

Principles of Environmental Compliance and Enforcement Handbook

Chapter 2: Overview of Compliance and Enforcement Programs

International Network for
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2. OVERVIEW OF COMPLIANCE AND ENFORCEMENT PROGRAMS

2.1 Introduction

Over the past forty years, environmental law has been central to government efforts to implement a wide range of environmental programs designed to protect air, water, natural resources, wildlife and public health. Countries throughout the world use environmental law to help address problems such as the discharge of pollutants into the environment, the protection of flora and fauna, the handling, storage and disposal of solid and hazardous wastes, the application of pesticides, preventing air contamination, and protecting the quality and availability of clean water.

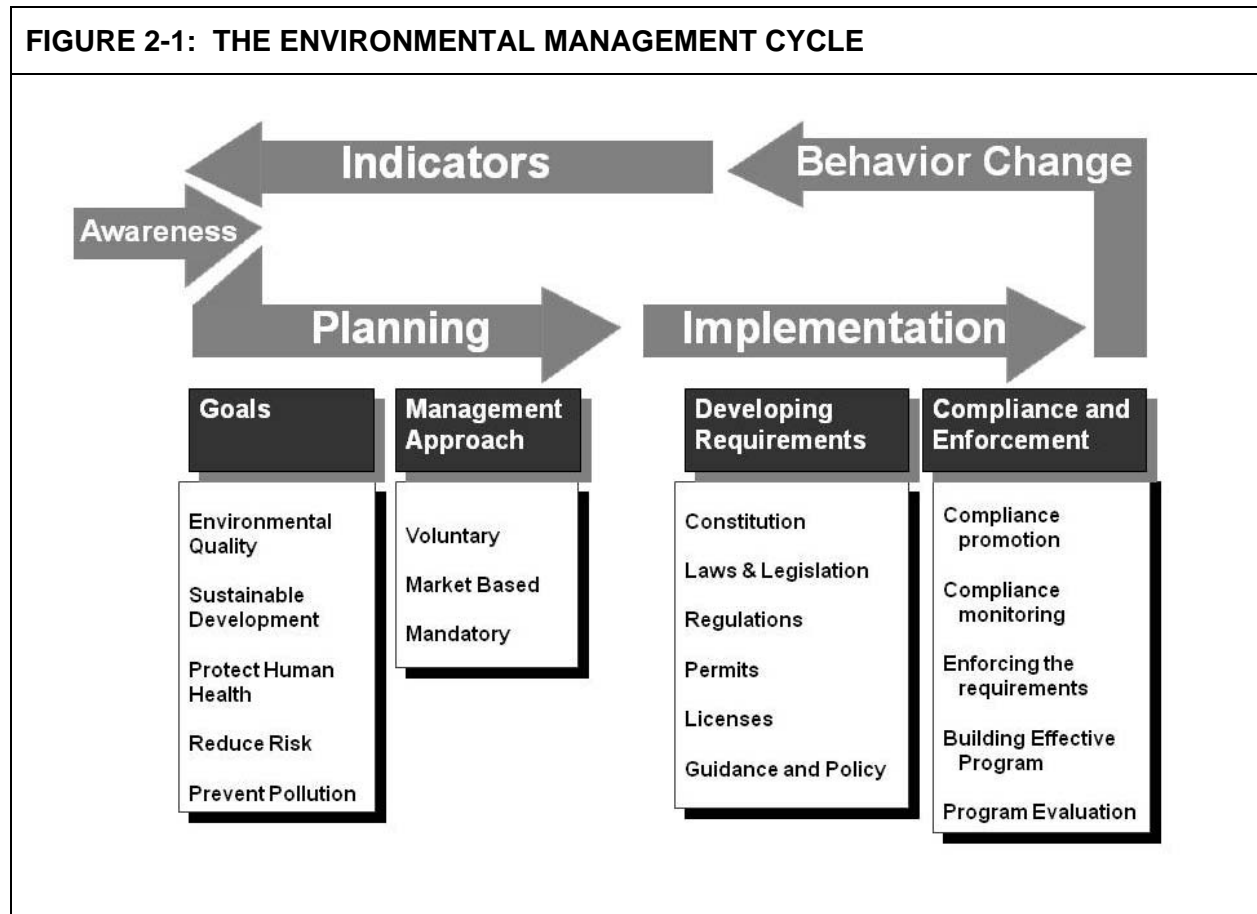
However, simply having environmental laws in place is not enough to address these problems. Governments must find ways to ensure that the regulated community meets the requirements put forth in the environmental laws and their implementing regulations. Successful strategies will both encourage and compel behavioral changes within the regulated community that are needed to achieve compliance.

