

Principles of Environmental Compliance and Enforcement Handbook

Chapter 6: Compliance Promotion

International Network for
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6. COMPLIANCE PROMOTION

6.1 Introduction

In many countries, traditional environmental regulatory programs are being carried out in conjunction with non-regulatory voluntary programs designed to promote changes in behavior. Voluntary programs are different from compliance promotion activities, as voluntary programs have no mandatory component while compliance promotion activities encourage and help the regulated community to comply with environmental laws and requirements through assistance and incentive activities.

This chapter provides an overview of some of these compliance assistance and compliance incentives activities. It begins by examining educational, technical, and financial assistance programs that make up compliance assistance efforts. It then examines compliance incentives efforts, such as auditing policies, recognition programs, efforts to provide the public with information, and market-based mechanisms.

6.2 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. Compliance assistance activities can cover both statute specific and sector related activities. Outreach programs and technical assistance tools tend to be most successful when they are developed at regional levels and are tailored to the needs of specific businesses.

Compliance assistance programs can help regulated firms reduce the costs of compliance and develop environmental management capacity within the regulated community. The success of these initiatives will depend largely on how they are developed, packaged, and delivered. Compliance assistance programs can include education and technical assistance and in some cases financial assistance.

6.2.1 Education and Technical Assistance

Education and technical assistance lay the groundwork for compliance. These efforts can help businesses and individuals fully understand their legal responsibilities, and how they can meet those responsibilities. Education and technical assistance are particularly important in the early stages of a new program or when legal and regulatory requirements change. Education and technical assistance programs can help the regulated community understand:

- Who is subject to requirements?

- What are the requirements?
- Why are these requirements important?
- What changes (including technical and managerial changes) can be made to comply with the requirements?
- How can these changes be made (e.g. equipment, operations, human resources)?
- What are the consequences of non-compliance (both in terms of costs and benefits)?

Education and technical assistance outreach can be made through publications (such as brochures and guidance manuals); websites; “hot lines” or dedicated telephone numbers; conferences and other meetings; or as part of media announcements.

Technical assistance can be provided by trained government personnel who visit individual members of the regulated community to assist them in making changes, and as part of special assistance programs, set up for example at universities or non-governmental institutions, that provide a central resource for information and advice on how to comply with legal and regulatory requirements.

Professional associations are important government partners for compliance assistance activities. These associations usually have established communication networks and access to industry experts. They can provide forums for the regulated community and enforcement program personnel to exchange information and ideas.

BOX 6-1: IMPROVING WASTE COLLECTION IN THE NETHERLANDS

Commercial establishments in the Netherlands are required to dispose of their hazardous wastes through permitted processors. However, getting the waste to the processor was a problem for small businesses. The processors were often unwilling to pick up small amounts of waste, and transporting small quantities of waste long distances to a processor placed a disproportionate economic burden on small businesses. Therefore, small companies were often out of compliance with the hazardous waste rules. The Dutch government helped to solve this problem by establishing a collection depot in nearly every town in the Netherlands. Both private citizens and small companies may now discard their waste at these depots at regular times. This government-facilitated cooperative arrangement was instrumental in helping solve the compliance problem.

Many countries are increasingly focusing compliance assistance efforts on specific sectors or types of businesses. By using this approach, governments can tailor their outreach efforts to the specific needs of an industry instead of focusing their efforts on the requirements of individual statutes. Many countries are increasingly using the internet to deliver sector focused compliance assistance material to the user and are cooperating with other countries in

sharing this information.

An example of this new approach is the collaboration that is occurring between the USEPA, the Asian Environmental Compliance and Enforcement Network (AECEN), and the environmental agencies of the Philippines and Thailand. Over the past decade, USEPA has established highly successful, stakeholder-driven, web-based compliance assistance centers geared primarily toward small and medium size business.¹⁷ It is now working closely with the Philippines, Thailand, and ASEAN to share U.S. experiences and provide feedback on proposed strategies and models as these countries develop their own stakeholder driven, web-based centers.¹⁸

6.2.2 Financial assistance

Even with education and technical assistance, cost may be a significant barrier to compliance. In some instances, the government may want to provide direct assistance to the regulated community in order to help them deal with the initial cost of compliance.

In the late 1990s, for example, selected firms in Sri Lanka's distillery, textile, and metal finishing sectors were shown ways to reduce waste generation quantities through simple process and raw material changes, as well as good housekeeping practices. Demonstration waste minimization projects such as these help industries to meet the required environmental standards while at the same time reducing end-of-pipe treatment costs.

