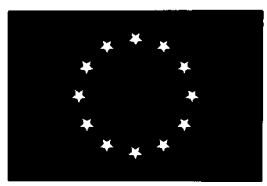
PROCEEDINGS

VOLUME II

INTERNATIONAL CONFERENCE ON ENVIRONMENTAL ENFORCEMENT

September 22–25, 1992
Budapest, Hungary



COMMISSION
OF THE EUROPEAN
COMMUNITIES

Ministry of Housing,
Physical Planning,
and Environment (VROM)
The Netherlands

INTERNATIONAL CONFERENCE ON ENVIRONMENTAL ENFORCEMENT

CONFERENCE PROCEEDINGS
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Budapest, Hungary

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These Proceedings, Volume II, contain materials presented at the second International Conference on Environmental Enforcement, September 22-25, 1992 in Budapest, Hungary. It includes opening and closing speeches, additional papers, summaries of discussions, the Conference evaluations and a list of participants. Volume I of these Proceedings was distributed during the Conference and contains papers prepared by speakers, panelists and several participants.

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PREFACE

These Proceedings, Volume II, contain additional materials developed following the second International Conference on Environmental Enforcement held September 22-25, 1992 in Budapest, Hungary. Volume II of the Conference Proceedings contains papers that were not available at the time Volume I was printed. In addition, the full text of the opening and closing speeches, summaries of the discussions on the Conference themes, results of the participant evaluations and a list of all actual participants. Volume I of these Proceedings contains papers presented at the Conference by speakers, panelists and participants and was distributed during the Conference. Both Volumes of the Proceedings will be widely disseminated to country environmental officials and NGO's throughout the world.

The Budapest Conference is part of an ongoing effort to develop effective approaches in different settings to achieve widespread compliance with our very important environmental program requirements. Speakers with substantial experience in different aspects of compliance with and enforcement of environmental laws were selected.

On behalf of the Executive Planning Committee, we look back on a successful Conference.

The Conference Staff

15 December 1992

CONFERENCE PURPOSE AND GOALS

The International Conference on Environmental Enforcement held September 22-25, 1992 in Budapest, Hungary responded to the growing recognition of the importance of environmental concerns both domestically and on a global scale. The heightened interest in environmental enforcement -- broadly defined as the range of actions governments and others may take to encourage and compel compliance with environmental requirements -- stems from a desire to ensure that environmental requirements, expressed in policies, laws and permits, lead to real improvements in environmental quality. Efforts to achieve widespread compliance and enforcement of requirements also provide an element of fairness to the regulatory process, instill credibility to government institutions, and prevent short term economic competition among regions and between facilities from undermining longer term economic and environmental goals.

The Conference focused on the development and enhancement of domestic environmental enforcement approaches[1] in Central and East European countries. The public and governmental leaders in these countries have strongly expressed the need for economic growth in harmony with concerns for public health and a quality environment. As the exchange should be broadly useful to other nations, representatives from other regions around the globe were also participating in the Conference. Planning of the Conference was guided by an Executive Planning Committee. The Committee included the three sponsors as well as the Environmental Ministries of Poland, the Czech and Slovak Federal Republic, and Hungary, the Regional Environmental Center in Budapest, the United Nations Environment Programme IE/PAC, and Hungary's Public Prosecutor.

Sharing experiences and strategies among nations for developing sound domestic compliance and enforcement approaches has already proven valuable as attested by responses to the first International Enforcement Workshop held in Utrecht, the Netherlands, in May 1990. Despite differences in culture and legal systems, the experience of participants at both the 1990 Workshop and the 1992 Conference has been that environmental enforcement theory and practice has basic elements which seem to transcend these differences among nations and peoples. It is not only possible but essential that nations seek to learn from each other what works and does not work to achieve widespread compliance with environmental requirements in different settings. Gaining compliance is an evolutionary process, and no nation has developed an approach which cannot benefit from continuing improvement. The Conference explored different approaches, sharing experiences within a general framework, but did not promote any single model for achieving compliance with environmental requirements. Conference participants considered the least resource-intensive approaches to achieving compliance success and explored integrated as well as single program focused compliance and enforcement activities.

[1] Consideration of issues related to enforcement of requirements and agreements that are global and transboundary in nature will be limited to a discussion of commitments of individual countries as they are adopted as domestic laws or requirements.

The structure and content of the Conference was designed to provide a pragmatic exchange with open appraisals of advantages and disadvantages of different approaches, opportunities for practical follow-up and ongoing resource materials for those interested in enhancing environmental compliance and enforcement. The Conference seeked to build institutional relationships to establish responsibility, provide opportunities for leadership, and support networks of experts among governmental, public, and private entities necessary to effectively achieve environmental compliance. The Conference served policy-makers from both within government and outside of government. Within government, the Conference had representation from national, regional and local governmental units, as appropriate to environmental enforcement and implementation responsibilities in each country, as well as current and potential leaders in both legal and technical aspects of environmental programs at the mid to senior management levels. It also involved selected non-governmental organizations (NGO's) and industry representatives.

CONFERENCE THEMES

The Conference addressed the following themes over a four day period:

Theme #1: Context for Enforcement.

An introduction to the importance of compliance and enforcement concerns, a general framework for designing effective environmental compliance and enforcement approaches and alternative approaches within that framework including designing enforceable requirements, setting priorities, compliance promotion, compliance monitoring, enforcement response to violations, establishing clear roles and responsibilities, and evaluation of and accountability for success.

Also addressed were the implications of membership in the European Economic Community and community of nations for environmental compliance and enforcement and the current status of enforcement in Central and Eastern Europe.

Theme #2: Designing Enforceable Environmental Requirements.

An assessment of the importance of ensuring the enforceability of environmental laws and requirements as they are developed with examples of problems that have been encountered because of poorly designed requirements, and alternative approaches to enhance the likelihood that requirements will be enforceable when established.

Theme #3: Developing an Effective Compliance Monitoring Capability (e.g. Inspection Capability).

An exploration of different organizational approaches and strategies for monitoring compliance, focusing on inspection capabilities, including whether and how to develop an inspectorate and whether to inspect on a single or multi-program basis.

Theme #4: Developing Authorities and Legal Enforcement Capabilities to Respond to Violations.

An exploration of different authorities and approaches to legal enforcement within different legal settings and what is necessary to employ and develop those authorities effectively.

Theme #5: Economic Development and Ownership Issues.

An exploration of the economics and realities of enforcement in three settings:

1) different approaches towards enforcement at government owned and operated installations;
2) approaches to enforcement when faced with economic hardship, and

3) how to address the new opportunities for enhanced compliance presented by privatization of industry and changes in ownership.

Theme #6: Applications to a Particular Environmental Problem: Solid and Hazardous Waste.

An integrating session that combined all elements of the compliance and enforcement framework, exploring different approaches to compliance and enforcement in different countries and settings. This theme explored more fully the potential of pollution prevention as a tool to enhance compliance and as an enforcement response. This discussion covered the total problem of controlling waste including controlling domestically, the transport of hazardous waste from other nations.

Theme #7: Public Disclosure and Citizens' Role in Enforcement.

An exploration of the role of public disclosure, citizens and others in the enforcement process and their implications for achieving more widespread compliance.

OPENING SPEECHES

MR. SANDOR K. KERESZTES, Minister of Environment and Regional Policy, Hungary

Ladies and Gentlemen,

It is my special honor to welcome you on behalf of the Hungarian Government to this Conference aimed at a useful and important exchange of views on environmental enforcement. The fact that governmental and other experts involved in this particular matter as well as representatives of industry, NGO's, international organizations and other institutions are attending from about 30 countries of the world clearly demonstrates that in our changing life environmental protection is given a high priority.

This Conference will usefully contribute to the efforts of the developed countries in assisting others, especially those of the Central and East European Region, as a result of the professional and financial support given generously by the US and the Dutch Government and the Commission of the European Communities. All important implications of environmental enforcement will be discussed here, in an open, fair and hopefully fruitful manner.

As for my country, the traditional Hungarian law and the various recent debates on a renewal of environmental law does show certain contradictions. Public hearings for example, as important tools of legal practice are not in use in the Hungarian law in general and even in environmental protection fields they have been practised to a relatively limited extent in the case of EIA's. The latter should however significantly be broadened thereby fulfilling our obligations undertaken by having signed various international conventions.

I would also emphasize that Hungary is to adopt and enact the relevant Directives and other environmental provisions of the European Communities within the next few years. This is our main direction in environmental legislation whilst we remain open to any useful information on the legal and administrative practice followed in other countries.

We are recently preparing a new Act on the protection of the environment hopefully coming into force in 1993. That Act will be based on the concept of prevention and the principles of sustainable development. Its drafting has been assisted by a detailed proposal of scientific value prepared by an independent team of the Central European University, Budapest. We also have been and are taking into account the opinion of the local government and NGO's and groups concerned about the environment when drafting the Act.

It is clearly reflected in that draft Act that the establishment and operation of a market economy is only possible in a manner not failing to improve the state of the environment as well.

This is in harmony with the Hungarian Constitution in which the rights for a health of highest level and for a healthy environment have been stipulated as well as the assertion of those rights.

All these are meant as state obligations and preferences to be realized by integrating environmental priorities in the tax, credit, price and customs system as well as by improving our capabilities to monitor environmental compliance and by further developing our related institutions.

Ladies and gentlemen,

Having a look at the recently existing Hungarian law, theoretically enforceable environmental requirements in themselves do not seem to be enough to achieve compliance. The social and economic interests in the period of the previous political regime did not prefer environmental protection and the recent desires to achieve a better living standard in a new, market economy have been appearing as a strong one that again does not show a preference towards environmental interests.

On the other hand, the enforcement of environmental interests has not become a juridical practice under the Hungarian Civil Code although various legal instruments still in force on the protection of the environment would provide such a possibility.

The same can be mentioned in relation to environmental enforcement under the Criminal Code where the uncertainties concerning responsibility for compensation and damage can be regarded as the main sources of failures.

Consequently, administrative tools have been used in a vast majority of cases where environmental pollution appears as a problem to be settled. This will hopefully undergo changes as a result of the transition process for two basic reasons. First, according to the new law on the local governments those bodies have the responsibility for the protection of the built and the natural environment as well. Statutory responsibility of the local authorities that were operating in the previous regime almost completely under a central conduct has significantly been changed: although two-thirds of the 130 kinds of first instance sphere of authority has remained with authorities of central subordination, one-third have relied upon the local governments. Second, since the reconsideration of the administrative decisions will be made in the future not by authorities of higher level but in a judicial way it can be predicted that the environment approach will be much stronger in the judiciary practice and as a result of that the positions of environmental protection will also become stronger in the hierarchy of social interests. A responsibility of the State however in environmental matters has to be given first priority. A legal framework of the tasks should be established by the State in a way integrating environmental concerns in economic and social planning and decision-making at all levels. To that end the new Hungarian environmental protection Act will not only place an emphasis on environmental impact assessment as a tool of prevention, but also, my Government does and will create as favorable conditions as possible for investments that can contribute to an economic growth and an improvement of the environment as well. I presume, all these are and will be in harmony with the various deliberations on this Conference.

I am especially pleased to see that also citizens' role and public disclosure are on the agenda since in this respect we have taken the initial steps by now. Another similarly crucial point is privatization and its environmental implications, a well-known problem. I am convinced that this Conference can help the countries in transition in such respects also.

Ladies and Gentlemen,

With these ideas in mind I welcome again the sponsors, participants and organizers of this important Conference and allow me to wish you a fruitful, really successful work.

Thank you.

MR. GABOR DEMSZKY, Mayor of the City of Budapest

Ladies and gentlemen,

I would like to welcome the participants of the Conference. As Mayor of Budapest it is a great pleasure to me that our city is the host of such an internationally renowned event, especially if the topic of discussion bears as crucial significance to all of us as in the case of this Conference.

Environmental protection is not only an issue of utmost importance, it is a field where problem solving depends on an ongoing international exchange of information and the provision of assistance.

The democratic reforms in Central-Eastern Europe changed the political map of Europe with unexpected speed. The restructuring of the economic systems in the countries of the region has also begun, resulting in large-scale openness towards Western markets. While the socialist economy was worshipping quantitative data on production, no expected quality of life was a principal. The present half-way-house to a true market economy is dominated by certain attributes of infant capitalism together with certain left - overs of the communist hangover. Neither one is sensitive to environmental hazards. While in Western countries environmentalists have been taking a stand for decades now, in Eastern Europe environmental protection were dispersed and not able to foster environment prone thinking because of the general anti-democratic nature of the state and communism busy preventing the consolidation of a civil society. Therefore, environmental protection movements have yet to be organized at a national level to achieve their goals. With a relatively weak environmentalist movement and government officials inexperienced in the field there is always danger that Western investments bring technologies to the area that are extremely destructive to the environment, even though it is a basic human right of the residents to live in a healthy, clean environment.

It is our wish and common interest that the development of the former Socialist countries bring with it change for the better in environmental conditions. This requires strict legal measures for the protection of the environment and the consistent enforcement of regulations on local, national and international levels at well. As phrased by the Congress on Environmental Protection in Rio, cities and local governments must play a key role in most urgent problems of environmental protection. This is especially true because cities have access to accurate information. This is where the needs of society for economic development and a cleaner environment are felt. This level has the means to solve problems closest to where they arise and when they arise with the cooperation of society.

This problem solving process using a prevention-oriented approach is a part of the so-called Third Generation of Local Environmental Management, under which both natural and human conditions and processes are understood, planned and managed in an integrated way.

In the third generation approach decisions would factor the carrying capacities of the ecosystem to prevent severe damage that may cause a break down in the system. The efficient use of resources would be supported and the methods of recycling the waste by-products of the system would be developed. A flexible and more adaptable infrastructure is required that is designed to reduce resource demands and to develop recycling.

