

Principles of Environmental Compliance and Enforcement Handbook

Chapter 9: Building Effect Program Infrastructure

International Network for
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9. BUILDING EFFECTIVE PROGRAM INFRASTRUCTURE

9.1 Introduction

The previous chapters introduced the basics of compliance assurance, including planning, developing environmental requirements, promoting compliance, monitoring, and enforcing requirements. As with any other organization or program, the effectiveness of the environmental management program will also depend on its managers, employees, institutional design, and ability to communicate with other institutions. This chapter discusses how organizations generally build effective infrastructure and inter-organizational communication and how they do so in the context of an environmental management program. A well-designed program infrastructure will allow regulators to use their limited resources in a way that maximizes compliance. In particular, this chapter will address:

- Designing compliance assurance institutions.
- Dividing responsibilities among levels of government.
- The role of civil society in compliance assurance.
- Facilitating national and international networking.

9.2 Designing Compliance Assurance Institutions

9.2.1 How to Define an Institution: Structure versus Working Methods

An effective environmental management program must have an institutional structure that furthers the compliance goals of the program. A strong institution uses limited resources more efficiently, and also instills greater public confidence in the integrity of the program. In order to do this, the basic functional structures of the program and its working methods must be clearly defined and incorporated into the strategic plan.

9.2.1.1 Functional Structures

This very popular organizational structure is constructed based on the division of labor according to several criteria, with the idea that specialization brings greater efficiency and higher output per person. This may produce a more focused approach, and improvements and innovation within a program may occur because members with similar interests are interacting. Lower turnover of personnel is a common characteristic of this structure, where management and staff development can be centered around standard types of functional skills. Since communication across department lines can be distorted by lack of expertise in other

departments' fields, and even by territoriality, managers need to coordinate department activities carefully to reach the common goals.

9.2.1.2 Product Divisional Structures

In industry, this structure means that each department is in charge of certain products. In environmental agencies, "products" could be characterized in terms of the issues treated, the industry sector policed, or the media, such as air or water, controlled.

This type of structure has the advantage of focusing on results, with greater orientation towards public service and satisfaction, easily identifiable accountability for results achieved, and more personnel in a position to develop management skills. But product structures can be more expensive than functional structures, because at the lowest level there can be substantial redundancy of skills among personnel. Conversion from product divisional to functional structure can bring impressive savings in administrative costs.

9.2.1.3 Geographical Divisional Structures

Regional or local offices are the basic units of geographical divisional structures. Environmental management programs may wish to allow their regional offices to work as autonomous units, with independent decision-making guided by policy formed at the head office. The head office provides services and support, but has little involvement in the daily management of the regional offices. This structure brings the benefit of proximity to environmental problems, their causes, and the segment of the general public most directly benefiting from agency work. But like a product divisional structure, it entails higher administrative costs. Also, a narrower geographic perspective can foster distortion of the larger picture, encouraging focus on local problems at the expense of global policy.

9.2.1.4 Matrix Structures

Matrix structures are based on projects, with teams working to achieve project goals. Often a worker has dual subordination to the department manager and the project manager. The matrix structure promotes sharing of information and coordination of efforts, increasing cost-efficiency and flexibility of the organization. However, the dual subordination can cause conflicts over personnel and budgets, and the team orientation means time devoted to meetings. Both of these features can lead to employee stress, especially at the lower levels.

9.2.1.5 *Horizontal Structures and Downsizing*

This type of structure arose from dissatisfaction with the layers of middle management resulting from organizational growth. Called “downsizing” because of the reduction in number of employees, it is accompanied by two major interrelated changes:

- Elimination of one or more hierarchies, usually at the level of middle management.
- Delegation of decision-making to a lower level.

The goal of this structure is to reduce costs by cutting bureaucracy; however, if decisions are shifted to a higher level rather than a lower level, the top-level management will probably become overloaded.

Among different programs and organizations, even those serving similar mandates, there are many different variations on the above listed structures. Factors that may influence the choice of a given structure include:

- Scope of activity.
- Complexity of the regulatory framework.
- Size of the organization and increasing specialization.
- External political, economic, and social factors.
- Whether the strategy is preventative, curative, or both.

Questions to be answered when determining if a given structure is appropriate include:

- Which structure will lead to the greatest compliance and the most effective enforcement?
- Is the structure compatible with policy objectives, legal mandates, and the strategy of the environmental management program?
- Are there too few or too many hierarchical levels?
- Does the structure promote coordination among its parts?
- Does the structure allow for appropriate centralization or decentralization of authority?
- Does the structure permit the appropriate grouping of activities?