Some international organizations and national development aid agencies provide funds to developing countries that could not otherwise afford to comply with environmental requirements. The Compliance Assistance Programme of the Multilateral Fund of the Montreal Protocol, for example, has a successful capacity building program that places teams in regional offices to deliver technical assistance on Protocol requirements directly to developing countries.¹⁹

6.3 Compliance Incentives

Compliance incentives consist of a set of policies and programs that eliminate, reduce or waive penalties under certain conditions for business, industry, and government facilities that voluntarily discover, promptly disclose and correct non-compliance, and prevent future environmental violations. Many audit and special recognition programs are examples of compliance incentive programs. These programs provide concrete benefits for companies, agencies, and individuals that actively monitor their facilities and report problems to appropriate authorities. Other compliance incentive programs provide the public with specific environmental

performance information on companies in order to motivate them to improve their environmental performance.

6.3.1 Auditing Policies

Some compliance incentives eliminate, reduce or waive penalties under certain conditions for business, industry, and government facilities that voluntarily discover, promptly disclose and correct non-compliance, and prevent future environmental violations. Under USEPA's Audit policy, called *Incentives for Self-Policing, Discovery, Disclosure, Corrective and Prevention of Violations*, regulated entities may, at the discretion of the Agency, avoid criminal prosecution, and have penalties reduced or eliminated. But they must discover violations through self-auditing or under environmental management systems, self-disclose (prior to the Agency having initiated its own investigation), correct the violations promptly, and take measures to prevent recurrence.²⁰

Mexico also has a similar program, called the Environmental Auditing Program (EAP). It is based on a voluntary agreement between Mexico's Attorney General for Environmental Protection (Profepa) and a participating organization. Under the EAP, a plan of action is devised to recommend preventive and corrective measures related to air, water, soil, solid and hazardous waste, noise, industrial safety and hygiene, energy, natural resources, environmental risk, environmental management and other issues with potential adverse impacts to the environment.

Participating organizations are evaluated by independent auditors. Participants agree to correct violations by a certain date, and Profepa agrees not to penalize companies until that date has passed. Organizations receive Profepa's certification of Clean Industry for Environmental Compliance after an audit has been completed, an action plan has been implemented, and all the preventive and corrective measures have been taken. Organizations that go further and achieve stronger environmental performance under pollution prevention and eco-efficiency schemes are granted the recognition of Environmental Excellence. Organizations can use Profepa's performance seals to promote their public image.²¹

6.3.2 Recognition Programs

Environmental regulators frequently use incentives in the context of recognition programs. Both Mexico and the United States, for example, have recognition programs, which provide incentives to join these programs and maintain high levels of environmental performance. Mexico's Environmental Excellence Seal (see above, Auditing Policies) is granted to organizations that have engaged in self-designed initiatives directed toward preventing

pollution, seeking community outreach, developing suppliers, solving local environmental problems, and participating in pollution cleanup programs, among other measures. To obtain the seal, organizations must present documented and operational proof of environmental compliance.

USEPA National Environmental Performance Track recognizes top performers among public or private facilities. To be recognized under performance track, facilities must have, among other things:

- A history of sustained regulatory compliance.
- Past environmental achievement and a commitment to continuous environmental improvement.
- A community outreach procedure in place.

Facilities accepted into the program receive special benefits such as low priority for federal inspections; special regulatory and administrative incentives, such as flexibility in developing certain air permits; and more flexible requirements for large generators of hazardous waste.

Surveys of regulated communities find that the potential opportunity to forgo or postpone regulation is the most important benefit of voluntary approaches.²² Therefore, environmental management programs using these voluntary approaches must balance the need to demonstrate a commitment to improvements while simultaneously maintaining a credible threat of mandatory regulation and enforcement.

6.3.3 Public Information

A number of jurisdictions have overcome these problems by developing a public rating system. Rating systems simplify the flow of information to the public by summarizing a regulated firm's performance into a grade. The grading scale can be simple (in compliance/not in compliance) or complicated. Box 6-2 provides an example of public grading in Indonesia. Note that the rating system has two grades above simple compliance, providing inducements to go beyond the environmental requirements.

Support of local media is critical to public information campaigns. To ensure accurate press reports and foster a working relationship with the media, the environmental management program should invite reporters to a detailed presentation of the information campaign, including an explanation of how the information was collected and analyzed. The information should also be in a format that is easily communicated by the broadcast and print media.