The democratically elected Municipality of Budapest will be celebrating its second birthday in the next few days. By now the legal framework of our operation is more or less structured and we became aware of our obligations. We now also have some experience about the difficulties caused by the unreasonable distribution of competencies and responsibilities in dealing with environmental problems. Please allow me to say a few words about the special situation and difficulties of Budapest.

At the turn of the century Budapest was one of the most dynamically developing cities of the continent. Today the city is impoverished and run down, we must face problems that should have been dealt with decades ago. Still now we have to set down our priorities and ways to protect our environment.

The condition of Budapest's environment is now nearing a critical stage in spite of some recent developments in certain areas. Air and noise pollution in the city has reached unprecedented figures. The dumping of communal waste after 1995 is unresolved. The protection of existing and potential green areas is a daily struggle as housing construction, investment and enterprises try to expand over the still untouched areas. In the inside districts the aged public utility works are nearly incapable of serving rising demands, these districts concentrate one-fifth of the city's population and one-fourth of the industry. Intra-Hungarian and trans-European transit traffic crosses the center of the city of Budapest and the transportation network of the entire country causes large-scale pollution in the capital city.

In principal it is only natural that all members of healthy democratic society should feel responsible for their environment. In such an ideal situation all people would force themselves to refrain from damaging the environment. Unfortunately, this is only an ideal. Modern society itself performs certain activities that by nature cause ham to the environment. On the other hand environmental awareness is not at a high enough level. Developing an awareness is a process that will take may generations to complete, using all powers and resources of education. The role of self-organizing social movements is quite significant in that the actions of their volunteers draw attention to environmental problems and thus aid the development of a so-called eco-morality.

An important question in Central-Eastern Europe today is building civil initiatives into the formal power structure in a way so that they retain their independence and active capabilities in spite of the centralizing efforts of the ruling powers. The large-scale independence of Budapest district governments is aimed at raising the level of autonomy - which is a laudable goal from the point of view of democracy. This independence, however, is that which hinders the healthy working mechanisms of the capital city. There are always certain responsibilities in the life of a metropolis where the decentralization of authorities impedes the normal operation of the city.

The municipal system of Budapest is a two-level system. The relationship between the city and the individual districts is such that Municipality of Budapest is only considered the "twenty-third local government" of the city. Most of the environmental problems in the city cannot be solved at the district level, at the same time the municipality does not have the necessary authority. This two-level municipal system creates a special situation, neither the districts with their shrinking range of authority nor the city with her non-existent authority are able to develop or protect a healthy, human environment. At the same time the central government organs do not have access to the specifications necessary to assume responsibility in this field.

The city of Budapest has plenty of duties in order to create a healthy environment for the citizens but law does not provide all authorities promised enabling the Municipality to serve the demands of the city. The laws on local governments proclaimed has the protection of the built-in and natural environment is the responsibility of the Municipality of Budapest, delegating by the same taken the authority necessary to do the job to the districts.

The environment inspectorates operated by the central government and the definition of the local governments' rights was aimed at regulating activities threatening local environmental protection. Although the district local governments have the right to define higher air cleanness and noise reduction standards in the protected areas they do not have the power to enforce these. Local governments may only take action in the case of service-originated environmental damage, even though it is clear that the population suffers mostly not from these, but from the damage resulting of transportation and industrial activities, for which the central government organs are responsible.

The protection of green areas which do much to improve the quality of life in the city is also divided. The municipality has authority over larger parks, avenues and cemeteries while the districts have authority over other parks and public squares. Green areas with significant conditioning effect, however are not regulated by local authorities as these are registered as national defence areas or are connected to transportation areas. The situation is made even worse by the fact that licences for establishments on larger green areas and public squares are given by the local authorities in the area and the Municipality has no say in the matter. In addition to this limited budget of the districts makes it necessary that the districts try to finance development by "selling" existing and potential green areas. The most "fashionable" trade agreement is that the investor promises development in exchange for the chosen green area that the district would be unable to accomplish (such as parking garages).

Protection against rodents is also a district responsibility even though this would require a city-wide coordinated efforts as any actions on the part of individual districts at different times would be ineffective.

The municipality has no say in the licensing of construction that may cause problems in the entire city's environment, this is the authority of the district. In an industrial area even a nuclear reactor can be built upon the district's decision. At the same time investments that would serve the whole city might be torpedoed or impeded by the district, such as construction of a waste-burning plant, waste-water cleaning works or new waste-holding areas.

The city is in no better position with the possibility of planning and preventive environmental protection. The general settlement plan of the city is approved by the Municipal Congress while the detailed plan by the district representative bodies. In principal the detailed plan is developed from the general one but in actuality there are many differences. The districts, as individual local governments may work out their own plans according to their own conception of the district.

The setting-up of enterprises or firms is licensed by the districts or the inspectorates and it may happen that the possible environmental damage is caused in another district, in which case the Municipality has no way to take action, having no second-degree authority to revise decisions of the district or the inspectorates.

The problems listed illustrate the difficulties the local governments face when taking care of responsibilities described by law, which cause friction between the municipal governments and the central government organs. It is the duty of state government to describe the responsibilities of the municipal system and to provide the conditions of operation. It is our hope that the environmental protection law no being prepared will clarify the duties of the local government, give special authority to the Municipality of Budapest and give the local governments a change to ensure a healthy human environment for the inhabitants of Budapest.

MR. HANS ALDERS, Minister for Housing, Physical Planning and Environment, the Netherlands

Ladies and Gentlemen,

First of all, I want to thank the Hungarian minister for the Environment for hosting this Conference. He and his staff did a great job in making it possible to organize this important event.

It is a great pleasure and honor for me, as the Netherlands Minister for the Environment and one of the three co-organizers, to welcome all of you to this Second International Enforcement Conference. The first one took place in May 1990 in the Netherlands, and it is my belief that it was a great success. I hope and believe that Budapest 1992 will be even more successful.

Environmental policy in the nineteen-eighties got a higher priority in most countries. Especially in the United States and the Netherlands, and now also within the European Community. Last weekend the EEC-ministers for the Environment met in Glasgow, Scotland, and Enforcement was one of the themes that were dealt with. In the Netherlands enforcement became a real theme with the implementation of the National Environmental Policy Plan in 1989/1990.

We are all together here because we think enforcement is important, it even is indispensable for a good environmental policy. But why is enforcement that important? Because the quality of the environment as a whole depends substantially upon an effective enforcement-policy. Uneven implementation of the environmental policy undermines the credibility of legislation and of government, and adversely affects the environmental situation. Compliance and enforcement need to be taken into account in the earliest possible stage of the development of environmental legislation. That is what we are working for in the Netherlands and, as I hope, soon also in the EEC.

Let me tell you something about the enforcement policy in the Netherlands. You will get more detailed information from Mrs. Bierman tomorrow, but let me show you the headlines.
Enforcement in the Netherlands is not only implemented by the central government, but also by provincial and local governments. We have various instruments to implement and carry out the policy plans. Information, taxes and levies, subsidies, legislation and other regulations.
But regulation by itself is not enough. If they are not complied with, all the government's conservation efforts are in vain. Environmental policy and regulations would be paper tigers, the governments environmental policy will lose its credibility and, worst of all, the environmental pollution will absolutely not diminish. It is therefore essential that the government, at all levels, will monitor compliance and, where necessary, take timely and appropriate steps to enforce environmental regulations.

Who in the Netherlands have enforcements jobs? In the first place, the police (local forces and general police branches) do a competent job of detecting environmental violations. The public

Prosecutor is the exclusive authority to bring these cases to court. On the other hand, the administrative authorities are responsible for compliance monitoring and administrative and civil enforcement. In the Netherlands, this authority is not only responsible for monitoring, but is also entitled to enforce that law. The municipalities are responsible for the enforcement of nearly all of the 400.000 business in the country. The provinces deal with about 3.000 big plants, including landfills.

We stimulate close and structural cooperation among the municipalities and the provinces. To realise this, we are building an enforcement structure with all participants, that has been laid down in a letter to Parliament. Main features are:
- all participants marching together;
- realizing an integrated, multi-media approach;
- administration and police/Public Prosecutors marching together, not two separate circuits;
- municipal cooperatives.

Information and sharing the know-how play an important role in the enforcement area in the Netherlands. They have proven to produce results, it really works! If you want to be convinced of that, please have a look at our stands in these conference rooms.

Enforcement not only is a matter of national interest. On the contrary, most enforcement problems we have in the Netherlands are caused by the fact that there are so many differences between the environmental policies in the European countries. Enforcement of waste transports for example is only possible if we have one definition of waste. At this moment, real waste still can be defined as "Wirtschaftsgut".

For this reason, we in the Netherlands, not only the Environmental Inspectorate of my Ministry, but also other enforcement agencies, have a lot of contacts with similar organisations in other countries. In this way we want to stimulate an international cooperation in the field of enforcement. These contacts are growing now that more and more statutes are adopted about internationally marketing substances, the international transports of waste etc. All these statutes have to be enforced! Contacts are increasing between neighboring countries, but also within the EEC and with some Central- and Eastern European countries, the United States, Interpol etc.

Within the framework of the European Community, the Netherlands' government stimulates the attention of the European Community members for giving higher priority to compliance monitoring and enforcement. In the EEC-Environmental Council Meeting of last December, the need for further development of compliance and enforcement was stressed. The Council acknowledged the need for enforceability of environmental legislation. It agreed that it would be desirable as a first step to establish a network of representatives of national authorities and the EEC commission in the field of enforcement. In 1992 the establishment of such a network has been started.

Enforcement is also one of the themes in the Memorandum of Understanding, we have with different Central and eastern European countries. The development of integrated environmental control has priority for most of these countries and support from the Netherlands is often requested. We therefore decided that one of the criteria for environmental cooperation with

these countries is the strengthening of the environmental management activities, including enforcement.

International enforcement is important for the Netherlands, not only because we have so many contacts and our country is so vulnerable for global environmental pollution. It is also important because the acceptance of environmental regulations for both the citizens and the companies will be higher when they know they will be in every country regulated and enforced in the same way. And it will also mean that trade distortions between countries can be prevented, for every plant or business the same rules are applying. Many kinds of pollution can only be dealt with if we have international cooperation in the field of environment, I already mentioned the waste transports.

And last but not least, international cooperation is very useful because we can all learn from each other. We can exchange experiences and knowledge. This conference's goal is not to produce an enforcement blue print for all countries involved. It's goal to identify some principles every participating country or organization agrees with.

We had a good conference in Rio de Janeiro about the relation between environment and development, about sustainable development. But now, we have to put these results in practice. In my view, this cannot only mean new ideas, it will also mean good enforcement of everything we have to do. We need a good and strong enforcement structure if we want to make the UNCED conference a real success. Therefore, we need good agreements, identical principles.

Ladies and gentlemen,

I hope this Conference will have that result. We paved the way two years ago in the Netherlands. Budapest will give us the possibility to further that work. Undoubtedly, many ideas will be presented these days. It is my hope that the good ones will be really put into practice. The Netherlands will go on, by taking initiatives. But we do not want to lose the contacts with all of you. We will give you the support you need, and help you where ever it is possible. I wish you a very successful Conference and a good time in this beautiful city of Budapest.

MR. HERBERT H. TATE Jr, Assistant Administrator for Enforcement, United States Environmental Protection Agency

Good Morning Ladies and Gentlemen, Mr. Chairman.
Thank you for your gracious Introduction.

I would like to offer a special note of appreciation to Minister Keresztes and to Mayor Demszky for their warm and gracious hospitality. I would also like to thank my fellow sponsors Minister Alders and Mr. Brinkhorst, represented today by Mr. Beck. I want to reserve particular thanks to my co-chair from the Netherlands, Pieter Verkerk. Pieter as co-chair for the first two International Enforcement Conferences epitomizes his country's long tradition of environmental leadership.

Today we have come together at this Second International Conference on Environmental Enforcement to continue the work begun two years ago in Utrecht, the Netherlands. Despite the diversity of our national origins, we have come together with one common resolve: a shared commitment to establishing environmental protection and the recognition of the importance of enforcement towards that commitment. Understanding the growing convergence of international trade with environmental protection has presented us with a significant opportunity for bridging the divide between economic development and environmental values. In 1992, there were two particular international agreements which underscore this point. Through Agenda 21 of the United Nations's Conference in the Environment and Development held in Rio, this past June, the world community recognized the importance of developing compliance and enforcement programs with environmental program implementation and institution building. Second, the North American Free Trade Agreement (NAFTA), called by Administrator William Reilly "the greenest Trade Agreement ever ...", explicitly called for economic development to take place in an environmentally sustainable manner recognizing that enforcement of environmental laws and regulations was the guarantor for this development.

Strong enforcement while deterring non-compliant behavior also has the effect of encouraging active management for environmental protection. Our experience in the United States is illustrative of this point. President Bush at the beginning of his Administration in 1989 promised to make "polluters pay ..." and pay they have. The President's enforcement program has achieved in the areas of penalties, criminal case referrals and successful prosecutions more than all the other previous Administrations combined in the preceding 18 years. In the past three years alone, under the direction of Administrator Reilly, EPA has collected more civil and criminal fines and penalties, an amount exceeding $200 million dollars, than the Agency had ever collected in the past eighteen years. This past year alone we anticipate an additional 100 million in civil and criminal fines and penalties to be issued against environmental polluters. Also, EPA, along with the Department of Justice, in the past three years has referred and successfully prosecuted over 50% of all criminal cases ever prosecuted in the Agency's entire 21 year history, with a significant number of individual offenders, including company presidents and other high level corporate officials, receiving jail sentences.

In addition to criminal prosecutions, fines and penalties, enforcement has been used to require industry to correct its own non-compliance through enforcement settlements. Preliminary reports for this past year alone indicate that regulated industries in the United States have spent or will spend over 200 million dollars to correct environmental violations or engage in pollution prevention projects as a direct result of enforcement settlements.

Finally, in the area of cleaning up old and long-standing hazardous waste sites, EPA's "enforcement first" program, under the Superfund Hazardous Waste Cleanup Statute has recovered from private companies and individuals over $1 billion dollars per year, for each of the past four years to clean up old long-standing hazardous waste sites which are now being completed at the rate of one site per week.

