Environmental Compliance: The Goal

Protection the Environment Through
Regulatory Enforcement and
Criminal Prosecution
Motivating Changes in Behavior

• Voluntary approaches.
• Economic or market-based incentives.
• Societal - public pressure.
• Legal/regulatory approaches.
Is it a Crime? It’s all lying Cheating and Stealing

Even Environmental Crime comes down to lying Cheating and Stealing.

In most traditional crimes you know a crime has occurred but the investigation needs to find out who did it. In many environmental crimes we know who did it but we need to prove it’s a crime.
Enforcement: Tool to Achieve Compliance

- Enforcement is set of actions governments or others take to compel or encourage compliance
- Enforcement is not an end, but the means to an end
Enforcement As Deterrence

• Creation of atmosphere where people chose to comply rather than violate.
  – Credible likelihood that violation will be detected
  – Swift and certain response to violation
  – Consequence: Sanction or Penalty
  – Perception that first three will happen to you if violation occurs.
ENVIRONMENTAL MANAGEMENT CYCLE

Indicators

Behavior Change

Planning

Goals

Management Approach

Implementation

Developing Requirements

Compliance and Enforcement

Awareness
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Environmental Quality
Sustainable Development
Reduce Risk
Prevent Pollution
Clean Up Contamination
ENVIRONMENTAL MANAGEMENT CYCLE

- Awareness
- Environmental Quality
- Sustainable Development
- Reduce Risk
- Prevent Pollution
- Clean Up Contamination

- Indicators
- Goals
- Management Approach
  - Voluntary
  - Market Based/Voluntary
  - Mandatory

- Behavior Change
- Planning
- Implementation
- Developing Requirements
- Compliance and Enforcement
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Management Approach

Voluntary
Market Based/Voluntary
Mandatory

Developing Requirements

Compliance and Enforcement

Constitution
Laws & Legislation
Regulations
Permits
Licenses
Guidance and Policy
ENVIRONMENTAL MANAGEMENT CYCLE

Goals
- Environmental Quality
- Sustainable Development
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Developing Requirements
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Compliance and Enforcement
- Compliance Promotion
- Compliance Monitoring
- Enforcing the Requirements
- Building Effective Programs
- Program Evaluation

AWARENESS
Planning
Implementation
Indicators
Behavior Change
BASIS FOR COMPLIANCE AND ENFORCEMENT

FACTORS AFFECTING COMPLIANCE

DETERRENCE THEORY
- CREDIBLE LIKELIHOOD OF DETECTION
- SWIFT AND SURE RESPONSE
- APPROPRIATE SANCTION
- PERCEPTION OF THE FIRST THREE ELEMENTS

ECONOMIC THEORY
- WHEN COMPLIANCE BENEFITS ECONOMICS

BEHAVIOR THEORY
- SOCIAL FACTORS
- PSYCHOLOGICAL FACTORS
- KNOWLEDGE AND TECHNICAL FACTORS
- ORGANIZATIONAL BEHAVIOR
ELEMENTS OF A COMPLIANCE STRATEGY/ENFORCEMENT PROGRAM

FRAMEWORK:

- Creating Enforceable Requirements
- Establishing Program Priorities
- Compliance Promotion
- Compliance Monitoring
- Enforcement Response to Violations
- Clarifying Roles and Responsibilities
- Management Accountability and Evaluation
Regulated Facilities

Criminal  Reactive  Compliant

← Less  Degree of Compliance  More →
Civil or Administrative Enforcement

Criminal Prosecution

Criminal Reactive Compliant

Regulated Facilities

Assistance

Inspection

Civil or Administrative Enforcement

Deterrence

Recognition & Reward

Assistant & Publicity

Less Degree of Compliance More
Regulatory Influence on Economic Behavior

• When a person or group of people operating a business have decided to operate in a manner outside of the law or out of compliance. Enforcement and the penalty of needs to be strong enough to out weigh the cost of doing business.

• Works best when Publicizing enforcement results can influence other actors that have not had direct enforcement action.
ELEMENTS OF COMPLIANCE AND ENFORCEMENT STRATEGIES

COMPLIANCE PROMOTION

- PROVIDING EDUCATION AND TECHNICAL ASSISTANCE

  **TYPE OF INFORMATION:**
  - Who is Subject to Requirement
  - What is Required and Why
  - What Changes are Necessary
  - What are the Consequences of Not Complying

  **WAYS TO PROVIDE INFORMATION:**
  - Publications, Hot Lines
  - Training, Conferences
  - Universities
  - Trade and Professional Associations

- BUILDING PUBLIC SUPPORT
- PUBLICIZING SUCCESS STORIES
- CREATIVE FINANCING ARRANGEMENTS
- PROVIDING ECONOMIC INCENTIVES
- BUILDING ENVIRONMENTAL MANAGEMENT CAPABILITY
ELEMENTS OF COMPLIANCE AND ENFORCEMENT STRATEGIES

COMPLIANCE MONITORING

• PURPOSES:
  Detect Violations
  Support Source Compliance
  Evidence for Enforcement Response
  Compliance Statistics

• SOURCES:
  Self-Monitoring
  Inspections
  Citizen Complaints, Area Monitoring

• STRATEGY ISSUES:
  Extent of Self-Monitoring
  Inspection Targeting, Frequency, Announced VS. Unannounced,
  Single VS. Multi-Media, Training
  Access to Information
ELEMENTS OF COMPLIANCE AND ENFORCEMENT STRATEGIES

ENFORCEMENT RESPONSE TO VIOLATIONS

- RANGE OF ENFORCEMENT RESPONSES: TYPES OF AUTHORITY

  **REMEDIAL ACTION:**
  - Impose Compliance Schedule
  - Shut Down Facility
  - Deny or Revoke Permit
  - Require Environmental Cleanup
  - Enter and Correct Immediate Dangers
  - Seek Compensation for Damages

  **INFORMATION GATHERING:**
  - Require Testing, Monitoring, Reporting
  - Impose Labeling Requirements
  - Require an Environmental Audit

  **SANCTIONS AND CONSEQUENCES:**
  - Impose Monetary Penalty
  - Seek Imprisonment -- Jail Terms
  - Seize Property
  - Bar from Government Loans, Guarantees, Etc.
  - Seek Reimbursement for Government Clean Up
  - Require Service or Community Work
  - Supplemental Environmental Projects
### Elements of Compliance and Enforcement Strategies

#### Enforcement Response to Violations

- **Enforcement Response and Penalty Policies**
  - **Principles**:
    - Escalation and Follow Through
    - Timely and Appropriate Response
    - Fair, Consistent Application
  - **Issues**:
    - Civil vs. Criminal Enforcement
    - Circumstances for Sanctions
    - First Response
    - Type of Sanctions

- **Enforcement Process**
  - **Types of Mechanisms**
    - Informal and Formal
    - Civil and Criminal
    - Administrative and Judicial
  - **Supporting the Enforcement Case**
    - Proof
    - Fair Application of Policies
  - **Protecting Basic Rights**
    - Notice
    - Appeals
    - Dispute Resolution
Obstacles to Effective Enforcement?