Ideally, an information strategy should be flexible enough to accommodate regulated firms with different characteristics. It should be simple and easily understandable by the public. Finally, it should offer the regulated firm a chance to improve its performance before the information becomes public. Many firms will take this opportunity to come into compliance rather than risk damage to their reputations or more severe fines. (See Box 6-3 for an example from China).

BOX 6-2: INDONESIA'S ENVIRONMENTAL REPORT CARD "PROPER PROKASIH"²³		
Compliance Status	Color Rating	Performance Criteria
Not in Compliance	Black	Polluter makes no effort to control pollution and causes serious environmental damage.
	Red	Polluter makes effort to control pollution but not sufficiently to achieve compliance.
In Compliance	Blue	Polluter applies effort sufficient only to meet the standard.
	Green	Pollution level is significantly lower than the discharge standards. Polluter also ensures proper disposal of sludge, good housekeeping, accurate pollution records and good maintenance of the wastewater treatment system.
	Gold	All the requirements of Green, plus similar levels of pollution control for air and hazardous waste. Polluter reaches high international standards by making extensive use of clean technology, waste minimization pollution prevention, recycling, etc.

The effectiveness of public involvement in information strategies will vary with the nature of the sectors and firms regulated. It will be a challenge to bring market pressure on firms that provide products or services in sectors with limited competition or where a brand name is not dependent on public good-will. Closely held and government-owned enterprises also have a degree of insulation from external pressure. But all of these firms can be reached with carefully planned strategies.

BOX 6-3: INFORMATION CAMPAIGNS IN CHINA²⁴

Faced with difficulty ensuring companies' compliance with pollution regulations, China began a program, informally called "GreenWatch," for disclosing industry pollutant discharges to the public. Pilot efforts, such as those in Hohhot Municipality and Zhenjiang City, demonstrated that public disclosure of environmental performance could impact a company's public image. The results were that "enterprises that improved their performance immediately requested new monitoring reports so that their public ratings could be improved as well. Enterprises with poor ratings shifted from passive resistance to active solicitation of inspections, as a means of improving their performance ratings. At the same time, enterprises with good ratings felt continued pressure to maintain their environmental performance to avoid complaints from the public about backsliding." In November 2006, the Chinese government decided to extend GreenWatch to every city in the country by 2010.

6.4 Market-Based Mechanisms

Market-based approaches, such as taxes, charges, and emissions or permit trading programs (See Box 6-4) can promote compliance with the law by incorporating externalities into the cost of doing business. Externalities are "hidden" costs to human health and the environment associated with an activity, such as manufacturing steel. Because manufacturing steel creates air pollution, an externality of this activity may be an increase in asthma rates among children. Market-based approaches can help minimize these externalities by stimulating consumers and producers to change their behavior to more eco-efficient use of natural resources by increasing costs, reducing consumption, stimulating technological innovation, and encouraging greater disclosure of actual/total/combined costs to community.

Market-based approaches are not usually considered compliance promotion activities unless they involve promoting compliance with underlying regulatory requirements. Instead they often either complement regulatory requirements or make them unnecessary. For example, the Netherlands, Portugal, the United Kingdom, Spain, and Finland have introduced car registration taxes which encourage car buyers to opt for the cleanest car models. These taxes can complement existing domestic laws that require minimum fuel efficiency standards by making more inefficient but legal cars more expensive.²⁵ (See Box 6-4 for other examples).

BOX 6-4: EXAMPLES OF TAXES AND FEES

In 1995, the Netherlands enacted a tax on the landfilling of waste. The purpose of this tax is to address environmental issues of waste and to better distribute tax burdens across different groups by introducing a new tax base. The tax is calculated based on the weight of the waste. As of 2004, those dumping waste had to pay € 84.78 per ton for waste less than 1,100 kg/m³ and for certain waste streams like dangerous waste and shredder waste and € 13.98 per ton for waste more than 1,100 kg/m³. Studies have shown that the tax has contributed to a shift from dumping to prevention, recycling, and incineration of waste.

Colombia has demonstrated how discharge fees can create incentives for regulatory authorities to improve permitting, monitoring, and enforcement. In 1997, to reduce water pollution, Colombia began charging polluters a fee per unit of pollution emitted. The fees were determined based on whether overall pollution reduction targets were being met. By allowing Colombia's regional environmental authorities to keep the fees, but requiring reporting of fees to a centralized authority, this system creates incentives for improved monitoring and enforcement.