

PART I: CONTEXT FOR ENFORCEMENT

1. INTRODUCTION

Many countries are taking action to protect public health from environmental pollution and to restore and protect the quality of their natural environment. They have developed or are developing management strategies to prevent or control pollution. Most environmental management strategies involve legal requirements that must be met by individuals and facilities that cause or may cause pollution. These requirements are an essential foundation for environmental and public health protection, but they are only the first step. The second essential step is *compliance*—getting the groups that are regulated to fully implement the requirements. Without compliance, environmental requirements will not achieve the desired results. Compliance does not happen automatically once requirements are issued. Achieving compliance usually involves efforts to encourage and compel the behavior changes needed to achieve compliance.

WHAT IS THE PURPOSE OF THIS TEXT?

This text has been prepared to help individuals responsible for environmental protection in different countries, regions, and localities design and implement compliance strategies and *enforcement programs*—that is, programs dedicated to achieving compliance with environmental requirements. It is intended for anyone involved in program development or implementation, including government officials, nongovernment officials, industry and academic leaders, and private citizens. For convenience, this text refers to these individuals as *policymakers*. The text provides:

- A framework for structuring enforcement programs and compliance strategies.
- Some basic principles common to successful programs.
- A variety of options for various elements of a program.
- Issues to be considered in designing a program.
- Examples of some existing enforcement programs.
- A list of resources that provide further information.

Successful implementation of environmental requirements requires significant effort and forethought. Changes in behavior have always been difficult to accomplish on both a societal and personal level. There is no magic formula for achieving compliance. There is merely trial, evaluation, and response to what works and does not work in a particular setting. Nevertheless, a reliable framework for designing enforcement programs has emerged based on the experience of countries such as the United States, the Netherlands, Canada, Norway, Sweden, and others. This text derives from that experience and will be updated periodically based on additional international experience to enrich the possibilities offered.

WHAT IS COMPLIANCE?

Compliance is the full implementation of environmental requirements. Compliance occurs when requirements are met and desired changes are achieved, e.g., processes or raw materials are changed, work practices are changed so that, for example, hazardous waste is disposed of at approved sites, tests are performed on new products or chemicals before they are marketed, etc. The design of requirements affects the success of an environmental management program. If requirements are well-designed, then compliance will achieve the desired environmental results. If the requirements are poorly designed, then achieving compliance and/or the desired results will likely be difficult.

WHAT IS ENFORCEMENT?

Enforcement is the set of actions that governments or others take to achieve compliance within the regulated community and to correct or halt situations that endanger the environment or public health.

Enforcement by the government usually includes:

- Inspections to determine the compliance status of the regulated community and to detect violations.
- Negotiations with individuals or facility managers who are out of compliance to develop mutually agreeable schedules and approaches for achieving compliance.
- Legal action, where necessary, to compel compliance and to impose some consequence for violating the law or posing a threat to public health or environmental quality.

Enforcement may also include:

- Compliance promotion (e.g., educational programs, technical assistance, subsidies) to encourage voluntary compliance.

Nongovernment groups may also become involved in enforcement by detecting noncompliance, negotiating with violators, commenting on government enforcement actions, and where the law allows, taking legal action against a violator for noncompliance or against the government for not enforcing the requirements. In addition, certain industries such as the banking and insurance industries may be indirectly involved in enforcement by requiring assurance of compliance with environmental requirements before they will issue a loan or insurance policy to a facility.

In some countries, societal norms of compliance have been a powerful force compelling compliance with any form of legal requirement. A system that relies on social norms for enforcement may not be effective in every situation and may become vulnerable to abuse if societal norms break down over time. This possibility has stimulated new consideration internationally of the need for dedicated enforcement programs within government and nongovernment organizations.

WHY ARE COMPLIANCE AND ENFORCEMENT IMPORTANT?

