaming through the press has little effect. Governments should design strategies to educate the citizens about the available information, publish relevant information in an accessible and readable manner, and engage citizens in the use of such information.

Tools such as telephone hotlines or internet-based complaint systems are useful to get information to the government. However, feedback mechanisms should exist so the complainant can see the response, and compel action by the government if necessary. Public reporting can be problematic when an uneducated population doesn't know how to report or doesn't understand compliance issues. For example, public complaints may be in response to illegal activities, or they may be the result of a desire to stop a legal activity they do not like or want, e.g. complaining about a necessary but unwelcome landfill. Citizens have filed nuisance reports and companies have reported on competitors in order to hamper production. In some cases, complainants may be seen as an enemy by governments because they are showing shortcomings of government activities. In some countries, such as South Africa, the Philippines, and the United States, the law, in certain circumstances, allows informants to be rewarded with a share of the resulting penalty.

Effective citizen monitoring programs require people to be educated about environmental issues and the law. This begins with integrating environmental education into schools and professional sectors. Both domestic and international nongovernmental organizations (NGOs) can play an effective role, and sometimes may need to pool forces so legal NGOs can help guide environmental NGOs in their legal rights and limits. The Center for Legal Assistance to Pollution Victims in China does so by training NGOs on environmental law and taking suits where the government fails to act.

Citizen suit provisions can help ensure that laws are enforced when government agencies fail to enforce the law. Individual domestic laws as well as international agreements may provide these authorities in many countries. These laws should be coupled with “anti-slap” rules that protect the plaintiff from countersuits, claims for libel, or intimidation.

The Secretariat of the Asian Environmental Compliance and Enforcement Network completed a toolkit on public disclosure based on experiences in Asia. They also

evaluated the effectiveness of the Chinese Complaint Hotline and created a manual for nationwide implementation. Those can be shared widely through the network and expanded along with other best practice guidelines.

THE OUTCOMES

INECE should promote basic steps needed for effective citizen monitoring and reporting. INECE can share case studies and document examples from different countries where citizen monitoring and reporting have been effective. They could share citizen suit provisions from different statutes in different countries, and could work with partners to distribute national and international standards for access to information. A network should exist to promote the issues, share contact information with different country experts, and help raise funds for additional training.

2B STRATEGIC TARGETING OF INSPECTIONS

Facilitators: Manon Bombardier, Environmental Enforcement Division, Environment Canada

Frances Craigie, Gauteng Department of Agriculture, Conservation and Environment, South Africa

Luc Lebel, Environmental Enforcement Division, Environment Canada

Rapporteur: Tony Liebrechts, Ministry of Housing, Spatial Planning and the Environment, The Netherlands

BACKGROUND

Many countries have strategic prioritization models for compliance inspections. Prioritizing inspections is important in order to efficiently allocate resources in a way that reflects societal goals and objectives. These programs vary widely and are based on a number of different factors, which may be regional and context specific. What can one learn by examining the different methods and criteria used by governments to develop inspection priorities?

THE WORKSHOP DISCUSSION

This workshop explored strategic prioritizing models for compliance inspections in Canada (Environment Canada) and South Africa (Gauteng Department of Agriculture, Conservation and Environment). The facilitators outlined the workshop objectives as:

- Providing a forum for dialogue among INECE participants to exchange information, knowledge, and experience on approaches currently being used or developed for targeting inspections.
- Developing a “toolbox” and identifying the key lessons learned and barriers in implementing each tool. The toolbox would allow compliance and enforcement practitioners working in newly established programs to make use of approaches/methodologies developed by others and transfer them to their own country.

The discussions led to an overview of available tools and recommendations to INECE for facilitating further development of prioritizing tools. Participants identified approaches to developing tools both across sectors or regulations and within given sectors.

Examples of tools across sectors or regulations included:

- Matrix based on a number of criteria including risk, compliance rate, expert support:
 - o Prioritizing across a variety of sectors/regulations;
 - o Tiered approach (national priorities, collateral, regional focus).
- Intelligence led (watch list approach).
- Financial benefits for noncompliance.
- IMPEL guidance book for planning of environmental inspections.

Examples of tools within a given sector included:

- Risk-based scoring system against list of criteria.
- Intelligence-led targeting.
- Partnerships with other agencies and other authorities such as customs and police.

THE OUTCOMES

A specific recommendation for INECE is to create an area on the INECE website to share information, good practices, and experiences on the issue of strategic targeting of inspections.

3B EVIDENCE GATHERING AND PRESERVATION

Facilitators: Andy Lauterback, Environmental Protection Agency, United States

Mark Measer, Environmental Protection Agency, United States

Phil Snijman, Consultant, South Africa

Rapporteur: Gene Lubieniecki, Environmental Protection Agency, United States

BACKGROUND

Conflicts often exist between organizations involved in incidents that require collection and maintenance of forensics samples. For instance, during emergencies, the actions of first responders may compromise and/or destroy evidence. Likewise, during crimes involving living organisms, transfer or shipment of the organisms can often create conflict and expense.