The result of this aggressive and vigorous enforcement program is industry's recognition of the great potential economic liability as well as individual personal liability for poor environmental practices. These direct costs resulting from civil or criminal penalties, the costs necessary to remediate a site or a plant or facility, as well as the indirect costs associated with lengthy litigation, all are causing industries to develop new and improved ways to manage their methods of operation and handling their waste. Industry is becoming "encouraged" toward active management for environmental protection and waste minimization. The concept that "good business" and "good environment" are compatible is beginning to take hold with our business community. Although in the past our program of enforcement was strictly a "Command and Control" regulatory-deterrent approach, we are now moving toward an approach of complementing our enforcement program with more market-based incentives and voluntary approaches to provide industry with incentives to go beyond mere compliance so they may engage in pollution prevention and waste minimization programs to a greater degree. These approaches are finding acceptance with industry without compromising our vigorous enforcement efforts. But we must remember that incentives are not meaningful incentives without deterrence through effective enforcement.

Given the current worldwide decline in many country's economies, the challenge facing all nations is striking an effective balance between deterrence and incentives in their environmental protection programs. Our goal should be to develop a strategy which clearly will "make polluters pay" but one that will also reward good corporate citizenship and enlist the substantial resources of private industry to help leverage the staggering costs associated with providing meaningful environmental protection.

There is no single ideal enforcement mode. Rather, enforcement will generally reflect the economic conditions and culture of a society. Indeed, environmental enforcement may pose unique challenges for nations which are in the process of transforming their economic systems. Whatever the specific circumstances, enforcement will be an essential component.

I think you will find that the themes we have struck for continuing to improve the U.S. program have applicability to countries both which are developing environmental enforcement programs as well as for those countries with mature programs.

Nations with limited financial and technological resources will discover that the adoption of clearer and more "enforceable" regulations and permits will reduce enforcement costs and increase their effectiveness toward regulation. Investigatory techniques such as strategic targeting through inspections and enforcement response as well as multi-media approaches to enforcement will help countries to leverage limited environmental resources for maximum, efficient environmental results, risk reduction and deterrence. Creative enforcement settlements calling for corrective technology changes, cleanup and remedial action, or pollution prevention and reduction projects can reach beyond the deterrence created by fines and penalties to require industry and companies to invest in sustainable development for their nation's future.

The U.S. is committed to sharing our own experiences, and also to respecting and exploring the many approaches each nation may take to achieve compliance. During the next several days, we will mutually work to develop effective environmental enforcement and environmental assessment capabilities, and in the process, to improve our own programs.

We have a lot to do ... now let's get to work.

MR. LAURENS JAN BRINKHORST, Director General for Environment, Nuclear Safety and Civil Protection, Commission of the European Communities

This speech was presented by Mr. Hans Beck, EEC-representative in Budapest

Mr. Chairman, Ministers, ladies and gentlemen,

It is an honour and a pleasure for me to conclude the list of distinguished speakers and welcome you to this conference. You might imagine that the last weeks have not been easy and smooth for EEC institutions and for their political agents.

Therefore, we from the EEC Commission are all glad on the outcome of France's referendum which hopefully will bring the EEC closer to European union and allow us to set up systems on this European continent which are adapted to the political, economic and social constraints of the 21st century. The European economic community has successfully started, some 35 years ago, to replace national egotism by constructive, progressive cooperation and integration. This undertaking has never limited itself to free trade and economic joint venture. From its beginnings, it rather tried to go beyond nationalism and create a community of states, regions and citizens. The success which the EEC had, made other states apply for membership doubling the number of member states. Among the new members were not only prosperous countries; as regards some of them the EEC was told that they would soon become communist and should therefore better be kept outside than integrated. As you know, the EEC did not follow that advice. Today all signals indicate that their integration is on a good way.

Since the EEC is more than a free trade area it does not satisfy itself with the promotion of economic objectives. One of the areas, where the EEC has been active and which do not concern free trade, has been the environment, where policy was developed during the last 20 years. The EEC and all its member states reached the conclusion that environmental measures were necessary at community level in order to protect, preserve and improve the quality of the environment, and while in the beginning of the EEC environmental policy implementation and enforcement were left almost entirely to member states, it soon turned and that compliance with community environmental standards required EEC monitoring.

This explains why the EEC Commission decided to actively support this present conference. We firmly believe that environmental rules need adequate enforcement. We firmly believe that an economic community which is on its way towards a more political union needs environmental standards to make economic growth sustainable. We firmly believe that where the EEC enters into economic relation with other states, care must be taken that economic activities do not destroy or adversely affect the environment in these states.

A French poet, La Fontaine, told us some time ago that a hungry stomach has no ears. If we look around, we often find that individuals, economic agents or even governments sometimes believe that economic development should rank first and that one should forget about environmental standards and their enforcement. Until a decent economic development has been reached, the EEC commission is not of this opinion. It has just suggested a fifth environmental

action programme which makes the integration of environmental requirements into other policies a top priority for the years to come. The commission, indeed, is of the opinion that sustainable economic growth may only be reached by such an integration of environmental requirements into economic considerations. And the difficult state of the environment in parts of central and eastern Europe is less due to the fact that there were no environmental rules and standards, but rather to insufficient integration into economic requirements and to insufficient enforcement.

I hope that this conference promotes mutual understanding, leads to better enforcement of environmental rules and thus to a better state of the environment. Good luck to all participants.

UPGRADING ENVIRONMENTAL LAWS IN FRANCE ACCORDING TO THE REQUIREMENTS OF THE EEC

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1. INTRODUCTION

The EC directives set forth obligations to the member States to be met through their governments. These governments must enact regulations for their citizens in order to provide, for example, the protection of bird species within a designated area, or to guarantee that waste disposal will not cause harm to the environment, or to ensure that waste producers will observe the applicable environmental requirements. Governments must also establish mandatory limits on maximum concentrations of pollutants emitted into the water or the air. They must appoint qualified authorities to oversee the practical application of the rules. They must establish administrative procedures, measurements, analysis methods, etc...

The enforcement of EC measures takes place through German, English, French, Dutch and the other countries' regulations. These national regulations must be followed by the people to whom they apply. The means of enforcement are therefore different from country to country, with some similar characteristics.

2 EFFECT OF EC LEGISLATION ON NATIONAL REGULATIONS

From a legal point of view, it is quite obvious that EC legislation has had an important effect on national regulations:

1. When no national legislation is applicable - when an EC directive regulates an issue which is not regulated internally by a member State - the relevant regulations must be created. In France, for example, it was necessary to establish rules about the prevention of major industrial accidents in order to implement the strict EC directive on accident prevention. Also many countries such as Greece, Spain, Portugal, and even Germany and Britain had to establish a procedure for environmental impact statements.
   When a directive is passed and member States already have relevant legislation, the case is more complicated. It has been pointed out several times that it is much more difficult to change existing legislation and practices than to introduce new EC legislation where no national laws have been adopted.

2. The implementation of the directive on environmental impact assessments illustrates this situation very well. When the EC decided to propose to the Council a directive on environmental impact assessment, France already had a decree on this subject. The French system obviously served as a model for the community directive. The final version of the directive was adopted in 1985 and the general opinion was that it corresponded in many ways to the French regulations. However, some elements of the directive were not fully transcribed into the French decree, such as the requirement for a trans-border consultation when projects submitted to an impact study could have an impact on another country. The requirement of submitting a written non-technical summary of each study was not applied in France. Other small differences appeared after an in-depth examination and comparison of the two regulations.

3. Another example of a problem with compliance is the directive on free access to environmental information, which was adopted in June 1990. The French law on free

access to administrative documents passed in 1977 contains many points which are in line with the requirements of the EC directive. It makes information from government authorities - including environmental information - available to the public. But the French meaning of "free access" to information depends on the nature of "administrative documents". The Courts and a specific legal body called the "Commission of Access to Administrative Documents" interpret the meaning of "documents". If information held by government authorities is not recognized as having the required characteristics of a document, it is not covered by the free access regulation. On the other hand, the directives give a wide margin for the administrative authorities to refuse information requests on the grounds of confidentiality for business reasons. The French meaning of confidentiality is not clearly defined and is often subjected to legal interpretation. This ambiguity makes the implementation of the directive uncertain and difficult.

4. I would like to emphasize this problem of wording in the EC environmental regulations. It often causes problems in implementation because the member states often do not have the corresponding tool - the appropriate legal institution - or do not know the concepts. One of the more glaring examples is the problem of liability. The concept of responsibility varies from state to state. Liability based on fault is of course established in every country. Liability for risk, or even objective liability, is recognized in certain states. The proposed directive on liability related to waste introduced a concept of liability without fault. Facing opposition from the industries, ranging from waste producers to waste-elimination industries and insurance companies, and also responding to objections from the European Parliament, the Commission has established numerous exceptions to this proposal. Even with these exceptions, if the directive were to be adopted, the inclusion of this form of liability will pose serious problems to most of the states. One can imagine that the same difficulties will arise in applying the directive on liability for defective products, because of the differences between liability and substantiating facts.

5. The same problems of interpretation occur for the "best available technologies" (B.A.T.) mentioned in several directives but left undefined. Does the word "available" include economic aspects? Does it refer to specific legal procedures, such as patents? What does "best" mean? In relation to what is it evaluated? A certain consensus has existed until now, but in fact the interpretation of these concepts varies from state to state.

   Since the B.A.T. is a condition imposed by the directive on the granting of authorizations, it is the administrations responsible for these authorizations which, de facto, define these technologies. There are many more examples. Only through the coordination among the administrations can there be a common concept, if the ministries concerned do not themselves decide on the best available technology. But it is clear that a definition of the concept interferes with adaptation to technological progress. If the best available technologies are defined for each industry, the companies will make it their goal to acquire these prescribed technologies and make the best use of them, but they have no incentive to seek superior technologies or to use new technologies which might be more efficient.

6. All these problems of interpretation are difficult to solve especially with 12 states having different legal, technical and economic practices. However, help can be given before the legislative process, during the drafting of the regulations. This point will be discussed in later sessions of this conference. Still, I must emphasize now the importance of an exchange between the Commission officials, especially the General Directorate XI, and the economic and industrial parties concerned. Such an exchange has already taken place, but - without going into too much detail - it needs a great deal of improvement. It needs to be more extensive and take place on a more regular basis. For example, the problems of practical implementation must be discussed, also the difficulties of interpretation of terms, and thus the legal transposition once the regulations are drafted.

7. Another enforcement difficulty arises when a state is reluctant to comply with a Court decision. Some member states like Belgium have been found guilty twice before they obeyed a court decision. It happened once in France with the directive on bird protection. The Court handed down its decision in 1988 (Case 252185), but some of the corrective measures have not yet been carried out. The lack of EC policy governing the compliance with Court decisions is obviously an obstacle to the proper execution of these decisions. Only the legal and political conscience of the individual governments compels them to comply with the courts and take the necessary measures. But in some cases, there is a psychological effect which must be mentioned, although it is not an excuse for breaking the law. The directive on the protection of wild birds requires governments to designate protected areas for bird habitats and ban certain activities which can endanger the life or reproduction of the birds. Certain forms of hunting are completely banned. The concept of "traditional hunting", meaning an ancestral way of hunting involving only certain categories of birds in specified regions, is not included in the directive. On one of the points of criticism of the Court, hunters in France consider that this concept justifies the practice in the southern region of capturing certain birds, and that this type of hunting is so limited that it does not jeopardize the survival of the species. No solution has yet been found for this conflict. This is a good example of how national or regional culture and mentality play a role in the successful enforcement of European Community environmental legislation.

8. The environmental legislation of the European Community has had considerable impact on the French legislation on environmental protection, especially from a strictly legal point of view. It is quite obvious in the light of three recent Court of Justice decisions in Luxembourg. A brief summary of the legal framework in France is needed in order to understand the case. Following the standard European model, a law is adopted by the Parliament. It becomes more precisely defined through a series of implementation measures taken by the government and the administrative branch. "Decrees" are passed by the government, and "orders" are given by one or several ministries or by a prefect (the head of the local or regional government). Both decrees and orders specify the rights and duties of the citizens or the parties involved. Memos are issued by the ministries or the prefects to advise their administration how to implement the decrees and orders. They are not usually legally binding for third parties.
In the matter of environmental protection, the main legal framework is provided by five major acts concerning:

(1) Industrial installations which can cause environmental damage, 19 July 1976,
(2) Water management, 16 December 1964, modified 3 January 1992,
(3) Prevention and treatment of waste, 15 July 1976, modified 13 July 1992,
(4) the Nature Protection Act, 16 July 1976 and
(5) the Chemical Law, 12 July 1977.

There are specific decrees for the application of each of these laws, and memos advising the administrative bodies how to apply them.
When the air quality directives were adopted, in 1979 for SO_2, 1982 for NO_x and 1983 for lead , these directives had to be transcribed into French law. The Act on industrial installations provided the necessary legal and administrative framework to comply with the regulations, but it established no limits for SO_2 or lead in the air. This oversight was perpetuated through the memos. The Commission issued infringement procedures against France - as it also did against Germany for the same reason - arguing that ministry memos are not legally binding and should not be used. The Court decided in favor of the Commission. The obligation of member states to set maximum limits of emissions into the air "is established in order to protect the public health". The directives "aim to define the rights and obligations of individual citizens". In order to exercise their rights, the citizens must have knowledge of them. "The steps taken on the national level must therefore create precise, clear and transparent situations". Since a ministry memo does not have a

legally binding effect, the legal situation it creates does not meet the defined criteria (Cases C13/90, C14/90, C64/90, 1 October 1991).
France was therefore made to replace the contested ministry memos with decrees. Germany faced the same problem after being found guilty on 30 May 1991 (Cases 54/89 and 361/88).

