

4. IDENTIFYING THE REGULATED COMMUNITY AND ESTABLISHING PROGRAM PRIORITIES

INTRODUCTION

Environmental requirements generally cover so many different organizations and individuals that it is usually impossible to identify and respond to all violations or to promote compliance among all members of the regulated community. No matter how generous a program's budget is, it will be small relative to the size of the regulated community. By establishing priorities for detecting and responding to violations and for promoting compliance, enforcement programs can operate as effectively as possible with the given resources. Priorities help target the available program resources to achieve maximum effect. Priority-setting involves answering questions such as:

- How should program resources be apportioned between compliance promotion and enforcement response?
- Which facilities should be inspected? How frequently should inspections be conducted? How comprehensive should these inspections be?
- Which violations should be responded to and how?

IDENTIFYING THE REGULATED COMMUNITY

An important step in developing program priorities is to identify which groups are regulated, and to understand as far as possible their sophistication, ability, motivation, and willingness to comply. An accurate profile of the regulated community helps policymakers focus the compliance strategy (including both compliance promotion and enforcement response) to optimize its effectiveness. It is also valuable for designing compliance monitoring schemes (see Chapter 6). The process of profiling the regulated communities makes the regulated community aware of the requirements, aware that the enforcement program officials know who they are, and aware that they will be expected to comply. This contact with the regulated community is the first step in creating a perception of an effective enforcement program. Thus, the process of identifying the regulated community can be a form of compliance promotion.

The need for and ability to identify the regulated community depends in part on the size and number of sources. If the regulated community consists of numerous small facilities (e.g., gasoline stations), it may be impractical or impossible to perform a comprehensive survey. In such cases, program officials may decide to identify a subset of the regulated community (e.g., only those facilities within a specific geographical area that is highly polluted). At a minimum, program officials can maintain records of complaints reported, which will help identify potential violators.

Important Information

The regulated community may include:

- Corporations.
- Small businesses.
- Public agencies/government-owned facilities.
- Individuals.

Information that can be useful in designing a compliance strategy includes:

- Identifying information, e.g., name of facility.
- Geographic location, e.g., longitude and latitude, street address.
- Type of business or operation.
- Any existing license, permit, or product registration numbers.
- Types and quantities of regulated materials or emissions at the facility.
- Risk associated with the releases (if this has been calculated).

Approaches To Gathering Information

There are several ways to gather information:

- Inventories. The enforcement program can inventory the regulated community either by requiring them to complete informational forms, or by sending inspectors to individual facilities to gather information. One disadvantage of inventories is that they place a resource burden on the government agency and/or the regulated groups. They require personnel time and thus can strain operating budgets. Another difficulty with inventories is keeping the information current. This has proven difficult in some programs. Government agencies will need to decide how often to survey the regulated groups. The need for information must be balanced with the cost of obtaining it. Laws can help ensure the quality of data by making it illegal to falsify data.
- Permit or License Applications. Initial information can be obtained in conjunction with the permitting and licensing processes if the requirements make it illegal to operate without a permit or license.
- Registration. In a registration process, facility managers are required to contact the environmental program to register particular information about their facility or product. The disadvantage of this process is that it may be more difficult to ensure that all appropriate facilities have registered. The degree of success in registering all appropriate facilities may depend, in part, on the consequences of not registering. Facilities will be more likely to register if there is a benefit for doing so (e.g., they get on a list for potential funding or contracts).
- Existing Records. If the facilities have been regulated under a previous or existing program, records about their characteristics and compliance status may be available in program files.
- Other Sources. Other government agencies or ministries as well as industry sources may have information about the regulated community, e.g., sales tax receipts, lists or surveys compiled by trade associations.
- Overflights. Aircraft overflights and/or resultant photographs may be used to inventory facilities subject to environmental requirements. Overflights are also useful to detect facilities that may not have registered for a program or filed required notifications, and to define the relative locations of wastewater discharges, air emissions, hazardous waste management facilities, water supply intakes, populated areas, etc., in specific geographic areas.

INFORMATION MANAGEMENT

However information is gathered, the enforcement program will need to develop a system (computerized if possible) to store, access, and analyze the information as needed. Information management can be enhanced by clearly assigning responsibility for maintaining a complete and accurate database to a specific person or group within the enforcement program.

The system can include not only the identifying information listed above, but also information on compliance (e.g., on compliance schedules, compliance status, violations, and outcomes of enforcement activities) as this information is gathered during the compliance monitoring phase of the program (see Chapter 6). The ability to analyze the information on a facility-by-facility basis is useful to determine patterns of noncompliance. The information may also be used to determine which facilities subject to the requirements have not applied for licenses or permits after being required to do so. Information in the database can be made available to all program personnel who may need it.

CONSIDERATIONS IN SETTING PRIORITIES

When setting priorities policymakers usually balance several important objectives. These may include:

- Protecting and restoring environmental quality and public health.
- Preserving the integrity of the program (i.e., making sure that the administrative and data-gathering aspects of the program are functioning effectively).
- Preserving the integrity of enforcement (i.e., maintaining an enforcement presence).
- Leveraging program resources by focussing on the smaller subset of facilities where changes can have the greatest impact in improving environmental quality and/or creating deterrence.