9.2.2 Mission Statement and Scope of Enforcement

A mission statement needs to communicate to the stakeholders and the public the essence of the organization or environmental management program. It should be no more than a few sentences. It should include a “purpose statement” of the program's goals, a “business

statement” outlining a plan to reach those goals, and a “values statement” of the basic beliefs underlying the program.

A vision statement also helps to define the scope of the program’s mandate. It provides an image of success, describing the purpose of the group’s work, in terms of the expected contribution to society.

If the mandate of the program is general, e.g., “Improve environmental conditions,” the institution needs to articulate more specific goals in the strategic plan that will help it fulfill this overall mandate. With such a mandate, there are innumerable ways to define success. If the mandate is more specific, e.g., “Reduce water pollution by reducing tons of pollutants released into the ecosystem,” there are fewer ways to define success, and the strategic plan will be more easily focused.

9.2.3 Institutional Identity and Degree of Independence

At the institutional level, some agencies have more independence from the legislative or executive bodies than do others. The environmental management program’s mission may be clearly and narrowly defined by statute, in which case the institution will have little autonomy. But in other cases, the program may be free to produce its own regulations within very general statutory bounds, or the head of the program might be appointed by the executive, but might not be removable by the executive. Then the degree of autonomy of the program will be much greater. When designing the program’s infrastructure, it is important to consider the degree of autonomy that the program is expected to have.

9.2.4 Internal Communication and Decision-Making Policies

Well-designed internal communication can help employees to understand organization objectives and adapt behavior and workplace processes to achieve these objectives. Employees want to understand why and how decisions are made, and they learn management strategies by observing their immediate superiors. Information should be presented to employees in such a way that it is easily absorbed. The employees should be told why the information is important and how to use it.

Often there are barriers to internal communication, stemming from managerial behavior or from the organization’s culture or structure. These barriers cause losses of efficiency and effectiveness, increased costs, and decreased morale. Barriers include:

- Job insecurity.
- Poor communication between management and staff.

- Isolation of employees from one another.
- Lack of cooperation or Team Spirit.
- Slow or cumbersome processes.
- Lengthy and unnecessary meetings.
- Transparency.

Transparency is important to maintaining public confidence in an environmental management program's activities. Increasing transparency entails helping the regulated community and others to understand what is expected of them and what they should expect from the program. It also means making clear why an inspector intends to, or already has, taken enforcement action.

Transparency on the part of inspectors is particularly important during enforcement actions in the following situations:

- Where remedial action is required. Not only must the action be clearly explained in writing, but also, if requested, a written explanation of why the action is necessary and when it must be carried out should be provided. A distinction should be made between best practice advice and legal requirements.
- Where opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken (unless urgent action is required, for example, to protect the environment or prevent evidence being destroyed).
- Where urgent action is required. A written explanation of the reasons should be provided as soon as practicable after the event.
- Where rights of appeal apply. A written explanation of any rights of appeal against formal enforcement action must be given at the time the action is taken.

9.2.5 Institutional Stability and Continuity

The development of multi-year and annual strategic plans serves to promote institutional stability and continuity. In some countries, an environmental management program's policies may be closely tied to the philosophy of the current government. If the government changes frequently, it is wise to have a safeguard against a rapid reversal of regulatory policy. For example, a notice and comment period might be required before the program or agency can change rules. In this way, the regulated community is informed and may participate in rule-changing. This is important because regulations that change too quickly may fail to elicit compliance, and that failure in turn promotes a loss of confidence in the regulations, which causes another decrease in compliance, and so on. The resulting cycle leads to a devaluation

of regulatory instruments, government, and the rule of law. Regulations certainly can change without creating such a vicious circle, but it is important to ensure that the regulated community can keep pace with the changes.

9.3 Dividing Responsibilities Among Levels of Government

9.3.1 Clarifying Levels of Sub-national Authority

A basic issue in developing environmental management programs is the extent of centralization of responsibility for compliance assurance at the national level. Decentralization is the process of placing more enforcement responsibility at the local level. There are advantages and disadvantages to both centralization and decentralization. A national presence in enforcement helps ensure that minimum standards are met, that the program is consistent and fair, and that national resources are available when necessary. Involvement of provincial and local governments in enforcement is useful because these levels are closest to the actual environmental problems and are sometimes better able to efficiently identify and correct them. This is particularly true where the local problems are minor compared to problems at the national level.