This chapter provides a basic overview of the concepts behind successful enforcement and compliance programs. The first section looks at the context for compliance and enforcement as a part of the environmental management cycle. The second section examines the benefits of an effective compliance and enforcement program. The third section discusses types of compliance activities. The fourth section discusses theories of compliance behavior. The final section examines some of the general difficulties and obstacles that may exist to the development of an effective program.

2.2 Context for Enforcement

Environmental compliance and enforcement programs occur as part of a comprehensive environmental management cycle. This cycle typically involves community recognition of certain environmental problems and governmental acceptance of the need to address these problems. From there it often leads to government establishing specific environmental goals to address these problems and selecting a management approach or approaches to reach those goals. When developing mandatory requirements, government must consider the legal basis for these requirements and establish compliance and enforcement programs to ensure that the regulated community adheres to these requirements. Once implementation begins, evaluations and adjustments must be made to continually update and improve the programs.

Figure 2-1 presents the environmental management cycle. This process is explained in more detail below the figure.



2.2.1 Awareness and Strategic Planning

The environmental management cycle starts with awareness that there is an environmental problem and adequate support to address the problem. Once there is awareness and support for action, program proponents must begin strategic planning and goal setting. These goals may include reducing environmental risk, preventing pollution, or cleaning up past contamination.

2.2.2 Selecting a Management Approach

Once program goals are set, the focus moves to selecting the most suitable management approach or combination of approaches, in order to achieve program goals. For purposes of this book, these approaches are categorized as voluntary, market-based, and mandatory. These approaches are discussed in more detail in Chapter 4.

2.2.3 Developing Effective Requirements

The selected management approach may require specific laws or regulations. Laws and regulations, in turn, include “requirements” that clearly define specific practices and procedures to directly or indirectly reduce or prevent pollution. Effective requirements demand that specific things be done or outcomes reached. Chapter 5 discusses the creation of effective environmental requirements to implement the selected management approach.

2.2.4 Evaluation and Adjustment

Once implementation begins, another important phase needs to be initiated—evaluation of the impact of the program through the use of compliance and enforcement indicators. This part of the environmental management cycle is often overlooked or not given the attention that it warrants. Evaluation leads to greater awareness of how the program is addressing the targeted environmental problem, which in turn, through feedback, leads to better planning and implementation. The evaluation process, including the development of compliance and enforcement indicators, will be discussed in Chapter 10.

2.3 Benefits of Compliance and Enforcement

A compliance and enforcement program that is effective and part of a larger environmental management effort will bring a broad range of benefits to society. A well-designed environmental compliance and enforcement program will create both public and private value.

Compliance creates “public value” when it promotes the rule of law and good governance; ensures fairness and strengthens the credibility of environmental requirements; protects the goods and services provided to a society by a well-functioning ecosystem; and protects public health. Compliance creates “private value” when it increases investor confidence by reducing business risks; stimulates innovation and increased competitiveness; and creates new jobs and markets.¹ (See Box 2-1).

BOX 2-1: CREATING VALUE THROUGH COMPLIANCE

Compliance Creates “Public Value”

Promotes the Rule of Law and Good Governance: The rule of law is essential to good governance and sustainable development. When individuals or organizations ignore an environmental requirement, they are not just hurting the environment, but also damaging the rule of law in that jurisdiction. Corruption and legal uncertainty foster widespread non-compliance, environmental or otherwise, and vice-versa, eroding the norms and values that constitute healthy societies.