9. So far we have discussed cases in which a member state is faced with EC legislation more strict than its own national legislation. But what about the opposite? Can a member state be forced to give up a high protection level if the Community standard is less stringent? The EC is a common, single interior market without borders among 12 states, and no trade restriction is admitted. Therefore, there must not be any product specifications or requirements which might hinder the free movement of goods within the EC. When France decided on environmental grounds to oblige waste oil producers to recycle the oil or burn it only in very specific cases, this was not considered to be contrary to the waste oil directive that made no distinction between the treatments of waste oil. At the same time France forbade the exporting of waste oil, arguing that oil burning might not be done elsewhere in an environmentally-friendly way. The Luxembourg court considered this ban to be a violation of the principle of free movement of goods (Case 240/83, AD BHU, 7 July 1985, p531).
Environmental requirements have priority over the principle of free movement of goods under certain circumstances. This was shown in the Danish case on beverage packaging (Case 302/86, commission of Denmark, 20 September 1988, p4607). The court decision had officially recognized that environmental protection is a matter of general interest, an "imperative requirement", and must be considered as having the same priority as freedom of movement.
The European Single Act confirmed this opinion by introducing the principle that member states may adopt more protective measures than required by the EC but that they must respect the Treaty. This refers to the general principles of the Treaty of Rome and the Single Act. Consequently, stronger regulations in the member states must not be discriminatory against any other member state or disproportionate to their goal.
For rules concerning industrial installations and not products, there is no known Court case. The same principles must obviously apply, but the free movement of goods would be less affected by stronger environmental rules than the free competition among companies, which is also a basic principle of the EC. Demonstrating a violation of this principle is much more difficult than proving an obstacle to commerce, which probably explains why there is no litigation on record. The French legislation on major industrial accidents is very strict and goes beyond the EC directive's requirements, but it remains uncertain whether the situation leads to an imbalance of competition.

10. Let us now take a look at the practical impact of the EC regulations on the environment. It is clear that the consequences have been felt in terms of actions and policies.
The directives have not changed the French administrative framework, nor have they led to the creation of new authorities, unlike what happened in countries which did not yet have advanced environmental regulations. But the directives have led to changes of administrative procedures in relation to impact studies, hazard studies, and freedom of information. These changes have been more or less far-reaching depending on whether the French regulations already complied with the corresponding EC requirements.
The EC directives have had a greater effect on the extent of the controls required of administrative authorities and industrial users. These requirements involve the monitoring of emissions and the analysis of environmental quality. It goes without saying that these obligations have led to better information on the immediate environment by requiring that more parameters be analyzed than before, more frequently than before. The quality of bathing water has become better known, and subsequently improved, due to directive 76/160 on bathing water quality.

Similarly, by obliging the states to draft quality improvement plans for air and water, by reducing emissions of dangerous substances into water or air, through plans to eliminate wastes, by determining reinforced protection areas for certain wildlife species, or for regions with more heavily-polluted air than elsewhere, the various directives have also contributed to an awareness of the necessity of global environmental management in time and in space, on a longer term basis.

3 CONCLUSION

In conclusion, it must be stressed that enforcement of EC environmental laws is not an exercise for its own sake. It goes beyond complying with limit values, staying within maximum concentrations and so on - it is a means to protect the environment as a common interest, while protecting individual rights.

SOME FACTORS INFLUENCING ENVIRONMENTAL ENFORCEMENT IN THE CSFR

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1 ENVIRONMENTAL LEGISLATION AND ITS QUALITY

The quality of environmental legislation significantly influence's environmental legislation, particularly from the point of view of its realistic character, respectively its enforceability. From this perspective it is important to take into account:

- the way how the legislation sets down rights and obligations in this field and environmental standards (limits), quality objectives, etc., which instruments and mechanisms of environmental enforcement the legislation provides.

1. Since changes in November 1989 and since establishment of environmental authorities in 1990 Czechoslovakia has prepared and approved a new environmental legislation in all fields except for water management.
   New act on the environment setting main principles of environmental protection, basic rights and obligation was approved.
   From one point of view the solution to enact new environmental legislation gave us an advantage to take into account new trends in economic, social and political life of the country. It also allowed us to make an effort to incorporate as much as possible EC environmental requirements into new acts and regulations. from another point of view the legislation was prepared in hurry and in some aspect, especially in emission standards and dead-lines for their accomplishment, it is too ambitious and non realistic.
2. New environmental legislation provides all instruments and mechanism of environmental enforcement that are known in modern systems:
   a. polluter pays principle expressed mainly in the system of charges and fees for pollution and for use of natural resources;
   b. some environmental aspects were incorporated into new taxes system that will be in force from January 1, 1993;
   c. new legislation empowers environmental authorities to impose fines and other sanction for violation of environmental legislation;
   d. it is possible to sue for environmental damage in civil and criminal judicial procedure;
   e. as one of the first Central and East European countries Czechoslovakia approved legislation for environmental impact assessment (Act on the Environment - federal, Czech National Council's Act on EIA).
   f. environmentalists succeeded to include environmental aspects into privatisation act during amendment procedure - how the Act on the large - scale privatisation contains one new section (6a) requiring environmental audits to be carried out as a part of privatisation process;

In the form of Czech government resolution the Czech republic also basically solved the issue of environmental liability for past damage and their cleaning-up. Regarding the new Czechoslovak environmental legislation it is necessary to say that Czechoslovakia made a big step towards better environmental protection system. As the only country of CEE countries Czechoslovakia succeeded to create new and relatively well coordinated and clear set of environmental acts and regulation. We also created a new structure of environmental authorities on all levels of State Administration, including quite powerful Inspection (Czech and Slovak).

As mentioned under I.1. we did not manage to accomplish enforceability of this legislation sometimes. Not only in the sphere of limits and dead-lines there are lacks. Also charged and fines should be higher to properly stimulate ecological behaviour of polluters.

There are some problems with environmental damage and ecological damage (defined as the loss of ecological functions of ecosystems in the Act on the Environment). It is not easy to express what is an environmental damage, to distinguish different extent of the damage (mainly in criminal procedure) and to express and "count" ecological damage. The experience of other countries and of the EC would be highly helpful in this field.

On the lower level (mainly districts and communities) professional skills are not sufficient for powers that were given to environmental authorities at these levels.

These shortly described problems show that the environmental enforcement is not always easy. The main reason of this situation is that before and during drafting the now legislation practically no environmental enforcement system and policy existed.

New acts were being prepared often without even proper economic analysis and assessment of economic consequences of new legislation.

2 PUBLIC PARTICIPATION

1. Prerequisite for public participation environmental awareness based on access to information about the state of the environment, its reasons and consequences. Information makes people aware of the current situation and enables general public to be a partner of state bodies, to support or to push, challenge state actions.
2. Czechoslovak legislation gives citizens right to in time, true, objective information about environment (Fundamental list of Rights and Duties, Act on the Environment, Act on Air, Act on Nature Conversation).
   Unfortunately no mechanism and exact way how to implement this right, how to provide information, when and whom, were set dow by the legislation.
3. Acts on EIA are the first Czechoslovak acts giving general public the right to take part in environmental decision-making.
   We will see after one year at least how this instruments works and what are the problems.
4. It is not easy now to involve the general public into environmental decision-making.
   Environmental protection does not belong among priorities of citizens, today. Since the beginning of 1990 the importance of this issue in the awareness of people has significantly decreased.
5. In comparison with pre-revolution" time environmental NGO's are not well organized, they are scattered and not very willing to cooperate with each other. However, new environmental non-governmental institution are being created. Hopefully they will begin to play some role in environmental policy. Especially those that are oriented towards transition of the society to sustainability.

3 CONCLUSIONS

1. It is necessary to examine the efficiency of new environmental legislation, problems of its enforcement; to find lacks, insufficiencies laying inside and also outside environmental legislation.
2. On the basis of results we must establish an efficient enforcement system and policy, realistic and enforceable, based on broad participation of state authorities, judicial institutions, business and general public.

DESIGNING ENFORCEABLE ENVIRONMENTAL REQUIREMENTS - EEC

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SUMMARY

This paper distinguishes two issues -- first, the problem of designing EEC requirements that member states can properly implement, and ensuring that they do so (ie., the question of enforceability against member states), and second, the problem of designing provisions directly applicable to the regulated community (ie., the question of enforceability against the regulated community). It notes the commonly held view that an implementation and enforcement deficit exists with EC environmental regulation in each case.

After a brief discussion of European regulatory style and the European debate over binding legal requirements in a field regarded as involving scientific and technical policy, the paper turns to the two issues noted above. In discussing the first, it sets out the institutional reasons for difficulty in achieving full implementation by member states, as well as some solutions being considered. It then illustrates the principles and elements of enforceable regulation as set out in the main speaker's paper in the context of each question.

1 INTRODUCTION

Over the last 20 years, the EEC has developed a considerable body of environmental regulation.(1) Yet that corpus has been widely criticized -- by the EC Commission,(2) by former members of the Commission,(3) by the EC Parliament,(4) and by commentators(5) -- because it has not been, and in some cases cannot be, effectively implemented and enforced.

It is important at the outset to distinguish two separate, but interrelated, questions. The first is the enforceability of EC law vis-a-vis EC member states. The second is its enforceability vis-a-vis the regulated community.

Much of EC environmental law is promulgated as "directives" -- a form of Community legislation that in general must be implemented at the member state level before it can apply directly to the regulated community(6). Without adequate implementing provisions in member state law to fill out the regulatory framework, and to translate it into detailed rules, standards, permits and other requirements directly applicable to the regulated community, effective enforcement against that community cannot normally be ensured. Of course, some member states themselves face analogous issues due to their own governmental structure, and in these cases the directly applicable provisions must be promulgated, in turn, by Länder, provinces, or other regional entities, or by local governments such as municipalities.

In short, designing enforceable environmental requirements in a hierarchial system like the EC, requires (a) designing clear and unambiguous primary requirements (here EC requirements) the proper implementation of which can be assured at lower governmental levels, and (b) designing enforceable secondary requirements directly applicable to the regulated community, whatever level they emanate from. These issues are related, since each involves the art of drafting binding legal requirements addressed to third parties, involving emotionally laden matters and public risk decisions, resting on complex scientific and technical premises, and costing many millions to carry out. Yet they are fundamentally different as well. The first involves chiefly issues of institutional design and structure at the governmental level that go to the heart of the political system involved. The second, at least as to EC environment law that is mainly applied directly to the regulated community by member state enforcement agencies (the design and practices of which are beyond the scope of this paper), chiefly involves regulatory draftsmanship.

2 SOME IMPORTANT CONTEXTUAL MATTERS

Environmental requirements are always set in a particular cultural, political and legal context. Before proceeding further, and especially because the principle speaker's paper proceeds from the American regulatory context, it may be useful to take note of the EC regulatory context, and how it differs from the American.

2.1 Regulatory Style in the EC

Regulation in Europe is generally regarded as a "technical" or "political," and not a "legal" issue, though this attitude appears to be changing slowly. European government and industry, on the whole, have not in the past looked to legal counsel to assist in handling environmental matters. They have relied, instead, primarily on technical staff.

The Community regulatory process, furthermore, is largely nonadversarial and is the result of a slow, non-public, complex law-making structure designed to achieve political consensus among the member states. There is a close industry-government relationship. Industry, in the form of its national and European-wide trade associations, operates through contacts with national authorities, through "expert" advisory committees at the Commission, and through lobbying of the Commission, Parliament and COREPER. Proposed directives are made publicly available and are commented on by Parliamentary committees, but there is no free-wheeling, open political process similar to that found in the U.S. Congress. Nor is there a structured, open administrative process for promulgating directives or implementing regulations, such as the American notice and comment rulemaking process.

The rise of the "green" movement in Europe and the manner in which it affects environmental regulation is also of importance. The European "green" movement has had success in organizing political parties, but it otherwise remains largely a local, grass-roots effort. Neither it nor environmental groups generally in Europe have, on the whole, organized effectively yet at the EC or, in many cases, at national levels. To date, environmental groups do not have as sophisticated a grasp of the technical, scientific, and economic factors that play a crucial role in the details of environmental regulation as do their U.S. counterparts, and they have not lobbied nor litigated nearly as broadly or effectively.

By way of contrast, one can note that in the United States, law and lawyers have been central to the development of environmental policy, and coordinated efforts at the national, federal level have led the way. American regulation relies heavily on generic, federal administrative "notice and comment" rulemaking to achieve specificity and uniformity, and to gather the technical, scientific and economic data that form the premises for continental-scope public decision making. Those administrative rulemaking proceedings provide public, formal, and structured opportunities for citizens and industry to participate in the development of regulation through comments, public hearings and sometimes judicial challenges to rules. Federal judicial review has played an important role, at the behest of both citizens and industry, in forcing the executive branch to implement federal environmental statutes promptly and properly, and to justify its discretionary policy choices.

The "political" aspects of the American environmental regulatory process take the form of lobbying directed at the Congress, as well as less formal efforts to lobby the administrative agencies that establish, implement and enforce regulations. In the U.S., there are no "green" political parties as such; the struggle goes on within the confines of the existing party structures, but both parties endorse environmental goals. Strong, sophisticated, and well-funded environmental groups at the national level have prodded both industry and government, and have lobbied and litigated with great effect.

In short, in the United States, contending interests use legal processes in the judicial arena and before administrative agencies to influence the formulation and execution of policy. This is particularly true of citizen environmental groups who, with some frequency, use citizen suit provisions in federal environmental legislation as a means of influencing environmental policy and ensuring its implementation and enforcement.

2.2 The Question of Binding Legal Requirements

The premise for this panel seems to be that binding legal requirements should exist -- the main issue examined is how to draft and implement those requirements so that they can be easily obeyed and effectively enforced.

In Europe, however, the premise itself is likely to be challenged. First, as to enforcement against member states, the discussion below will show that the present system of EC governance is in many regards structured to enable member states to limit the scope and depth of EC legal requirements that are enacted, and thus that become legally binding on them.