Most environmental enforcement programs around the world are decentralized to take advantage of local knowledge of facilities and the more specialized resources available at the local level. Despite this bias towards decentralization, some programs are centralized where there is a clear need for national involvement, *e.g.*, to handle transboundary pollution; where local desire to create favorable conditions for industry may lead to lax enforcement; or where unique or very specialized expertise is concentrated at the national level. For example, enforcement of U.S. regulations pertaining to the manufacture of cars and fuel additives is centralized, as are enforcement programs concerning the production of toxic chemicals and pesticides.

Sometimes the national program and provincial, or local, programs have concurrent roles. Sub-national programs may have the primary role for implementing the enforcement program, but the national government retains authority to intervene if certain criteria are not met. In other cases, the national government may not delegate any responsibility to the sub-national level.

BOX 9-1: CAPACITY BUILDING FOR DISTRICT BY-LAW FORMULATION AND ENFORCEMENT IN UGANDA⁶⁸

Uganda implements a policy of decentralization that entails a transfer of rights, responsibilities, and authorities to local governments. Under the National Environmental Act, the National Environmental Management Authority assists District Councils and lower local councils to formulate and enforce environmental by-laws as part of the Environmental Action Planning Process. This process seeks to identify environmental issues in need of regulation or existing environmental by-laws that need reinforcement. The by-law formulation and enforcement process incorporates a significant element of public participation, based on the premise that public awareness and endorsement is the key to successful implementation.

The National Environmental Management Authority has been building the capacity of district and community leaders to formulate and enforce environmental by-laws. This training seeks to:

- Introduce environmental regulation as a tool for environmental management at the community level.
- Enhance the capacity of the local leaders to formulate environmental by-laws especially regarding decentralized environmental functions and services.
- Raise awareness of the local leaders and communities and generate a common understanding of the procedures to be followed in environmental by-law formulation and enforcement.

The targeted audience includes local leaders, district and sub-county councilors, district technical staff, sub-county chiefs, resident state attorneys, and local police. These various officials and staff play distinct, key roles in formulating and enforcing environmental by-laws, including:

- Identifying environmental problems that need regulation.
- Drafting by-laws.
- Passing and enacting by-laws.
- Monitoring compliance with by-laws and enforcing them as necessary.

9.3.2 Qualification Procedures

Where authorized by environmental law to do so, the national agency may establish criteria for an acceptable sub-national environmental program. These criteria generally cover three areas: legal authority, resources, and personnel. A sub-national program meets these criteria for its program to be approved and start running. If an appropriate sub-national program has not been approved by the time enforcement is slated to begin, then the national level agency can administer its own program.

9.3.3 National Support to Sub-national Units

The national agency may provide provincial and local governments with funding for staff and equipment through an annual grant process. When the national agency sets program

priorities annually in consultation with the sub-national units, agreements reached can specify national, regional, and local priorities.

9.3.4 National Oversight of Sub-national Programs

It is challenging to implement this type of partnership between different levels of the government and to use resources most effectively. Duplication of efforts is a particular hazard. The national government may interpret its role differently from year to year. The United States addressed these challenges in 1995, when the Environmental Protection Agency and state leaders created a National Environmental Performance Partnership System. State participation in this system, which is voluntary, allows for the implementation of joint state-national programs by means of annual agreements.⁶⁹

To ensure the effectiveness of such programs, the national agency might conduct oversight of sub-national programs. To pass oversight inspection, most sub-national environmental programs must:

- Clearly identify the regulated community and establish priorities for enforcement.
- Have clear, enforceable requirements.
- Monitor compliance accurately and reliably.
- Maintain high or graduated rates of compliance.
- Respond to violations in a timely and appropriate way.
- Use penalties and other sanctions appropriately to create deterrence.
- Maintain accurate records and provide accurate reports.
- Have sound overall program management.

Direct national level enforcement may become necessary when at least one of these conditions apply:

- The sub-national level requests national involvement.
- The sub-national level action is not timely or appropriate.
- A case at the sub-national level would set a national legal or program precedent.
- A national agency or court order has been violated.

The national agency may also consider additional factors, such as whether:

- The case is nationally significant.
- The violation significantly threatens public health or environmental quality.
- The violator is gaining significant economic benefit.

- The case involves more than one sub-national entity.
- The case involves a repeat violator.