Ensures Fairness and Strengthens the Credibility of Requirements: A consistent and effective compliance and enforcement program helps ensure that actors affected by environmental requirements are treated fairly. Without an effective compliance assurance program, actors who violate environmental requirements may benefit compared to actors who choose to comply. Ultimately, actors will be more likely to comply if they perceive that the requirements are fair and do not place them at a competitive disadvantage.

Protects Goods and Services: Compliance assurance protects natural resources so they can continue to provide valuable goods and services to society, including renewable natural resources, climate stability, clean air, and fresh water. A recent study, for example, found that eco-system services amounted to roughly €22 billion or 25 percent of the Scottish GDP.

Protects Public Health: Compliance assurance helps protect public health. In Europe alone, air pollution is responsible for over 300,000 premature deaths each year. Pollution imposes a substantial social cost in terms of increased health care expenses and employee absenteeism. Strong compliance assurance helps improve public health, economic productivity, and the environment.

Compliance Creates “Private Value”

Increases Investor Confidence by Reducing Business Risks: Widespread non-compliance is often tied to corruption and legal uncertainty, which can have devastating impacts on economic development. Firms will be less willing to make investments and assume risks when their legal rights and responsibilities remain uncertain. An effective compliance assurance program promotes certainty through the rule of law, thereby helping foster an attractive investment climate.

Stimulates Innovation and Improves Competitiveness: Environmental requirements can often save businesses money by stimulating innovation, leading to improvements in product design and manufacturing processes. These innovations improve pollution prevention strategies and energy efficiency efforts and result in reductions in waste. Numerous studies indicate that countries with high environmental standards often have market-leading firms and better economic performance than those with lower standards.

Creates New Jobs and Markets: Compliance assurance creates jobs in new industries. The most visible beneficiary is the environmental goods and services sector, which includes, among other things, pollution abatement technology, waste management, organic products, eco-certified resources, and eco-tourism. These are among the fastest growing industries in the world.

2.4 Types of Compliance Activities

Governments have developed a number of regional and context appropriate policies and programs to encourage and compel the behavioral changes needed to achieve compliance. Although definitions and ways of categorizing these policies and programs vary from country to country, they generally involve four major categories of activities: compliance assistance, compliance incentives, compliance monitoring, and enforcement. Most often effective implementation will involve some combination of these four categories of activities.

Note: In this Handbook and in other contexts, the terms “compliance promotion” and “compliance assurance” are used to categorize specific compliance programs. Compliance promotion refers to both compliance assistance and compliance incentives programs. Compliance assurance refers to all compliance-related activities, including enforcement.

2.4.1 Compliance Assistance

Compliance assistance encourages observance of the law through outreach, education, and other promotional activities. Compliance assistance activities are designed to improve compliance by explaining how to comply with legal and regulatory requirements.

2.4.2 Compliance Incentives

Compliance incentives are a set of policies and programs that provide concrete benefits to those organizations that meet certain compliance objectives. Examples include programs that reward top-performers or that reduce or waive penalties for facilities that voluntarily discover, promptly disclose, correct non-compliance, and prevent future environmental violations. Information campaigns and market-based mechanisms can also include compliance incentives.

2.5 Compliance Monitoring

Compliance monitoring is one of the key components government agencies and others use to ensure that the regulated community obeys environmental laws and regulations through on-site visits by qualified inspectors, public reporting of violations, and by reviewing information submitted to it by the regulated industry as part of self-monitoring and reporting programs. Compliance monitoring is generally considered to include both self-monitoring by the regulated entity, and governmental inspections and investigations.

2.6 Enforcement

Enforcement refers to actions taken by the government against violators to compel compliance the law. These provisions generally give a governmental entity authority to impose sanctions, in either the administrative, judicial, or criminal forum, and require the violator to come into compliance with the law. Some statutes contain provisions that require a violator to remedy environmental damage caused by the violations or that allow the government to clean up the damage and recover the cost from the violator.

2.7 Theories of Compliance Behavior

The theories underlying these programs reflect two different government approaches to achieving compliance, often referred to colloquially in English as the carrot and the stick, which together both encourage and compel behavioral change. The carrot (compliance promotion activities) and the stick (the threat of an enforcement action against non-compliers) are based on the rationalists and normative models of behavior.