Second, and perhaps more fundamentally, much of industry and some government officials (e.g., in the U.K. and the Netherlands) remain wedded to "voluntary" action and consensual "contract" or "covenant" approaches. Any form of legislation is stronger if it solicits input from and the support of the public and the regulated community, and these techniques accomplish both in the case of industry. The stakes in the environmental area (and the incentives to avoid control costs or to engage in "free riding" while others bear those costs) are now high enough, however, that if environmental regulation is to do the job that needs doing, voluntary efforts or covenants alone are unlikely to suffice(7). Further, the private sector needs, and generally prefers, legal certainty in the rules applicable to it and to its investments.(8)

Finally, there is a tradition in some quarters in Europe that environmental regulation is a matter of policy, and as noted above, scientific and technical policy to boot.(9) Lawyers and law are thought not to be required, or at best are to be suffered only at the point where matters must go to court, a point to be avoided at all costs if possible. On this view, it is the expert government administrators -- sometimes given great discretion by the European legislation -- who should apply policy case-by-case, frequently guided by informal administrative "rules of thumb" or "guidelines" as opposed to formal, detailed, legally binding rules.(10) It is interesting to note that this same tradition held strong sway at the state level in the United States in the 1960's and is still alive in many states today. But for the same reasons that voluntary efforts and covenants alone will not suffice, "policy" alone is inadequate. Written, legally binding, and enforceable requirements are essential. And if enforceable legal requirements are to be had, lawyers, and an efficient legal enforcement process manned by knowledgeable judges, are essential.

3 PROPER IMPLEMENTATION OF EC LEGISLATION AT THE MEMBER STATE LEVEL – THE INSTITUTIONAL ISSUES

3.1 The Problem

Much EC legislation, as noted above, takes the form of directives and must be implemented at the member state level. Even EC regulations, which are directly applicable to the regulated community, frequently depend on further implementation by the member states.(11) In either case, where such "secondary" level implementation is required, its proper adoption and implementation is a prerequisite to effective enforcement against the regulated community.(12)

By the Commission's own account, there are deficiencies in even the simplest aspects of formal compliance by member states.(13) The deficiencies multiply when the more subtle aspects of compliance (e.g., involving the effectiveness of implementation) are considered.(14)

The most fundamental reason for the implementation deficit is obvious, and cuts to the institutional heart of the Community. The Community has not developed the institutional powers in the Community institutions to ensure vigorous implementation of what is enacted, nor has their been the political will by member states, acting in the Council, to enact sufficiently precise legislation that member states can be easily held accountable for its effective implementation. The current debate over Maastricht and subsidiarity, and the cloud created by the Danish vote and the French vote, indicate that this situation may well not soon change.(15) This section discusses

the institutional problems; the next section discusses the precision of the drafting of the EC legislation itself.

The structural deficiencies in EC institutional arrangements are legion. First, the EC's legislative body -- the Council -- as presently structured in the Treaty of Rome is not sufficiently independent of the member states that it has the political will to draft legislation that will insure full member state implementation.(16) Indeed, the legislative process in the Council frequently tends toward the "lowest common denominator,"(17) and has in the past resulted in subtle loopholes such as that described below pertaining to the Fresh Water Fish Directive.(18) The problem seems mainly to be a lack of will, not a lack of power.

Second, there is no formal, rigorous or systematic process for gathering public input on the scientific, technical and economic information necessary to underpin sound and enforceable environmental regulation, nor any requirement that the legal and factual basis for the legislation as finally adopted be formally set out and justified, so that these bases can be easily tested and challenged. Thus, while public awareness, concern and indignation over environmental degradation and inadequate implementation and enforcement of environmental laws is growing, public participation in the law-making, law-applying and law-enforcing effort is weak in Europe. There is, in general, a lack of formal procedural rights that enable the public to participate in these processes and that enable it to hold member state executive and legislative branches accountable before the courts for adequate implementation and enforcement of the laws.

Third, the EC's judiciary -- the European Court of Justice -- is not presently structured so as to facilitate implementation of EC law by member states. The Treaty does not grant broad public access to initiate litigation to force member state compliance, and the Court does not have adequate remedial powers to compel full and faithful compliance once its jurisdiction is invoked.(19) Further, "standing" rules in the member state courts do not, on the whole, allow a broad spectrum of interested persons to initiate litigation to challenge member state legislative or executive branch inaction or inadequate implementation or enforcement.(20)

Fourth, the EC lacks an adequate Executive Branch. The Commission itself is small compared to the size of the implementation and enforcement task, has no offices or resident officers in all the member states, and has inadequate investigative and enforcement powers. Directorate General XI does not have the staff, the funding, or the powers to investigate member state implementation and enforcement systematically and comprehensively.(21) It must rely largely on a complaint process in which it reacts to issues brought before it by others,(22) and then can enforce only through the lengthy and cumbersome Article 169 process.(23) The Commission has the power to propose legislation directly applicable in member states by using a regulation rather than a directive, but in the past it has seldom proposed legislation in this manner.(24) The Commission itself also has no power to directly enforce member state legislative requirements on the regulated community when the member state fails to do so. The Council can delegate to it the power to promulgate regulations without further Council action (as it has done in the food area), but has not generally done so (except in the case of provisions for "adaptation to technical and scientific progress" in existing directives) in the environmental area.

Beyond these structural governmental issues, other institutional factors contribute. The Parliament is of the view that member states actively seek to use Community laws to favor national producers and to prefer economic or social development over environmental consideration.(25)

Public interest environmental groups, which seldom litigate for the reasons noted earlier, tend not even to make good use of the publicity tools that are available to them, because those groups are politically (and frequently locally) oriented, and are usually technically and legally unsophisticated. Further, they frequently lack key information, since in most European countries executive branches and industry make a cult of secrecy and there are few effective legal rights of public access to government or industry information.(26)

Many industries and government entities are not yet imbued with a compliance ethic in the area of environmental protection, and this lack can be particularly pronounced in certain countries and in the case of government-owned businesses or governmental facilities (which remain, of course, prevalent in Europe).

Finally, there is a significant problem involved in ensuring adequate implementation where the member state itself is a federation, or for other reasons has inadequate control or power to ensure that its constituent parts live up to its EC treaty obligations.(27)

3.2 Solutions

The problems outlined above (that is, the problems of a higher level of government instructing a lower, and making it stick) are endemic to any hierarchical system of government, although they are most pronounced in a confederal or federal system. Their resolution is central to the development of effective and enforceable environmental regulation. Before turning to how best to ensure that legislation by a higher level of government is in fact properly implemented and enforced by a lower, it is useful to reflect on which sorts of things are best done at the higher level and which at the lower.(28) To the extent that this question can be answered, the conclusions may offer guidance in the current "subsidiarity" debate within the EC.

3.2.1 Who Should Do What -- The American Federal Experience

There is experience to be brought to bear on this question in the specific context of environmental regulation. Americans have struggled since the days of the founding fathers with the relationship between levels of government. As Woodrow Wilson once said: "The question of the relation of the states to the Federal Government cannot indeed be settled by the opinion of any one generation, because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question."(29)

Further, federal/state issues have been central to American environmental law since its inception. And environmental law has been an important proving ground for new ideas in the field of federal/state relations. When the U.S. Clean Air and Water Acts were first enacted, for example, they contained a complex balancing of functions between state and federal governments, a cooperative relationship that was then referred to as a "new federalism."(30)

Over the years a consensus has developed in the U.S. on certain aspects of federalism in environmental regulation. First, if situations can be found where both the costs and benefits of an issue are national (i.e., federal) in scope, there is little question that federal decision-making is in order. Likewise, if situations exist where the costs and the benefits are both local or statewide in scope and fall within the same geographic area, again, there is little question. It is where the costs are all borne, or are largely borne, by a small group of people in one area while the benefits are nationwide or accrue to people in another area, or vice versa, that the real problems lie. In such cases -- which are the majority of cases -- the problem is to determine which level of government should decide, why, and using what principles. Beyond the question of matching costs and benefits with the proper decisional body, there are also considerations of decisional or implementation efficiency, market-place efficiency, avoidance of forum shopping, and assuring a level economic playing field.

It is generally thought in the U.S. that the federal government should handle (a) interstate pollution (where, for example, it is argued that the benefits of "acid rain" control accrue to people in the Northeast while the costs are borne by people in the Mid-West), (b) areas with economies of scale, such as training and research and development, and (c) cases where national uniformity or preemption is needed for various reasons, as in the following cases: first, so as to avoid burdens on commerce (for example, in regulating widely distributed products such as chemicals or automobiles); second, so as to strive for uniform health standards (to ensure that a citizen breathing air in Omaha will be protected to the same extent as one breathing air in Boston or Seattle(31), (with states retaining the right to profit from the natural assimilative capacities of their individual geographic position for discharge levels below these levels and relating to environmental (e.g., aquatic life) rather than public health matters); third, so as to avoid competition for new industry among states by lowered environmental standards (normally attained through use of uniform, minimum technology-based requirements); and finally, so as to preempt parochial vetoes of projects where important national (i.e., federal) interests are involved but the costs are locally borne, as with hazardous waste disposal and nuclear power facilities.

There is also consensus about many aspects of the proper state role. First, obviously, that it is a residual role under the U.S. Constitution (the states technically remain sovereign except to the extent of powers surrendered in the U.S. Constitution), that occupies whatever ground the federal government does not.(32) Second, that for efficiency reasons and because they are closer to the messy details of the real world, the states should be the primary implementers and enforcers in most of the regulatory schemes (such as the Clean Air and Water Acts, although not in areas of product regulation like the regulatory scheme for production and marketing of chemicals in TSCA). Third, that the states are important laboratories for experimentation. Fourth, that decision-making should, in general, be decentralized in the interests of efficiency and increased political accountability. Finally, that the states should -- and in fact do under most of the environmental statutes -- always have the right to regulate more stringently, except where preempted by an overriding federal interest of the sort noted above.(33)

It may be useful to compare the American consensus with the developing EC debate on subsidiarity. The EC began by attempting to "harmonize" member state provisions. It then shifted, with the advent of the single internal market, to reliance on "essential EC requirements" coupled with mutual recognition of member state actions. The Danish vote has now prompted a much more direct debate on the justification for EC level action, as part of the debate on the role of "subsidiarity." The Single European Act, of course, is quite explicit on the question of subsidiarity, providing the following language in Article 130r, para. 4. of the Treaty:

> The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member States.

It added in Article 130t:

> The protection measures adopted in common pursuant to Article 130s shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

Other relevant provisions are Article 100(a), para. 3, which calls for a "high level of protection" for Article 100a measures "concerning health, safety, environmental protection and consumer protection," and Article 100a, para. 4, which allows for more stringent member state environmental measures, after notice to the Commission, if these measures do not constitute "a means of arbitrary discrimination or a disguised restriction on trade."

The current D.G. XI Commissioner, Van Miert, recently identified three key justifications for EC level environmental regulation -- first, the transfrontier and even global character of most environmental phenomena; second, the need to avoid barriers to trade and distortions of competition; and third, that the Treaty of Rome calls for the improvement in the quality of life of EC citizens, which "implies a minimum level of environmental protection throughout the Community and applies, in [his] opinion, to drinking water, to bathing water and also to the conservation of nature."(34)

Van Miert's three principles are found in the American consensus, but the latter includes other areas as well. Further, the U.S. principle on a minimum level of protection is strongest as applied to public health driven standards and to the scientific premises behind other environmental standards (e.g., the water quality criteria necessary to protect aquatic life are federally set, at least initially), but the value judgements as to resource use and levels of protection (e.g., the uses to which water bodies are to be put and the aquatic species to be protected) are to a large extent left to the states (which, e.g., set water quality standards based on their choice of water body uses and federal water quality criteria for those uses).

Dealing with these matters requires struggling with generic structural and functional problems. The particular constitutional, historical and cultural context is, of course, crucial. But many of the analytical insights involving the proper division of authority and responsibility between higher and lower levels of government derived from one context -- for example, the American or the EC -- may be useful to those who are debating these or similar choices in other political and legal systems.

3.2.2 Ensuring Implementation and Enforcement -- The American Experience

Moving beyond the basic policy issues of who should be doing what, one can also look to the American example for insights into mechanisms for assuring implementation by the lower level of government. Many of these mechanisms are of statutory, not Constitutional, origin, but the Constitutional power of the U.S. federal government and its de facto ascendancy has enabled their adoption.

In the United States, the implementation of federal legislation at the state level is encouraged through a series of institutional and legislative devices lacking in Community legislation. First, there is a well staffed, trained and funded environmental agency at the federal level in the United States (the Environmental Protection Agency or "EPA"). There is also a great deal of publicly available monitoring data and other information, as well as effective freedom of information legislation at the federal and state levels.

Second, EPA must normally approve a state's implementing program in detail before the state can qualify to implement the applicable federal legislation. It reviews not just the state agency's formal powers and implementing rules, but also the adequacy of its organization, staffing and funding, and such matters as the adequacy of the enforcement process and penalty and fine levels provided under state law. EPA may withdraw a state's right to implement many of the federal regulatory programs if it judges the actual implementation to be inadequate. EPA normally has direct prior approval authority over specific state implementing actions, such as issuance of state-implemented regulations, standards and individual permits, before those measures can go into effect under federal law (although they sometimes can and do go into effect under state law without regard to EPA approval at the federal level). In the absence of an EPA-approved state implementing program, or of EPA-approved state regulations, standards or permits, EPA is normally required itself to promulgate directly applicable federal provisions. Should EPA fail to act in supervising (or superseding) state implementation where it has a duty to do so, it may be sued in federal court by citizens and environmental groups and forced to act. Lastly, EPA frequently threatens to withhold federal funding (on which many state environmental programs depend) if state implementation is deemed inadequate.

Enforcement in America is vigorous, and takes a number of forms. Nearly all of the major American environmental regulatory statutes require some form of publicly available self-monitoring and reporting. This system automatically highlights lapses in compliance and the need for enforcement. EPA has broad powers to inspect, sample and investigate, which it can use against both the states and their subordinate entities and against the regulated community. These can be invoked anywhere within the territorial limits of the United States, by federal officials, and can be enforced in independent federal courts throughout the country.