If the national agency does become involved, it should do so with maximum respect for the efforts at the sub-national level. Adequate notice and consultation should occur before national action. In some cases, the national and sub-national level agencies may take joint action.

9.3.5 Dispute Resolution

When national and sub-national jurisdictions overlap, it is necessary to set up a dispute resolution method to settle conflicting views on how a situation should be handled. In some cases, there may simply be deference to the national agency. But in other instances, this may not make the most sense. There should be a clear procedure for examining the various aspects of the dispute and making a decision within the terms of the law. The procedure may be internal agency review, or review by an external body, such as a special tribunal, mediator, arbitrator, or court.

9.4 Role of Civil Society in Compliance Assurance

9.4.1 Non-governmental Organizations and Public Interest Groups

Citizens can help to shape and implement environmental compliance and enforcement. They may influence environmental legislation and enforcement programs through lobbying efforts. Usually such efforts are coordinated by public interest groups, which may collect and publicize data on environmental quality and compliance levels.

These groups may also track monitoring data collected by the enforcement agencies that is made publicly available. They can serve as environmental watchdogs, spotting local violations that might otherwise escape notice. In some situations, these groups may file citizen suits against the environmental agency (if it failed to do its job), or against individual violators. Box 9-2 provides an example of participatory management in the Philippines.

9.4.2 Industry Associations

Industry or trade associations track and publicize developments that may affect their members. Therefore, they can be important dissemination channels for communicating requirements, methods of compliance, and compliance activities. These associations also usually try to influence environmental legislation and programs.

9.4.3 Trade Unions and Workers' Councils in the Regulated Community

Workers are generally members of the local community and would therefore benefit from localized improved environmental quality. But enforcement actions that result in substantial process changes or shutdown of an operation may cause unemployment. Consequently, workers often have strong opinions about some types of enforcement actions. The participation of workers' councils is important to the success of local compliance and enforcement actions. These organizations may become involved in the development of requirements and policies for compliance assurance. When worker groups are vested in the environmental improvements, individual workers may be more likely to report violations by their facilities.

BOX 9-2: PARTICIPATORY MANAGEMENT AND MONITORING OF PROTECTED AREAS IN THE PHILIPPINES⁷⁰

In the Philippines, protected areas are established and managed through the National Integrated Protected Areas System. Participatory management for each established protected area is central to effective implementation of the System.

Management of each protected area is supervised by a Protected Area Management Board. The Board is composed of representatives of the various local stakeholders such as the Department of Environment and Natural Resources (DENR) Regional Executive Director, the Provincial Development Officer, representatives from the Municipal Government, tribal communities, concerned NGOs, and other agencies in the area. The Board members are formally appointed by the DENR Secretary and serve for a term of five years, without compensation. If a protected area has a large Board membership, the Board creates an Executive Committee that is chaired by the Regional Technical Director or Provincial Officer of the Department and composed of at least two representatives from the local government, concerned NGOs, and indigenous communities.

Involvement of local stakeholders in protected area management through the Board has improved public support for the protected areas and the management decisions. Indeed, the public has participated at the early stages of establishing many protected areas and developing the management plans. This, in turn, has increased the compliance of local stakeholders with the Integrated Protected Areas System.

9.4.4 Insurance Companies

In many countries, citizens can sue firms for personal injury or property damages caused by environmental damage. Therefore, the insurance companies that end up paying firms' lawsuit costs have an incentive to educate their clients about environmental requirements, and to assist them in maintaining compliance. These companies are a potential ally, and enlisting

their support for an enforcement program could make that program both more efficient and more effective.

9.5 Facilitating International and National Networking

Networks are formed across different boundaries and for different purposes. They range from domestic to international and from informal to more institutionalized organizations. They are located within existing organizations, are created by agreements, or arise spontaneously through regular contact. They can also involve somewhat surprising participants.

For instance, judges are starting to network more, whether by means of information-sharing and mutual citation, or actively by means of forming organizations and cooperating on transnational litigation. At the UN Conference on Sustainable Development in Johannesburg in 2002, for instance, UNEP, INECE, and others organized a Global Judges Symposium. This symposium brought together judges from around the world to review their role and the rule of law in the context of sustainable development.

Networks can be more flexible and thus potentially more effective, than the large formal institutions of international governance when it comes to certain functions. By working directly peer-to-peer, trans-governmental networks can quickly distill and disseminate information, enhance enforcement cooperation, harmonize laws and regulations, and address common problems from a shared perspective shaped by experience and expertise. See Box 9-3 for examples of enforcement-related networks.