The rationalist theory posits that regulated actors follow the logic of consequence. Put simply, everyone acts to maximize their own self-interest. If it is “cheaper” to violate an environmental requirement, then regulated actors will do so. Therefore, rationalists argue that policies must “deter” this behavior by raising the “costs” of non-compliance.² Accordingly, they advocate deterrence-based enforcement. Generally, for a policy to have a deterrent effect, the individual or organization must believe that:

- There is a high probability of being caught.
- The response to violations will be swift, certain, and fair.
- The punishment will be severe enough to outweigh the benefits of non-compliance.³

Deterrence may be enhanced either by expanding monitoring activities, improving enforcement capacity to investigate and prosecute violations, raising penalties, or increasing awareness of enforcement.

Normative theory posits that regulated actors follow the logic of appropriateness and often act in good faith. Compliance occurs (or does not occur) largely because of the regulated actor’s “capacity” (e.g. knowledge of the rules, and financial and technological ability to comply) and “commitment” (e.g. perception that the rule is fair).⁴ Accordingly, these theories call for more compliance promotion in the form of assistance, incentives, and other activities.

The rationalist and normative models represent opposite ends of the spectrum and each provides useful insights into the types of behavior that lead to compliance. Regulated communities everywhere generally can be divided into three general categories: (1) those who

will not comply at all unless they are forced to; (2) those who are “impressionable,” and might comply if presented with incentives, knowledge, or capacity to do so; and (3) those who will cooperate in all circumstances. Which one of these categories predominates will vary from country-to-country and can help inform individual country decisions about what mix of compliance promotion and enforcement activities to stress in efforts to promote the rule of law and the protection of public health and the environment.

2.8 Challenges in Developing an Effective Program

Unlike twenty or thirty years ago, most countries now have at least some environmental programs in place. Efforts to build effective compliance assurance programs therefore are not starting from scratch. Today the question usually is how to build upon and improve existing efforts.

How should such efforts at improvement begin? How can new responsibilities and efforts be handled with limited program resources? What elements of a compliance assurance program should be stressed? What legal, policy and technical drivers or barriers are moving or slowing these efforts? How should programs evolve over time, as policy makers evaluate the success of previous strategies, and as technological and economic developments suggest new solutions? These are many of the challenging questions that politicians, legislators, regulators and interested members of the public may ask as a government attempts to improve its environmental compliance and enforcement programs.

In many countries, compliance and enforcement programs face significant barriers. The OECD’s publication, *Guiding Principles for Reform of Environmental Enforcement Authorities in Transition Economies of Eastern Europe, Caucasus and Central Asia*,⁵ outlines some of the regional challenges faced by environmental enforcement authorities, problems that are common in many parts of the world. The report states:

“The transition period [from communism] generated new, and accentuated old problems of environmental enforcement systems. These include, for instance, a greater diversity in the regulated community and lobbying by powerful groups or individuals for special privileges. A number of studies have shown that enforcement has not received sufficient attention from decision-makers, and low environmental performance and violations of environmental laws has been widespread. Important factors that nourished non-compliance were the slow pace of governance and economic reforms, the complicated legal framework and poor economic situation, societies failure to believe in fair regulation and the erosion of

the rule of law. Limited powers, scarce financial and human resources of enforcement agencies are also major causes of low effectiveness in ensuring compliance.⁶

There are no standard ways to address these complex and difficult issues. In some countries, efforts to improve compliance assurance programs must be closely tied to efforts to improve the rule of law and governance, in others it may require placing greater emphases on education and awareness, while in others it may be a question of finding new resources or using existing resources more efficiently, and in still others, a heavier emphasis on legal sanctions that compel behavioural changes and punish violators may be needed to demonstrate increased importance of the law. In many countries it will be a combination of all of these, and more.

Although each country and jurisdiction faces a unique set of political, economic, social and culture issues, certain general principles have emerged as to what constitutes an effective compliance and enforcement program. Understanding these principles will allow governments and civil society to better evaluate and adapt their environmental compliance and enforcement programs to meet the challenges of the 21st Century.