THE WORKSHOP DISCUSSION

The workshop discussed protocols to address conflicts between organizations during events requiring collection and maintenance of forensics evidence. Participants discussed the balance and competing interests between the various responsible organizations involved in emergency response, and crimes involving living (and dead) wildlife. Many examples of actual conflicts were discussed. Success stories, where there was excellent cooperation resulting in conviction, were also shared.

THE OUTCOMES

The following protocols/concepts were suggested as ways to address these conflicts: safety comes first; the “police” control crime scenes; train emergency responders regarding forensics needs; have prosecutors present on-scene; have enforcement officers also be the emergency response personnel (cross designation); develop effective communications between potentially responsible parties; have memorandums of understandings outlining responsibilities; and conduct exercises to test protocol. Participants recommended that INECE promote these and other best practices in its training materials and in relevant publications.

4B REMOTE SENSING AND OTHER TECHNOLOGICAL DEVELOPMENTS TO AID ENVIRONMENTAL COMPLIANCE

Facilitators: Richard Charette, Environment Canada

Troy Collings, Department of Natural Resources & Water, Australia

Gene Lubieniecki, Environmental Protection Agency, United States

Rapporteur: Tim Whitehouse, INECE Secretariat

BACKGROUND

Many techniques can improve environmental inspections and investigations. A number of tools are necessary to ensure that evidence is gathered and analyzed properly. These tools can be simple, low cost, and easy to use; or they can be expensive, involve complicated technologies and require trained personnel to operate.

THE WORKSHOP DISCUSSION

Workshop discussions focused on a number of techniques for detecting violations and analyzing information. The workshop facilitators provided examples of techniques and tools they use in inspections and investigations for both pollution control and remediation issues as well as wildlife and habitat protection.

Remote sensing is a powerful tool for monitoring the compliance status of regulated entities and gathering evidence for enforcement case development. Remote sensing can involve relatively simple activities such as visual observations, as well as the use of sophisticated technologies such as satellite imagery. The use of remote sensing in any particular situation is dictated by numerous factors including available technologies, resources, and time.

In addition to visual observations and satellite imagery, the use of magnetometers, infrared cameras, and remote sensing techniques were also presented and discussed. In addition, methods such as the use of bullhorns, dyes, and smoke to identify the discharge points of illegal wastewater discharges were discussed.

THE OUTCOMES

Some of the outcomes of the discussions were that INECE should:

1. Explore ways to facilitate the sharing of information on technology used to collect enforcement evidence.

2. Continue to build networks between individuals and organizations, particularly in terms of identifying needs and assisting in the development of needs assessments.
3. Develop a reference library targeted to appropriate programmatic areas.
4. Look for ways to facilitate the equipment exchange.
5. Provide a forum to pose questions/get answers on technology issues.
6. Share strategies to show how technologies will allow inspectors to do more with less. This can act to justify spending the money upfront on technology.

5B COORDINATION AMONG INSPECTORS, POLICE AND PROSECUTORS

Facilitators: John Cruden, Department of Justice, United States

René Craemer, The Netherlands

Prof. Jacobus de Ridder, University of Groningen, The Netherlands

Rapporteur: Peter Murtha, Environmental Protection Agency, United States

BACKGROUND

Effective coordination among inspectors, police, and prosecutors is a critical component of any enforcement and compliance program. All countries face a number of challenges in developing and maintaining this effective coordination. A wide body of experiences and practices now exist which can help minimize potential pitfalls and improve communication and coordination among officers and prosecutors in the preparation and management of court cases.

THE WORKSHOP DISCUSSION

This workshop discussion focused on minimizing potential pitfalls and offering suggestions for improving the communication and team effort between officers and prosecutors in the preparation of environmental cases.

John Cruden set the stage by offering a chart designed to provide common enforcement terminology to help provide clarity to the workshop.

René Craemer provided an in-depth description of recent (i.e., 2005) changes in the Dutch environmental crimes enforcement structure under which 19 Public Prosecutor's Offices were consolidated into a single national office in which the Public Prosecutor had authority over the inspectors in all agencies relevant to the

environment (broadly defined to include pollution, wildlife, livestock, marine, water use, etc.). René pointed out that there are now 420 specialized environmental detectives at the national level dedicated to the investigation of all environmental crimes. René's experience has been that, although the system is imperfect, it nonetheless offers a high degree of coordination and communication and clear lines of authority. In particular, the Public Prosecutor is empowered to determine which cases are pursued criminally and those to be subject to administrative action, and is also authorized to select which priorities to investigate and prosecute. One particular emerging trend from the new system is a focus on criminal networks and associated individuals.

Professor Jacobus de Ridder provided a framework for assessing the areas of potential conflict among prosecutors, police, and inspectors at the nexus between: (1) agency vs. agency; (2) administrative vs. criminal; (3) enforcement vs. prosecution; and (4) all enforcement mechanisms vs. the judiciary. The possibility of friction was discussed from both structural and cultural perspectives.

THE OUTCOMES

Although no specific outcomes were suggested for INECE, the lively discussion that ensued demonstrated that although many potential areas of potential friction, miscommunication, and dysfunction exist, there are many mechanisms that help to overcome these obstacles and lead to successful and mutually satisfactory enforcement outcomes.

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