Often most of the pollution is caused by a small percentage of sources (e.g., 20% of the regulated community may cause 80% of the pollution). A program with limited resources can gain significant environmental benefit by focussing on these sources. However, in cultures where deterrence may also be an important factor contributing to environmental quality, policymakers will need to balance the specific environmental benefits to be achieved by this approach with the potential deterrent effect of broader coverage. Policymakers will also need to balance the strong deterrent advantages that targeting 100% of a particular group for inspection and enforcement will have on that particular group, with the broader deterrence that will result from selective inspection and enforcement of a smaller percentage of a larger group. For example, program managers may decide to inspect all facilities of a certain type in a particular region. At the same time, they may randomly inspect some facilities of that type in neighboring regions. Well-placed publicity suggesting that any facility of that type in any of the targeted regions may be subject to inspection, combined with publicity about actual inspections, could have substantial deterrent effect.

Table 4-1 describes different approaches to selecting individual facilities and groups of facilities for inspection and enforcement. These approaches are not mutually exclusive. They can be combined to develop very specific priorities. For example, program managers may decide to inspect all significant violators within a particular geographic area that have a history of violation. The selection process will be greatly enhanced by having an effective data management system that permits analysis of compliance patterns and comparison of sources.

WHO SHOULD SET PRIORITIES?

Various levels of government (national, regional, provincial, and local) are often involved in setting priorities. One challenge is how to reconcile national, regional, provincial, and local priorities. The relative involvement of these various levels in setting priorities will depend, to a large extent, on the structure of the enforcement program (e.g., whether it is centralized or decentralized, see Chapter 8). National involvement in priority setting helps ensure consistency and harmony among regional, provincial, and local priorities. National involvement improves the climate and potential for cooperation among the regions, provinces, and local governments for achieving their priorities. National consistency also creates a greater potential for harmonization with priorities of other nations.

Involvement of regional, provincial, and local governments in priority setting is critical. Individuals who are running the program at the regional/provincial/local levels will have the best sense of what problems pose the most significant threats to the environment and human health, and of what factors motivate or inhibit compliance. Therefore, priorities will be most meaningful if they take into account national, regional, provincial, and local needs and are flexible enough to accommodate all these perspectives.

COMMUNICATING PRIORITIES

Once priorities have been established, they will need to be communicated to all program personnel and to the regulated community. A broad understanding of priorities improves program efficiency and can promote compliance and contribute to deterrence. Unions, trade associations, and professional journals are good vehicles for communication. In the United States, for example, enforcement priorities, together with specific enforcement case and other information, are widely communicated through the *National Environmental Enforcement Journal*. Program officials must be careful, however, not to communicate information that would lead members of the regulated community to believe they are unlikely to be targeted for inspection and enforcement.

REVIEW AND REVISION

Priorities will need to change periodically in response to such factors as changes in the law and lessons learned under the program. Chapter 9 describes approaches to measuring and evaluating the success of an enforcement program. Policymakers will need to change priorities in response to problems identified during these evaluations to improve the effectiveness of the program.

TABLE 4-1. APPROACHES TO SETTING PRIORITIES FOR INSPECTION AND ENFORCEMENT

PRIMARY GOAL: TO PROTECT AND RESTORE ENVIRONMENTAL QUALITY AND PUBLIC HEALTH

- **Significant Violators.** Program officials may decide to target *significant violators* (i.e., those believed to be causing the greatest harm or posing the greatest risk) for inspection and enforcement. The potential harm or risk is determined by both the quantity and toxicity of facility discharges and emissions or the potential impact of improper use, storage, and disposal of hazardous substances. This approach to targetting can achieve significant environmental benefits if it causes the violators to come into compliance. Significant violators are often well-known facilities. Successful enforcement can have substantial deterrent effect among other significant violators; however, it may not deter less significant violators who may come to believe they are "shielded" from enforcement by the focus on the other violators.
- **Type of Industry or Industrial Process.** Program officials may decide to target for inspection and enforcement those industries that emit high-risk pollutants into air, water, or land. The advantage of this approach is that teams experienced in the processes, practices, and materials of that industry can be formed to conduct inspections and to follow through on enforcement actions. This approach can also create a deterrent effect as members of this facility group learn that they will likely be subject to enforcement if they are out of compliance.
- **Geographic Considerations.** Geographic areas where there are substantial risks to human health or the environment can be targeted for inspections and enforcement. For example, program officials could decide to inspect and take action to achieve compliance among all facilities within a particular geographic area to achieve overall environmental quality goals for the area.
- **Type of Emission.** Particular types of chemicals or waste streams may pose substantial risks to human health and/or environmental quality. Program officials may decide to reduce exposure to these substances by targetting for inspection and enforcement all facilities that emit these chemicals.

PRIMARY GOAL: TO PRESERVE THE INTEGRITY OF THE PROGRAM

- **Reporting and Recordkeeping.** Inspections could be targeted to ensure that reporting and recordkeeping requirements are being followed. These inspections would not directly influence environmental quality, but do help ensure that the program has access to the information it needs for decision-making and strategy development.

PRIMARY GOAL: TO PRESERVE THE INTEGRITY OF ENFORCEMENT

- **Less Significant Violators and Lower Risk Areas.** Some selective enforcement activities may be allocated to less significant violators or areas with lower-risk emissions to maintain an overall enforcement presence.
- **Compliance History.** Analysis of compliance data may reveal patterns of noncompliance by particular facilities or types of facilities. Program officials can target violators exhibiting a particular pattern. For example, program officials may decide to specifically target repeat violators to demonstrate the program's commitment to keeping facilities in compliance once an enforcement action has been taken.
- **Follow-up Inspections and Enforcement.** Follow-up inspections are inspections at facilities that have agreed to take certain actions to correct a violation or otherwise improve environmental quality. Follow-up inspections (and enforcement, if needed) are conducted to ensure that the facility is meeting its commitments and achieving compliance.