BOX 9-3: EXAMPLES OF NETWORKS

Interpol – the international police network, facilitates information exchange and provides assistance to local police efforts. Interpol has also created an environmental crime network, called Ecomessage, to facilitate information-sharing and enhanced coordination of enforcement efforts.⁷¹

European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) – an informal network of the environmental authorities of the EU Member States, acceding and candidate countries of the EU, and Norway. IMPEL's objective is to create the necessary impetus in the European Community to ensure more effective application of environmental legislation, by exchanging information and experiences; providing a framework for policymakers, environmental inspectors, and enforcement officers to exchange ideas; and encouraging the development of enforcement structures and best practices.⁷²

Environmental Compliance and Enforcement Network for Accession (ECENA) – established by high level officials from the environmental ministries of South Eastern Europe in 2005, as an informal network of environmental authorities from pre-candidate, candidate, and acceding countries. ECENA's mission is “to protect the environment in its member countries through effective transposition, implementation and enforcement of EU environmental legislation by increasing the effectiveness of inspectorate bodies and promoting compliance with environmental requirements.”⁷³

Network for Environmental Compliance and Enforcement in the Maghreb (NECEMA) – established in 2006 as an informal network of environmental authorities in the Maghreb region of North Africa. NECEMA's mission is to promote good governance in the region through an exchange of innovative policies and practices.⁷⁴

Capacity building is a critical function of enforcement networks. The Green Customs network, intended to build the capacity of customs officials, has been created and is supported by Interpol, the World Customs Organization, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Basel Convention, and UNEP. The U.S. Environmental Protection Agency offers courses to train regulators and environmental officials in other countries because building regulatory capacity in nations with weak or poorly developed legal systems allows cooperative enforcement efforts to occur. Their efforts stem from the recognition that a global regulatory system based on trans-governmental networks is only as strong as its weakest link.

Box 9-4 contains an example of successful international networking and Box 9-5 describes an example of successful national networking.

BOX 9-4: ROLE OF INECE IN ENFORCING COOPERATION ON THE TRANSPORT OF WASTE⁷⁵

In 2000, 29 containers of chemicals arrived in the harbor of Rotterdam, Netherlands from the United States. In the Netherlands, the company receiving the containers denied being the buyer. The company then claimed that the containers were in transit to Nigeria, but communications between the Dutch Government and Nigeria showed that the receiving company in Nigeria had only a post office box and had no agreement with the Nigerian government to import these chemicals.

Some of the containers in Rotterdam harbor started leaking, and a search by the Dutch Government revealed that more than 3,000 different chemicals were in these contaminated containers. According to information received from the U.S. Environmental Protection Agency (USEPA), the company had received an order from the local environmental authorities to remove “improperly stored wastes” from its warehouse. In 2001, the Netherlands government requested in writing that the company return the leaking waste materials voluntarily to the

United States. The company continued to refuse, so the Netherlands government began to incinerate the dangerous chemicals. The owner and the company were brought to court, and found jointly and severally liable to the Dutch government, USEPA, and the Europe Container Terminals BV, where the waste was stored in Rotterdam. The owner of the company was also found criminally liable.

While official requests were sent to the U.S. government, it was the communications through INECE network channels with USEPA that contributed to solving the case expeditiously.

Similarly, IMPEL has undertaken an enforcement cooperation project to crack down on transnational shipments of waste in the European Union. INECE has worked with IMPEL on this project, creating training exercises to accompany the first edition of the Principles of Environmental Enforcement, in order to build the capacities of enforcement officials attempting to address the challenges posed by illegal waste in ports.

BOX 9-5: GAMBIA'S NETWORK OF ENFORCEMENT PERSONNEL⁷⁶

The Gambia's National Environment Agency established a network of enforcement personnel in all five geographic Divisions of The Gambia to deal with chemicals and hazardous waste. This network seeks to respond to the limited personnel resources within the Inspectorate of the Agency. The network comprises personnel from the Departments of Agriculture, Livestock, Health, and Customs. A Ministerial Decree and Gazette sanctioned the appointment of the personnel. As members of the network, the enforcement personnel act as inspectors for monitoring chemicals. Agency inspectors cover the greater Banjul Area. The members of the network are all charged with the same responsibilities; different members do not cover different chemicals. The Agency, through the Agricultural Divisional Coordinators, is responsible for the coordination of the network.