

Closing Statement

Uniting To Enforce For Better Results



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President

Through the years ELI attorneys have worked with private sector managers and government officials to devise new procedures to enhance compliance and effective enforcement. In ELI's desire to forge a broad-based consensus of protective environmental law, we keep in mind Oliver Wendell Holmes Jr.'s formulation of the centrality of enforcement. He wrote: "If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vague sanctions of conscience."

And there are a lot of bad men out there who not only are not governed by the sanctions of conscience but also risk dire material consequences by lying in the weeds of noncompliance. In the desire to deregulate, enforcement budgets have dwindled across the board, not only in the environmental field but also in the Internal Revenue Service and the Securities and Exchange Commission, where enforcement offices also are underfunded and understaffed. Last

month, Sylvia Lowrance, formerly one of the most senior environmental officials at the Environmental Protection Agency, testified before the Congress that enforcement activity had come to a standstill.

The good news is that enforcement officials can work smarter and more efficiently than in the past because of a tight web of interlocking relationships that have built trust between agencies. The International Network for Environmental Compliance and Enforcement is a partnership promoting compliance and enforcement of environmental laws through networking, capacity building, and enforcement cooperation. Comprising 2,500 practitioners from international organizations, governmental agencies, and NGOs such as WWF, CIEL, and ELI, INECE is the only global network exclusively dedicated to this critical mission.

INECE publications stress that a good enforcement program leads to better environmental performance. It helps create an atmosphere that promotes compliance by building public support, educating the regulated community, and assuring deterrence. INECE's Principles of Environmental Enforcement stress four factors: "There is a good chance violators will be detected. The response to violations will be swift and predictable. The response will include an appropriate sanction. Those subject to regulation perceive that the first three factors are present."

Major funders of overseas development now see that monitoring and enforcement are key to achieving economic development. The Dutch and U.S. environmental agencies founded INECE and remain key funders. The United Nations Environment Program, the World Bank, the European Commission, and the Organization for Economic Cooperation and Development provide additional support.

Members of INECE share expertise through a newsletter, an extensive website, and a biennial conference that gathers some 150 enforcers from as many as 60 countries around the world. All the conference proceedings are published at www.inece.org. There,

anyone interested in enforcement can tap into an encyclopedia of case histories and identify enforcement expertise in almost any country.

The most recent conference, held in San Jose, Costa Rica, last April, featured one particularly interesting case study on how the Dutch Ministry of Housing and Environment uses the local police in communities across the Netherlands to augment the staff of the Environmental Inspectorate. In every country, the scarcest resource is inspectors. The Dutch Inspectorate conducts a training course at local police academies on recognizing potential polluting incidents and how to go about reporting back to the Inspectorate. The police do not do the inspection and are not involved in issuing citations. They are the extra eyes of the Ministry.

In the United States a key bottleneck in the enforcement pipeline often is not at the Justice Department or EPA. As in most countries, it is the lack of inspectors. The situation is particularly acute this year because a large number of inspectors were pulled off their cases and assigned as acting marshals for federal facilities following 9/11. Reportedly, Region 9 was down to just one inspector during much of the year.

One of the pleasures of working with INECE during the last decade has been to observe the progress different countries have made in building more effective enforcement programs. Nowhere was this more obvious than at the Planning Committee's recent meeting in Prague. When ELI first visited Prague to start the operations of our Central and East European program, three months after the Velvet Revolution in 1990, the Czech Environment offices were a holdover from the Communist style of sacrificing environment and health to industrial production. Environmental information was regarded as a state secret and the press and citizens were barred from the process. What a difference the decade has made. An effective Environment Ministry and Inspectorate cooperate with an active environmental citizenry, and the Czech Inspectorate plays a vital and much appreciated role in INECE.