



CHAPTER SIX

NGO COMPLIANCE STRATEGIES

INTRODUCTION

This chapter introduces a selection of the best literature on the role of non-governmental organizations (NGOs) in environmental enforcement and compliance. Enforcement traditionally has been the province of governments, who have a monopoly on the formal power to sanction violators. Compliance assistance also has been primarily the function of government. But NGOs are playing an increasing role in both enforcement and in compliance assistance, especially at the national level, but increasingly at the international level as well.

Government compliance officials face real-world budget constraints and are learning the value of incorporating the energy and creativity of NGOs to help achieve environmental goals. Information regulation strategies, for example, are explicitly designed to empower NGOs to impose informal sanctions on firms based on their environmental record.¹ Researchers also are moving beyond their traditional focus on the two-actor game involving government regulators and the firms they regulate, and are starting to take a systems view that captures the multiple actors involved in compliance, including NGOs.

Recognizing the gap between environmental rules as written and compliance with such rules, environmental NGOs have started putting more of their resources into enforcement and other compliance strategies, including training and capacity building. At the same time, NGOs themselves have been growing. By 1996 there were more than 40,000 international NGOs, up from 175 at the turn of the century.² There are tens of thousands more NGOs at the local level created by concerned

¹ See Chapter Seven: Information Regulation.

² See Susan Raymond, *The Nonprofit Piece of the Global Puzzle* (2001), available at http://www.onphilanthropy.com/tren_comm/tc2001-10-15.html.



citizens. While government compliance remains the front line of compliance efforts, NGOs have become a significant supplemental force in the effort to ensure that firms are following environmental regulations. NGOs have proven to be determined watchdogs in their efforts to ensure that firms that violate environmental laws are sanctioned sufficiently to send a powerful deterrence signal.

More and more NGOs are working in tandem with governments to enforce environmental laws, even as they work to help develop new legal mechanisms to capitalize on NGOs' enforcement potential.³ The contributions of NGOs to environmental compliance include their ability to investigate violations, file citizen suits, submit petitions, organize citizen monitoring projects, conduct public information campaigns, and implement boycotts.⁴

Within the vast and varied universe of NGOs, two types deserve special mention for their compliance work. The first comprises NGOs that use their resources to investigate and publicize violations of environmental law, and include such groups as Greenpeace, Basal Action Network, Environmental Investigation Agency, the International Fund for Animal Welfare, and WildAid, among hundreds if not thousands of others.

The second type of NGO includes those that use the courts to enforce environmental legal requirements, usually on a case-by-case basis but sometimes on a program-wide basis. These NGOs are staffed with lawyers and include the following, among many others:⁵

³ For the role of NGOs in designing government compliance systems at the international level, see Svitlana Kravchenko, *Strengthening Implementation of MEAs: The Innovative Aarhus Compliance Mechanism* excerpted in Chapter Three: Multilateral Environmental Agreements in Action (noting that NGOs can nominate experts to sit on the compliance committee). See also Steinar Andresen and Lars H. Gulbrandsen, *The Role of Green NGOs in Promoting Climate Compliance*, in *IMPLEMENTING THE CLIMATE REGIME: INTERNATIONAL COMPLIANCE*, 169 Olav Schram Stokke, Jon Hovi and Geir Ulfstein, eds (2005) (discussing influence of NGOs on design of climate compliance regime and their work to promote climate performance by parties and non-parties to the Kyoto Protocol). For the role of NGOs in non-governmental regulation and compliance strategies, see Dara O'Rourke, *Outsourcing Regulation: Analyzing Non-Governmental Systems of Labor Standards and Monitoring* in Chapter Nine: Compliance Assistance & "Beyond Compliance".

⁴ See Chapter Five: Courts, Tribunals & Liability. See also Tom Tietenberg, *Private Enforcement of Environmental Regulations in Latin America and the Caribbean: An Effective Instrument for Environmental Management?*, Inter-American Development Bank (1996), available at <http://www.iadb.org/sds/doc/env-101e.pdf>.

⁵ The first five of these NGOs were founded by graduates of the L.L.M. program in international and comparative law at American University's Washington College of Law. See <http://www.wcl.american.edu/ilsp/llmoverview.cfm>.



- Centro Mexicano de Derecho Ambiental in Mexico City, the first public interest environmental law firm in Mexico, founded by Gustavo Alanis Ortega;
- Centro de Derecho Ambiental e Integración Económica del Sur (DASSUR) in Veracruz, Mexico, founded by Claudio Torres;
- Euronatura, the first public interest environmental law firm in Portugal, co-founded by Nuno Lacasta;
- Eco-Peace, now Friends of the Earth-Middle East and the first regional environmental organization in Israel, founded by Gidon Bromberg;
- The Center for Human Rights and the Environment in Cordoba, Argentina, the first such organization in the world, founded by Romina Picolotti;⁶
- The Lawyers' Environmental Action Team (LEAT) in Tanzania and the Indonesian Center for Environmental Law (ICEL), which focus on legal advocacy and community empowerment, as well as research and capacity building, to pursue sustainable development; and
- The National Environmental Action Team in Manila, The Philippines, created by the Integrated Bar of the Philippines, with Antonio Oposa, Jr. as the Chairperson.

NGOs also are working with law schools and other university departments to develop additional compliance strategies by creating environmental law clinics, which are serving as laboratories to experiment with innovative public interest enforcement strategies.