When EPA deems state enforcement to be inadequate, it normally has the authority to override the state's failure to enforce. In so doing, it has the power to itself issue an administrative order against the violator or, in some cases, to assess civil penalties on an administrative basis and to enforce its action in either case in federal court. Alternatively, it may take a violation directly into federal court for injunctive relief, and civil and criminal penalties. Should EPA fail to enforce (or to do so diligently), citizens and environmental groups can themselves normally prosecute the regulated party in a civil action in federal court to correct the violations or have civil penalties assessed.

3.2.3 Ensuring Implementation and Enforcement -- Community Solutions

The Community institutions have at their disposal virtually none of the mechanisms noted above. As noted earlier, DG XI has inadequate resources and investigative powers for enforcement of EC legislative duties against member states, and its enforcement remedies against member states are cumbersome and, in the end, toothless. At the level of enforcement of specific standards, requirements or permit conditions against an individual regulated facility, the Community can play virtually no role. Such enforcement is left up to the member states.

The Commission has used a number of techniques to enhance member state implementation and enforcement, many of which have been mentioned above. It has begun to

propose more specific and precise legislation, to propose more implementing "daughter" directives, to use directly applicable regulations more often, and to consider use of rules for "industry categories" and specific "priority wastestreams." It has encouraged complaints and increased its filing of Article 169 proceedings. It has developed the Freedom of Information Directive to put more information in the hands of citizens. It has nurtured the development of the "direct effect" doctrine to provide better judicial remedies. It has begun to include interest group "standing" provisions in draft legislation (e.g., the draft Directive on Civil Liability for Damage Caused By Waste). It has attempted to enter into a dialogue with member state bureaucracies on implementation, and to promote new legislation requiring more effective member state reporting on implementation and establishing a decentralized member-state level public "complaints" mechanism, with the Commission intervening only if proper or timely resolution is not achieved by the member state.(35) It has seen the creation of the European Environment Agency, although that body has no enforcement powers and as yet has neither home nor head.(36) One recent Commissioner has even proposed the creation of a "Green" police force. Finally, the Commission has seen the development of the Maastricht provisions set out in note (15) that, if adopted as Treaty amendments, may help the situation.

Recently, the Commission has begun to speak out bluntly. Its Eight Annual Report to the Parliament on implementation of EC law is a clear departure from prior practice in this regard.(37) That Report's new Annex C details the Commission's efforts and frustrations, and has led to the commentary in the two Parliamentary Reports previously mentioned. Thus, the issue is now very much on the public agenda.

Having encountered such great difficulties in trying to develop an effective "command and control" regulatory system in the directives issued to date, however, the Commission is now also engaged in a series of moves to bypass these problems (and the national legislation and bureaucracies causing them). It is considering the use of fiscal and economic measures in lieu of administratively driven control requirements. It is designing an Eco-Audit Regulation to provide, in effect, a comprehensive, universal substitute for the self-monitoring and reporting provisions that are lacking in many existing directives (as well, perhaps, as de facto new standards of environmental performance beyond current legal requirements). These eco-audits would have to be verified by independent outside auditors and there would be public disclosure of certain information. It is also drafting a highly significant directive on Integrated Pollution Control that, in addition to providing a uniform and comprehensive EC-level permit requirement and process, will require public notice and input during that process, new standards of environmental control (beyond those adopted in existing directives) to be imposed case-by-case, and compliance monitoring with the results being publically available.

The Parliament has been active in analysis of the reasons for the implementation deficit in EC environmental law, and the two Parliamentary Reports noted earlier (note (4)) contain extensive views on this subject and suggestions for a multitude of actions in response.

For all the reasons noted above, however, the problems with implementation and enforcement of EC environmental law at the member state level are deep seated. They are not likely to be solved with a magic wand that creates an "EPA" of Europe or a "Green" police force. Their existence, like the existence of U.S. federal/state problems, teaches many lessons for others striving for effective implementation and enforcement of environmental laws.

4 PROPER IMPLEMENTATION OF EC LEGISLATION AT THE MEMBER STATE LEVEL -- DESIGNING ENFORCEABLE REQUIREMENTS

In addition to the institutional difficulties noted above, and to a considerable extent as a result of them, the way in which EC environmental legislation itself is drafted frequently contributes to inadequate member state implementation.(38) These drafting difficulties illustrate many of the points made in the main speaker's paper.

The comprehensibility of EC environmental regulation (ignoring the special translation difficulties frequently introduced by, e.g., the "Euro-English" used in translations) is one of its strong points. Perhaps because it is drafted by the technical staff at the Commission and deals in

"statutory" generality as to many issues, it tends to be simpler and less confusing then the complex, detailed and frequently overlapping and contradictory U.S. legislation drafted by U.S. Congressional staff. Where political compromises introduce ambiguity or confusion, as they inevitably do, the result is normally less disastrous than with U.S. legislation. This being said, however, there are many problems.

Many directives, particularly earlier ones, use only vague, general language to impose duties on member states, and lack the clear and specific criteria necessary for judging adequacy of implementation.(39) The Parliament's Report on Implementation contains a good discussion of this point at 8-9, and supplies many examples.

Important examples exist that go to the heart of the Community's water and air regulatory programs. In the water program, the Dangerous Substances Directive(40) required member states to "establish programmes" to regulate List II (Grey List) substances, required "prior authorization" provisions and "quality objectives for water," with "emission standards ... based on the quality objectives."(41) The quality objectives in turn were "to be laid down in accordance with Council Directives, where they exist."(42) The programs "shall set deadlines for their implementation," "[s]ummaries ... and the results of their implementation" were to be submitted to the Commission, and the Commission, together with the Member States, was to "arrange for regular comparisons of the programs in order to ensure sufficient coordination in their implementation."(43)

This language could have been usefully supplemented by details on the major policy issues that must inevitably be dealt with in designing the complex water quality regulatory program called for (e.g., what basis to use to set quality objectives where they had not been set in Community legislation; what mathematical modelling techniques to use to determine total allowable loads for each pollutant, to allocate those loads to individual dischargers, and to set the resulting permit limits; whether and on what conceptual basis mixing zones were to be used; and how the available assimilative capacity was to be allocated as between (i) existing users, and (ii) existing and future users).(44) Nonetheless, the basic objective was quite clear, has been since 1976, and could have been implemented.(45) Had it been, it would have constituted the bedrock of the EC water quality program, since it would have covered virtually all discharges and would have required some form of permit program with water quality based permit limits. It was especially important that it be implemented, since all List I (Black List) substances remain List II substances until the EC has gotten around to establishing specific "best technical means available" (BTMA) limit values and quality objectives for them, which it has been exceedingly slow in doing.

It was not, however, properly implemented.(46) Indeed, the Commission has now moved against all 12 member states under Article 169 for failing to implement it.(47) Further, there has been a general failure to develop the implementing plans and the necessary water quality objectives required by various of the other water quality directives and by the daughter directives.(48)

While implementation has failed for a number of reasons (among them probably being the early split, as to the preferred basis for regulation, between U.K. preference for quality standards and Continental preference for technology-based limits(49)), several things can be said about the drafting of the provisions themselves, beyond their general vagueness which has already been noted. There are no deadlines for member state development of quality standards or implementing plans, for the issuance of "prior authorization" permits, and for the prohibition of discharges not in compliance with such authorizations (this being only implicit in any case), or for submission of the required plan summaries and results of implementation. Further, there was no review and approval required by the Commission of the adequacy of the quality standards, the implementing plans or the individual "prior authorizations."

In short, the "guts" of the program, and the "guts" of the tools necessary for the EC to check on and control it, were omitted from the legislation. The result was a foregone conclusion.

The same general story exists for the necessary implementing programs for nonattainment areas under the air quality legislation. Similar problems have persisted, to a large extent brought on by the Commission's own slowness in following up with daughter directives, with limit value and quality objective regulation of List I (Black List) water pollutants, with BATNEEC regulation of

industrial plants(50), and with detailed technical regulation of specific on-site or off-site waste treatment, storage and disposal facilities(51).

Turning now to the specific prerequisites for enforceable environmental regulation set out in the main speaker's paper, there are a number of examples where Community environmental legislation is so unclear that it would be difficult for a member state to know how to implement it when it tried to do so. For example, the Dangerous Substances Directive, the backbone of the EC water pollution legislation, provides for "limit values" for the most dangerous List I ("Black List") polluting substances. The basis on which the standards are to be set, however, lists both ambient quality and technology based criteria, with no intelligible indication as to relative weight to be given to each, or how to resolve the conceptual incompatibility between the two. It says that the limit values are to be set "mainly" on the basis of the ambient types of factors, "taking into account" the technology-based standard of "best technical means available" (BTMA).(52) Another example of clarity difficulties is the "non-deterioration" provision of that same Directive, which says:

> The application of the measures taken pursuant to this Directive may on no account lead, either directly or indirectly, to increased pollution of the waters referred to in Article 1.(53)

But the Directive's definition of "pollution" is quite subjective, and the Directive clearly provides for authorization of discharges from new sources.(54) Similar problems exist with the analogous "standstill principle" in the air quality directives.(55)

In other cases, the EC Directives have failed in implementation because they did not precisely define their scope of application. The best example may be the Fresh Water Fish Directive, which "applies to those waters designated by the Member States as needing protection or improvement in order to support fish life."(56) This Directive, as well as the Shellfish Directive(57), appear to provide Member States great latitude in determining which water bodies to designate and thus which water bodies and polluting sources must be regulated. The Bathing Water and Abstraction of Drinking Water Directives, while somewhat more specific, also allow great latitude.(58) The result has been significant under-designation by Member States(59), and it is only in 1988 that the European Court of Justice has stepped in to condemn Italy for failing to designate a sufficient number of waters under the French Water Fish Directive(60).

Other issues of scope arise, for example, in the Dangerous Substances Directive, where nothing is said as to whether the "discharges" to be covered by the "prior authorization" requirement are limited to point sources only, or include rainfall runoff or non-point sources, nor whether "owners," "operators," or some other category of discharger is to be regulated.(61)

Examples of failure to state the required standard of conduct also exist. The contradictory instructions in the Dangerous Substances Directive for the substantive test for setting List I limit values was mentioned earlier. Another example that goes to the heart of the EC air pollution control program is the provision, in the Framework Directive on Air Pollution From Industrial Plants, that new and modified Annex I facilities are to be issued the required authorization only where, inter alia, "the use of the plant will not cause significant air pollution."(62) The term "significant" is not defined. The remainder of the substantive tests spelled out in article 4 are equally non-specific and arguably overlapping.(63)

Many EC environmental directives, particularly those on air and water pollution, specify such technical aspects for monitoring compliance as analytical methodology and averaging times (although, as is generally true with U.S. environmental law, they give inadequate attention to the legal effect of the precision and bias of the methods in setting numerical standards or permit conditions and in enforcement of such numerical limits). Failure to specify other necessary aspects, however, such as the number of required air quality monitoring stations and how geographic representativeness of air quality modelling is to be assured, has lead to difficulties in ensuring adequate member state implementation.(64) Further, in some cases (e.g., under the Framework Directive on Air Pollution from Industrial Plants), compliance monitoring methodologies have been left up to the member states altogether.(65) Finally, the 1975 Framework Directive on Waste, applicable until the recent amendments take effect in 1993, contains no monitoring requirements.(66)

Implementation problems caused by the lack of deadlines for member state compliance with the List II water quality objectives implementation program requirements have been discussed above. It is interesting to note, however, that there has also been non-compliance with the analogous implementation plan requirements for air emission sources in defined non-attainment areas, despite the existence there of explicit member state deadlines and reporting requirements.

To date, the EC has had no comprehensive permitting requirement through which self-monitoring and reporting requirements were required to be placed in all permits. The spotty permit and prior authorization requirements that have been adopted have generally not contained specific requirements that permits contain such self-monitoring and reporting requirements. Member state legislation and practice, while imposing such requirements in some cases, does not do so in all member states and the level of self-monitoring and reporting in Europe in general is not high. The Commission has had no legal tools available to it to force member states to include such provisions in permits.

The criteria of adoption in accord with correct procedure is much less important in the context of EC environmental regulation than it is in the U.S., since few if any formal procedural requirements exist (other than those determining who can act, in what order, and on what basis in promulgating EC legislation), and there are highly restrictive standing requirements that limit judicial challenges by the public in any case. Notwithstanding, however, there is one clear illustration of this point in EC regulation, and that pertains to the choice of legislative basis for promulgation of a directive, with the resulting consequences in terms of legislative path and voting basis in the Council. Here, there has been recent litigation by the Commission as to both the Titanium Dioxide Directive and the 1991 Amendments to the Framework Directive for Waste, where in each case the Council changed the legal basis chosen by the Commission from Article 100a of the Treaty to Article 130s. The European Court of Justice annulled the Titanium Dioxide Directive and the challenge to the Waste Framework Directive Amendments is still pending. (67)

Standing behind these specific deficiencies in the way EC legislation is drafted may lurk a more fundamental and systemic problem. The European penchant for regarding environmental regulation as a matter of scientific and technical policy, rather than a legal matter, has been noted earlier. EC environmental legislation appears in the past to have been developed chiefly by the programmatic offices at DG XI, and it is not clear that they have always obtained the kind of early, continuous, and "hands-on" drafting assistance from their legal staff that yields sharply chiseled, easily enforceable legislation. Technical folk write legislation designed mainly to communicate with other technical folk of good will. Thus, they tend to see little need for careful and precise definitions of scope; clear and precise standards and criteria; specific "approval", permit, or other implementing mechanisms; or detailed self-monitoring and remedial provisions.

Lawyers, on the other hand, are trained to consider all the problems and "worst cases" that may arise in a situation, and to write documents, whether they be contracts or legislation, to anticipate and clearly resolve them. Further, enforcement lawyers will always assume that the person to whom the legislation is addressed will do everything in his power to avoid compliance if it suits him. They will thus attempt to phrase the legislation so that there is no alternative but to comply, and to comply exactly as the drafter desires.