An effective compliance strategy and enforcement program brings many benefits to society (Table 1-1). First, and most important, is the improved environmental quality and public health that results when environmental requirements are complied with. Second, compliance with environmental requirements reinforces the credibility of environmental protection efforts and the legal systems that support them. Third, an effective enforcement program helps ensure fairness for those who willingly comply with environmental requirements. Finally, compliance can bring economic benefits to individual facilities and to society.

WHAT ARE THE COMPONENTS OF A SUCCESSFUL ENFORCEMENT PROGRAM?

An effective enforcement program involves several components:

- Creating requirements that are enforceable.
- Knowing who is subject to the requirements and setting program priorities.
- Promoting compliance in the regulated community.
- Monitoring compliance.
- Responding to violations.
- Clarifying roles and responsibilities.
- Evaluating the success of the program and holding program personnel accountable for its success.

These components form a framework within which to consider issues pertinent to any enforcement program, no matter what its stage of development. The response to these issues may differ among countries, among regions or localities within countries, and among different programs over time. Important to the success of all programs, however, is the need to address all elements of the framework. Each element is part of an interconnected whole and thus can influence the success of the whole program.

TABLE 1-1. WHY ARE ENVIRONMENTAL ENFORCEMENT PROGRAMS IMPORTANT?

- **To Protect Environmental Quality and Public Health.** Compliance is essential to achieving the goals of protecting public health and environmental quality envisioned by environmental laws. Public health and the environment will be protected only if environmental requirements get results. Enforcement programs are essential to get these results.
- **To Build and Strengthen the Credibility of Environmental Requirements.** To get results, environmental requirements and the government agencies that implement them must be taken seriously. Enforcement is essential to build credibility for environmental requirements and institutions. Once credibility is established, continued enforcement is essential to maintain credibility. Credibility means that society perceives its environmental requirements and the institutions that implement them as strong and effective. Credibility encourages compliance by facilities that would be unlikely to comply if environmental requirements and institutions are perceived as weak. The more credible the law, the greater the likelihood of compliance, and the likelihood that other government efforts to protect the environment will be taken seriously.
- **To Ensure Fairness.** Without enforcement, facilities that violate environmental requirements will benefit compared to facilities that voluntarily choose to comply. A consistent and effective enforcement program helps ensure that companies affected by environmental requirements are treated fairly. Facilities will be more likely to comply if they perceive that they will not be economically disadvantaged by doing so.
- **To Reduce Costs and Liability.** Though compliance is often costly in the short-term, it can have significant long-term economic benefits to both society and the complying facility. The healthier environment created by compliance reduces public health and medical costs, as well as the long-term cost to society of cleaning up the environment. Compliance benefits industry by reducing its liability and long-term cleanup costs. Industry may also realize immediate economic benefits if compliance involves recycling valuable materials or increasing the efficiency of its processes. A strong enforcement program may also encourage facilities to comply by preventing pollution and minimizing waste, rather than installing expensive pollution control and monitoring equipment.

HOW PROGRAMS MAY EVOLVE IN DIFFERENT CULTURES AND COUNTRIES

Anyone involved in designing an enforcement program will face certain issues: How should a program begin? What elements are most important? How can the full range of responsibilities be handled with limited program resources? How should the program evolve over time as the program moves to new stages, as policymakers evaluate the success of previous strategies, and as technological and economic developments suggest new solutions? There are no standard answers. Each program must answer these questions for itself based on program resources and culture. This text provides a broad range of possibilities for the different elements of an enforcement program. Policymakers can select from these possibilities to design or modify a program so that it best serves the desired goals within the available resources.

Resources often limit choices. For example, ideally inspectors would be well-trained before they start to inspect. Due to limited resources and/or program priorities, many programs rely initially, if not predominantly, on on-the-job training. The challenge for every program is to make the most effective use of the resources that are available. This text presents many ideas for leveraging program resources to achieve broad results.

Finally, the effectiveness of an enforcement program will depend in part on the degree to which environmental quality is a national, regional, and local priority. Achieving compliance sometimes requires hard economic choices. Public and government concern for environmental quality provide an important foundation for enforcement programs.