In Argentina, Human Rights and Environment Legal Clinic, operated by CEDHA and the Universidad Nacional de Córdoba, uses local environmental laws to fight environmental degradation, focusing in particular on raising awareness of the link between environmental harms and human rights violations. Students in the clinic direct the entire process of case management, including case selection, strategy development, research and documentation, and presentation of the case before provincial courts. In the United States, the Interdisciplinary Environmental Clinic at Washington University in St. Louis provides *pro bono* legal and technical services to local environmental and

⁶ Romina Picolotti's article *Using Human Rights as an Enforcement Tool To Ensure the Right to Safe Drinking Water: An Argentine Case Study* is included in this Chapter. See *infra* note 11.



community groups. It is unique among environmental law clinics for including both law students and other students from the liberal arts, engineering, business, and medical schools in its work on air and water quality issues, lead poisoning, and habitat preservation.

Similarly, citizen enforcement is a growing focus of environmental law scholars and students in China. Environmental law clinics are being created at a number of universities to assist in the development of public participation procedures and to help citizens seeking redress for environmental damage. One example is the Center for Legal Assistance to Pollution Victims, which was created in 1998 by Wang Canfa and Xu Khezu of the China University of Political Science and Law.⁷ The clinic operates as an NGO under the auspices of the university and has established itself as a substantial force in the enforcement and development of environmental law. The clinic is run by volunteers, including law professors and students, but also professors and students from other universities, along with volunteer lawyers. The clinic's activities include bringing cases on behalf of pollution victims and conducting training in environmental law and law enforcement for lawyers and judges.

NGO efforts in support of enforcement and compliance bring considerable resources to the overall effort to detect and prosecute violators. But their enforcement efforts sometimes can cause friction with governments, especially when they are investigating criminal law violations. NGOs, particularly the better-funded international NGOs, run the risk of outpacing government efforts in countries where there is limited government capacity for enforcement and compliance, and this may present diplomatic problems when governments consider NGOs as competitors rather than collaborators. In the field of wildlife enforcement, the suggestion has been made to develop a set of guidelines outlining how NGOs and governments can work together most efficiently.

This chapter describes some of the efforts undertaken by NGOs in environmental enforcement and highlights various tools and strategies that are proving effective.

⁷ CLAPV's website is: <http://www.clapv.org/new/en>. In addition to CLAPV's website, English language descriptions and analyses of some of CLAPV's litigation appears in *Studies on Environmental Pollution Disputes in East Asia: Cases from Mainland China and Taiwan*, Joint Research Program Series No. 128, Institute of Developing Economies, IDE-JETRO [Japan External Trade Org] 2001.



It begins with an article by Susan Casey-Lefkowitz, J. William Futrell, Jay Austin, and Susan Bass providing an overview of the role NGOs can play in an environmental enforcement regime and discussing the fundamental requirements for effective public participation in enforcement.⁸

Three articles discuss how NGOs operate at the national level. Professor Barton H. Thompson, Jr., examines the evolution of citizen suits in the U.S. as a key tool for expanding environmental enforcement.⁹ Svitlana Kravchenko discusses the viability of citizen suits in Eastern Europe,¹⁰ and Romina Picolotti demonstrates how her NGO applied human rights law along with environmental laws to secure safe drinking water in Argentina.¹¹

While most NGO enforcement efforts remain focused at the national level, there are increasing opportunities at the regional and international levels, highlighted by two excerpts in this chapter. John Knox describes the citizen-directed submissions procedure in the North American Agreement on Environmental Cooperation,¹² and Linda A. Malone and Scott Pasternack discuss legal tools and strategies NGOs can utilize to help enforce international environmental law.¹³

Finally, David Hunter discusses the Inspection Panels and other enforcement mechanisms in international financial institutions and how they are used by NGOs to ensure that development projects comply with the banks' environmental policies and procedures.¹⁴

⁸ Susan Casey-Lefkowitz *et al.*, *The Evolving Role of Citizens in Environmental Enforcement*, 4th INECE Conference Proceedings, vol. 1 (1996), available at <http://www.inece.org>.

⁹ Barton H. Thompson, Jr., *Symposium: Innovations in Environmental Policy: The Continuing Innovation of Citizen Enforcement*, 2000 U. ILL. L. REV. 185 (2000).

¹⁰ Svitlana Kravchenko, *Citizen Enforcement of Environmental Law in Eastern Europe*, 10 WIDENER L. REV. 475 (2004).

¹¹ Romina Picolotti, *Using Human Rights as an Enforcement Tool To Ensure the Right to Safe Drinking Water: An Argentine Case Study*, 7th INECE Conference Proceedings (forthcoming 2005).

¹² John Knox, *Citizen Suits in International Environmental Law: The North American Experience*, 6th INECE Conference Proceedings, vol. 2 (2002), available at <http://www.inece.org>.

¹³ LINDA A. MALONE AND SCOTT PASTERNAK, *DEFENDING THE ENVIRONMENT: CIVIL SOCIETY STRATEGIES TO ENFORCE INTERNATIONAL ENVIRONMENTAL LAW* (2004).

¹⁴ David Hunter, *The Emergence of Citizen Enforcement in International Organizations*, 7th INECE Conference Proceedings (forthcoming 2005).