Sadly, human nature proves the lawyer right more often than not. While unnecessary legalisms should be avoided in drafting legislation, there is no substitute for a close working relationship between lawyer and technical person at every stage of the drafting process if enforceable legislation is to result.

5 ENFORCEMENT OF EC LEGISLATION AGAINST THE REGULATED COMMUNITY

Turning now to enforcement against the regulated community, the first thing to note is the gaps in the Community's environmental legislative scheme. Where there is no law, there obviously can be no enforcement.

There are important substantive gaps in the basic EC legislation. There is, for example, no legislation dealing directly with wetlands, volatile organic compounds (efforts are now underway here), underground storage tanks, and until recently, municipal sewage. Further, as noted above, where the EC has enacted framework legislation, it has frequently not promulgated many of the subsequent implementing ("daughter") directives contemplated by the framework directive and essential to its adequate implementation. Thus, limit values for List I (Black List) water pollutants, BATNEEC air emission standards for industrial plants, and technical requirements for waste storage and treatment facilities like landfills, incinerators, surface impoundments, and waste piles have either been slowly and sparsely enacted (e.g., List I limit values), are only now being developed (e.g., landfill and hazardous waste incinerator requirements and BATNEEC limits), or have not yet been addressed at all (e.g., surface impoundment requirements).

Turning now again to the specific elements of enforceable regulation outlined by the main speaker, examples illustrating the operation of each can be found. Many of the examples cited above in the context of member state implementation apply equally in the case of compliance by and enforcement against the regulated community. Likewise, some of the examples cited below hinder enforceability against member states as well.

Lack of clarity can cause real difficulties for regulated community compliance, and thus for the enforceability of the provisions. For example, the Framework Directive on Waste, as amended, excludes from the scope of the directive "waste waters, with the exception of waste in liquid form."(68) The meaning is not obvious. Further, in a number of ways noted below, the core concepts of "waste" and "hazardous waste" in the European Community waste directives, while more straight-forward than those employed in U.S. regulation, create severe compliance difficulties.

The precise definition of the scope of EC environmental legislation is one area in which considerable improvement could be made. For example, EC legislation typically relies on lists of substances and facilities for determining its applicability. It is commonly thought that the use of lists provides the regulated community with certainty, but this is by no means always true. For example, in the "Sevaso" directive, the regulatory scheme is applicable to facilities listed in Annex I.(69) But Annex II extends coverage, notwithstanding the Annex I list, to installations other than those in Annex I. The language used is confusing, both in the title and the text. The title says "Storage Other Than of Substances Listed in Annex III Associated With an Installation Referred To in Annex I." It is not clear on the face of this language whether all Annex III substances stored at non-Annex I facilities are covered (i.e., because they are Annex III substances not associated with an installation referred to in Annex I), or whether the scope is the storage of all substances except Annex III substances at Annex I facilities. The language in the text is equally opaque, although an analysis of the logic of the relationship between Annex I and Annex II indicates that the first meaning rather than the second must have been intended. Thus, while application of the Sevaso directive appears to turn on the use of a rather small list of types of major industrial facilities, in fact it reaches the storage, in the relevant quantities, of Annex III substances "at any place, installation, premises, building or area of land, isolated or within an establishment, being a site used for the purpose of storage."(70)

A major area of difficulty for the regulated community in determining the scope of sources covered by EC environmental legislation concerns the still developing definitions of "waste" and "hazardous waste" in EC waste legislation.(71) These core concepts lie at the threshold of compliance with all of the various pieces of EC Waste legislation. Quick, easy classification under them is thus crucial, but does not look likely as things now stand.

First, the definition of "waste" turns essentially on the term "discard", which is itself undefined. Second, while the Commission is to base the regulatory definition of both terms on lists that it is now developing (the European Waste Catalogue), the precision of this approach may be more apparent than real.(72) Some of the categories being considered in current drafts of the European Waste Catalogue are clearly not self-defining -- virtually every specific industry category has residual categories such as "manufacturing not otherwise specified." Further, some of the categories themselves are quite open-ended -- e.g., draft Category 16.10.1 ("small amounts of hazardous waste (separate collected fractions) from trade, commercial, manufacturing and institutions"), which is a subcategory of 16.10 ("mixed bulky wastes from trade,

commercial, manufacturing and installations"), itself a subcategory of 16 (Municipal wastes and similar commercial, industrial and institutional wastes).

Third, the tests to be used to determine when a waste is "hazardous" have been borrowed from the directives for the classification, packaging and labeling of dangerous substances and preparations. The elaborate testing procedures used for determining the hazardousness of new chemicals before they are put on the market, however, are ill suited at best for the repetitive use and rapid resolution necessary when testing the multitude of various mixtures that constitute commercial and industrial wastes. Further, it is not at all clear that the Commission will in fact use (or has the time to use under the schedule set out in the relevant directives) these tests to determine which of the listed wastes should be classified as "hazardous wastes" in its European Waste Catalogue. Nor is it clear whether the regulated community will itself have to use these tests to classify its own wastes if the lists are not sufficiently clear and precise to govern all cases, as they almost certainly will not be. If the regulated community must use these tests, they will have to be greatly simplified and specific rules for their application in the waste context carefully elaborated.

Fourth, when the Commission publishes its list, it will in any case have to clarify whether thresholds for contaminants apply to the waste categories, and what those thresholds are for the various relevant contaminants, how mixtures are to be treated, and a number of other very practical, but absolutely essential, details.

Other areas of definitional difficulty in the waste program include the scope of such key terms in Annex II A of the Framework Directive on Waste as discharge to a "water body" and "temporary storage, pending collection"; the difference in Annexes II A and B between disposal category D-10, "Incineration on land," and recovery category R-9, "Use principally as a fuel or other means to generate energy"(73); and the technical distinction between the concepts of "liquid" and "solid" in the draft Landfill Directive.

There are a number of cases where the failure of EC environmental legislation causes the regulated community to lack a clear standard of conduct. The term "BTMA" in the water legislation has never been defined adequately in practice and few daughter directives have been adopted for specific List I pollutants setting BTMA. The same is true for BATNEEC under the air legislation. Thus, there have been few, if any, effective guidelines at the EC level as to which types of technologies qualify as BTMA or BATNEEC for various industry categories (at least, as to BATNEEC, until recently), why they do so, how relevant technical and economic feasibility is to be considered, how these concepts are defined, what specific pollutant emissions can be achieved by the relevant technology, and thus what permit limits are appropriate. Further, such details as how startup/shutdown and malfunctions are to be dealt with are nowhere stated.

The same sort of difficulty has existed with the Framework Directive on Waste, which established some limited procedural requirements, but which did not spell out any substantive standards at all for various methods of waste treatment, storage or disposal. Only now is the Commission drafting landfill and hazardous waste incineration directives that set substantive standards.

Finally, the Commission's draft Eco-Auditing Regulation, in Annex I.B, requires many areas to be audited, such as "energy management, savings and choice," "raw materials management, savings, choice and transportation; water management and savings," "selection of production processes," and "product planning (design, packaging, transportation, use and disposal)," for which no substantive legal standards now exist or are set out in the proposed directive, and for most of which (e.g., "selection of production processes") no commonly agreed environmental standards of any sort, legal or otherwise, exist.(74) And such techniques as product life cycle analysis, that might be thought relevant to categories like "product planning," are highly developmental, subjective, value-laden, and thus problematic.

Questions regarding measuring compliance, deadlines for compliance, and self-monitoring and reporting are sometimes covered in permits issued under member state law. Because EC environmental legislation frequently ignores them (except as to analytical methods and averaging times), the enforceability of EC law in these regards turns on the happenstance of member state implementation.

The impact of incorrect procedural adoption on the enforceability of EC environmental requirements on the regulated community may be most apparent, other than in the cases of the Titanium Dioxide judgement and the shadow it casts over the crucial Waste Amendments, where a member state has incorrectly implemented EC law and the "direct effect" doctrine or the principle of the Frankovitch judgement can be successfully invoked by a regulated entity or a member of the public. For a discussion of these matters and references to other sources on them, see Deskbook at 7-8.

6 CONCLUSION

EC environmental legislation offers ample illustrations of the propositions in the main speaker's paper. It also illustrates the critical role played by institutional capability in design of enforceable regulation. Solutions, especially on the institutional front, are likely to prove difficult, but lessons can be learned, in any case, by all.

REFERENCES

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2 Eighth Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law - 1990, Annex C, Monitoring of the Application by Member States of Environmental Directives, O.J.C. 33811 (Dec. 31, 1991) [hereinafter Commission's Environmental Implementation Report].

3 Clinton Davis Hits Lack of Enforcement as Contributing to "Democratic Deficit" [Current Report] 12 Int'l Envt. Rep. (BNA) 579 (Dec. 13, 1989) (Mr. Clinton Davis is a former EC environmental commissioner).

4 Report of the Committee on the Environment, Public Health and Consumer Protection on the Implementation of European Community Environmental Legislation, PE 152. 144/fin. (J. Vernier, rapporteur, Jan. 6, 1992) [hereinafter Parliament's Report on Implementation].
Report of the Committee on Legal Affairs and Citizens' Rights on the Eighth Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law - 1990, PE 155. 131/fin. (J.M. Bandres Molet, rapporteur, Mar. 27, 1992) [hereinafter Parliament's Report on The Commission's Environmental Implementation Report].

5 J. Reitzes, The Inconsistent Implementation of the Environmental Laws of the European Community, 22 Envtl. L. Rep. 10523-28 (1992). Several important studies have been compiled on member state implementation of EC environmental legislation. N. Haigh, Manual of Environmental Policy; the EC and Britain, Longman, 1992 (hereinafter Haigh); European Community Environment Policy in Practice, Graham & Trotman, 1986 (comprised of, in separate volumes and by separate authors, a comparative study, and national reports on the Netherlands, France and the Federal Republic of Germany).

6 For a general discussion of the nature of, and enactment procedure for, directives, see Deskbook at 5-6. For a view that the process leads to enforcement problems, see Parliament's Report on Implementation at 11, para. A. Under the "direct effect" doctrine directives can sometimes have important implications for private parties, even if not implemented, or not implemented properly, at the member state level. See Deskbook at 6-9.

7 For a discussion of voluntary action, and its limits, see ENDS Report 211, 21 (Aug. 1992) (Voluntary action on the environment: Environmental care in the Netherlands). It should be noted that it is the position of the Dutch government that it will use covenants in place of regulations only where in its view, covenants are a more effective tool. See also, Parliament's Report on Implementation at 16, para. C 2.

8 For a discussion of how an environmental regulatory system can be made compatible with the needs of private investors, see *The Point of View of the Private Investor - The Impact of Environmental Laws on Privatization Transactions: Due Diligence and Other Means of Coping with Environmental Risks*, Conference on "Privatization, Foreign Direct Investment, and Environmental Liability in Central and Eastern Europe", Warsaw. (May 19-21, 1992). It must be noted, of course, that the regulated community, particularly in Europe, may acquiesce in regulatory ambiguity if it believes that later clarification will yield a better result, or at least that present clarification would yield a bad result. Further, it can be argued that foreign investors may prefer more clarity and certainty then domestic investors, since the former may feel that they are at a disadvantage vis a vis the latter in securing favorable decisions under an ambiguous regulatory provision.

9 See Commission's Environmental Implementation Report, Annex C at 220, para. 91.

10 Several of the Commission's Article 169 enforcement proceedings against member states have turned on the need for implementing EC environmental legislation by legally binding rules, not administrative guidelines. Commission's Environmental Implementation Report, Annex C at 207, paras. 21-23. See also, Parliament's Report on Implementation at 16, para. C 1.

11 For example, the proposed EC Eco-Audit regulation will require member state accreditation of the external auditors, and the proposed Shipment of Waste Regulation will require case-by-case shipment approval by member state competent authorities.

12 Commission's Environmental Implementation Report, Annex C at 208, para. 26, and 221, para 95.

13 Id. at 206-7.

14 Id. at 207-9.

15 The Treaty on Political Union, agreed to by the EC member states at the December 9 and 10, 1991 Maastricht Summit, is now going through the ratification process. If approved, it would substantially expand the EC's legislative competence in the areas of social, consumer and environmental protection, and would give important new powers to the Parliament and the Court of Justice. Changes immediately relevant to environmental law include:

- *Legislation removing non-tariff barriers to trade:* Presently, the EC uses its "harmonization" power extensively for environmental measures that may affect trade in the internal market. These environmental measures are adopted by majority voting in the Council, and the Parliament's role is largely advisory. The Treaty on Political Union, with its new "conciliation procedure" for the adoption of legislation, would give the Parliament a greater ability to force amendments to proposed legislation on the Council and Commission.
- *Environmental protection legislation:* Voting in the Council on environmental measures (which are not harmonization measures) is currently required to be unanimous. The Treaty would reduce that requirement to majority voting, after two readings in the Parliament, thereby making it easier for more stringent environmental measures to be adopted.

  In addition, EC environmental powers would be expanded to include the express authority to adopt environmental legislation (a) of "a fiscal nature," (b) affecting land use planning and water resource management, and (c) "significantly affecting" a member state's energy policy. This purports to be a significant expansion in practice of EC competence into areas previously thought to be the exclusive domain of member states. However, these particular measures would have to be adopted unanimously in the Council.
- *Judiciary:* The Court of Justice, at present, has no power to penalize member states for failing to implement EC directives. The Treaty will give the Court of Justice the power to fine member states that, after being condemned for not implementing EC law, fail to correct the situation.

These changes to the legislative powers and process, by giving the Parliament a greater role and by reducing the voting requirements in the Council, could result in a greater volume of more extensive environmental legislation. By giving the Court of Justice the authority to penalize member states, the Treaty would increase the importance of the expanding body of

EC environmental law. Member states would be compelled, under pain of fine for the first time, to implement EC law.

16 It can be argued, of course, that the member states acting in Council are simply implementing the public will, but where the issue involves legislation to force them to act, or to act in specific ways, there seems to be an inherent conflict of interest with their natural desire to retain discretion for their national bureaucracies. Likewise, they have little incentive to legislate systems that show up their own inadequate implementation or enforcement.

17 The Single European Act has, by giving Parliament a larger role, resulted in a situation in which the Parliament and the Commission, when aligned together on matters being considered under Article 100a, can sometimes outmaneuver laggard member states in the Council.

18 Directive 78/659 on the quality of fresh waters needing protection or improvement in order to support fish life, O.J.L 222/1 (Aug. 14, 1978) [hereinafter Fresh Water Fish Directive].

19 In a recent case, however, the European Court of Justice has created a new right of action by private parties to sue member states for damages suffered as a result of a member state's failure to properly implement EC law where that law bestows rights upon such parties. Joined Cases C-6/90 and C-9/10, Francovich v. République italienne and Bonifaci v. République italienne (Nov. 19, 1991). The Francovich judgement could create significant new pressure on member states for proper implementation. And if the Maastricht Treaty takes effect, the Court will have the power to fine member states for non-compliance.

20 There may be other disincentives to public interest group litigation, such as the UK rule that the losing party bears the winner's litigation costs and counsel fees.

21 Cf., Commission's Environmental Implementation Report, Annex C at 205-9 (documenting these problems in some detail); Parliament's Report on Implementation at 11-12.

22 Id. at 208, para. 32.

23 See the Commission's Environmental Implementation Report, Annex C at 221, para. 94; Parliament's Report on Implementation at 11, para. B. For a description of this process, see Deskbook at 10-11; Commission's Environmental Implementation Report, Annex C at 205-6, paras. 7-13.

24 The Commission is now turning to use of regulations more frequently, as the recently adopted Eco-label Regulation, and its proposed Eco-Audit and Shipment of Waste Regulations indicate. As noted earlier, however, even regulations frequently require some form of implementation at member state level.

25 Parliament's Report on Implementation at 13.

26 The EC has recently adopted a Directive on the Freedom of Access to Information on the Environment, but this legislation contains numerous loopholes. Directives 90/313 on freedom of access to information on the environment, O.J.L 158/56 (June 23, 1990) [hereinafter the FOI Directive]. See Deskbook at 15.

27 E.g., Commission's Environmental Implementation Report, Annex C at 207, para. 20 (the case of Belgium) and 210, para. 40 (the case of Germany); Parliament's Report on Implementation at 15, para. A.

28 The discussion below focusses chiefly on which subject matters are best dealt with at each level, and why. These questions frequently turn on whether one is dealing with the question of legislating (or legislating further, or adopting implementing administrative regulations or other legally binding measures), the question of case-by-case implementation (as through permits or other forms of approval), or the questions of enforcing or adjudicating.

29 Woodrow Wilson, Constitutional Government In The United States 173(1908).

30 The basic framework, involving legislation addressed in many respects to the states and requiring state implementation, is remarkably similar to that of an EC directive. The normal U.S. federal legislation is applicable nationwide, is directly effective against the regulated community, and resembles an EC regulation. The two acts in question creatively combined both methods of legislating, depending on the parts of the program in question.

31 There are difficulties here. The U.S. has decided that citizens should be equally protected even though the costs of doing so will vary geographically. Third world nations, and even some European ones, may see the economic/environmental risk calculus differently than the

U.S., or be prepared to see different levels of protection at different geographic areas within their borders. Further, it is not necessarily true that the same ambient standards will protect individuals in different geographic locations to the same extent, when sources of risk from other routes of exposure to the pollutant in question, or other catalyzing or contributing risk factors, are considered. Taking these matters into account, however, gets complicated.

32 Thus, there are important constitutional limits to federal action. In short, states cannot be forced to legislate or to regulate -- such direct coercion is prohibited. But indirect coercion is allowed -- e.g., the threat of direct federal regulation where state response is inadequate, and the threat of withholding federal funds.

33 Several other aspects of the federal/state issue may be worth noting. First, the mechanics of funding have proven to have a decisive impact on the balance of federal/state power. Federal funds have facilitated much of what state environmental agencies have been able to do, but potential withdrawal of funds has also been effectively used as a club by EPA. Second, as implementation of federal environmental law has been delegated to the states, pressure is put on state administrative law. Federal administrative law, whatever its problems, is a fairly coherent and well-developed body of law. The same cannot be said, however, for much of state administrative law. State administrative law may provide no right of intervention, of judicial review, or of other fundamental procedural protections taken for granted under federal law. When one considers that environmental licensing allocates rights to use the limited assimilative capacity of valuable air and water resources, without which many forms of highly profitable economic activity cannot proceed, the possibilities for abuse and arbitrary decision-making at the state level are apparent. Third, many Americans say they view federalism as a question of principle, particularly when they wrap themselves in a states' rights mantle. Note, however, that they tend to change sides on the federalism issue, depending upon where their individual interests lie. Industry is normally in favor of state-level regulation (which it believes will generally be more lax than federal regulation, for a host of reasons), except -- for example -- where a uniform manifest system would avoid the need to deal with fifty different manifests as hazardous waste is shipped interstate. And environmental groups normally favor strong federal power. But in siting nuclear power plants or hazardous waste facilities, they support local or state veto rights.

34 Europe Environment, No. 392 at 19 (July 28, 1992). The Commission and the COREPER are to prepare a report on the subsidiarity doctrine by October. Id. at 7.

35 Commission's Environmental Implementation Report, Annex C at 221-22, paras. 96-100; Deskbook at 15.

36 On the other hand, the Agency will have information gathering powers that may prove useful to the Commission, given the documented lack of cooperation by member states in this regard to date. See Commission's Environmental Implementation Report, Annex C at 221, para. 93.

37 See supra note (2).

38 E.g., The Commission's Environmental Implementation Report, Annex C at 217, para. 77; Parliament's Report on Implementation at 6, 8-9; c.f., Parliament's Report on the Commission's Environmental Implementation Report at 16-17.

39 Ambiguity in EC legislative language is particularly difficult, since no legislative history exists. The closest thing may be the Commission's Explanatory Memoranda, which the Council is not bound by, and the minutes of the Council Meetings, which may be hard to obtain and which have no standing in court.

40 Directive 76/464 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, O.J.L 129/23 (May 18, 1976) [hereinafter Dangerous Substances Directive].

41 Id. art. 7, paras. 1-3.

42 Id. art. 7, para. 3.

43 Id. art. 7, paras. 5-7.

44 One simple solution, of course, would be for the Council to routinely give the Commission the authority to itself adopt the more detailed implementing legislation that broad statutory language, usually all one can usefully get out of a legislative body in any case, needs in order

to be effectively implemented and enforced, whether with regard to subordinate levels of government or the regulated community. The U.S. EPA has this power in virtually all cases. The Community has used a similar legislative technique in the area of food regulation, delegating to the Commission, acting through a Technical Committee of member state experts, the ability to enact further implementing legislation without intervention by the Council except in case of deadlock. It has not used this technique widely in environmental legislation. In the U.S., formal administrative procedures for public input during the EPA rulemaking process and the easy availability of rigorous judicial review provide safeguards to substitute for the lack of political control in this form of subordinate administrative "lawmaking." Absent such safeguards in the EC context, use of this technique, while perhaps efficient, would be problematic, although the use of the Technical Committee (with resort to the Council) retains some semblance of political control.

45 The U.S. statutory language establishing the basic federal water quality regulatory program has more detail than the Dangerous Substances Directive, but still lacks explicit treatment of many of these key matters. It has also had a checkered history of implementation.

46 See the pointed comments by the Commission in the Commission's Environmental Implementation Report, Annex C at 217-18, paras. 77, 78, 80.

47 Deskbook at 22.

48 See The Commission's Environmental Implementation Report, Annex C at 217-18, para. 80.

49 See Haigh at 3.8 to 3.10 and his subsequent discussion in the context of specific directives.

50 For the history of EC efforts here, see Deskbook at 18-19.

51 See Deskbook at 18-19, 21-22, 24-26; The Commission's Environmental Implementation Report, Annex C at 216, para. 73, 219, para. 85.

52 Dangerous Substances Directive, art. 6, para 1(b). A similar problem exists with the substantive test for BATNEEC under the air pollution directives. Deskbook at 18.

53 Dangerous Substances Directive, art. 9.

54 Id. art. 1, para. c, art. 3, para. 3.

55 See Deskbook at 17, n. 134.

56 Fresh Water Fish Directive, art. 1, para. 1.

57 Directive 79/923 on the quality required for shellfish waters, O.J.L 281/47 (Nov. 10, 1979) [hereinafter Shellfish Directive].

58 Directive 76/160 concerning the quality of bathing water, O.J.L 31/1 (Feb. 5, 1976) [hereinafter Bathing Water Directive]; Directive 75/440 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States, O.J.L 194/26 (July 25, 1975) [hereinafter Abstraction of Drinking Water Directive], as amended by Directive 79/869, O.J.L 271/44 (Oct. 29, 1979).

59 Parliament's Report on Implementation at 8; Haigh at 4.10-1 to 4.10-3.

60 Commission v. Italy, Case 322/86, 1988 E.C.R. 3995.

61 Deskbook at 21, n. 194.

62 Directive 84/360 on the combating of air pollution from industrial plants, O.J.L 188/20 (July 16, 1984) [hereinafter the Framework Directive on Air Pollution From Industrial Plants], art. 4, para. 2.

63 See Deskbook at 18, n's. 145-47.

64 Commission's Environmental Implementation Report, Annex C at 216, para. 73.

65 Deskbook at 18, n. 145.

66 Id. at 24.

67 See Deskbook at 5, n. 12, and 5-14, passim, for a discussion of the two methods of enacting legislation, their consequences, and the litigation.

68 Directive 75/442 on Waste, O.J.L 194/26 (July 25, 1975), as amended by Directive 91/156, O.J.L 78/32 (Mar. 26, 1991) [hereinafter Framework Directive on Waste and Waste Amendments respectively], art. 2, para. 1(b)(iv).

69 Directive 82/501 on the major accident hazards of certain industrial activities, O.J.L 230/1 (Aug. 5, 1982) [hereinafter Sevaso Directive], as amended by Directive 87/216, O.J.L 85/36 (Mar. 28, 1987), and Directive 88/610, O.J.L 336/14 (Dec. 7, 1988).

70 Id. Annex II. See also, Parliament's Report on Implementation at 8.

71 E.g., Waste Amendments, art. 1, para. (a); Directive 91/689 on hazardous waste, O.J.L 337/10 (Dec. 12, 1991) [hereinafter Hazardous Waste Directive], art. 1, para. 4. The fact that the Framework Directive on Waste has used a definition of waste that turns on national definitions has made easy, pan-European compliance difficult for industry. See Deskbook at 24, n. 240; c.f., Parliament's Report on Implementation at 8. While the Waste Amendments were intended to cure these problems, the older legislation continues in effect until the Waste Amendments are promulgated, those Amendments are under challenge in the European Court of Justice on "Titanium Dioxide" grounds, and the new definitions have the problems laid out in the text in any case.

72 See, e.g., Parliament's Report on Implementation at 8.

73 Not to mention the distinction between "incineratable packaging" which constitutes "recoverable" packaging (a "good thing"), and packaging that is classified as "non-recoverable" (a "bad thing") because its incineration constitutes "final disposal" (i.e. insufficient heat being recovered). While technical distinctions are set out between the two in Annex II to the Commission's proposed Packaging Waste Directive, real difficulties remain when something as simple and obvious as the varying heat value of residues in the packaging is considered.

74 Further, even if clear, developed environmental standards did exist on matters like selection of a plant's basic production process (separate from the already existing environmental legislation that must be complied with in any case), there would likely be little consensus on their relationship to the mandates of consumer choice (dictated by the principle of consumer sovereignty) and of economic efficiency in production and distribution (dictated by the use of a free market).

COMBATTING ENVIRONMENTAL CRIME IN AN INTERNATIONAL CONTEXT

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1 THE DEVELOPMENT OF ENVIRONMENTAL CRIME

The phenomenon of environmental crime has been assuming greater proportions since 1985. One of the reasons for this is the growing "waste mountain" within Europe. Europe produces too much waste material and there are too few possibilities for processing it. In most cases the NIMBY (not in my backyard) principle applies when incinerators and waste dumps are being established. Because governments are introducing stricter regulations with regard to the processing of waste, it is also becoming more expensive to have this waste processed. In the Netherlands, for example, dumping fees have trebled in recent years. (To give an idea of the extent of the waste problem, an annex has been attached containing figures on the import into, export from and transit of chemical waste through the Netherlands).

Criminal studies conducted in the Netherlands reveal that the pressing waste problem is a breeding ground for the sharp growth in environmental crime. "Environmental crime" can be defined as "a type of crime involving a conscious violation of the environmental standards laid down in environmental law". Environmental offenses are usually committed for economic reasons, with an excess of waste that nobody wants, finding its way onto the illegal circuit for a considerable sum of money.

2 INTERNATIONALISATION OF ENVIRONMENTAL CRIME

Legal inquiries in recent years have often focused on international types of environmental crime. Recent studies by the National Criminal Intelligence Service reveal that environmental crime is assuming an increasingly international character.

Types of international environmental crime include:

- "Waste tourism". This involves the illegal transportation of waste material across borders within Europe. These waste transport routes are often part of large-scale international environmental crime. Such transport lines are difficult to detect.

When the internal borders fall away in 1993, the external borders will become very important for the illegal transport of waste. Once a shipment of waste has crossed an external border, it is of course also inside Europe. There is then the risk that such illegal shipments can be dispersed, without being checked, throughout Europe and other countries and ultimately disappear somewhere illegally or be dumped.

This then gives rise to a second derived form of environmental crime (also existing as an independent phenomenon), namely:

- The illegal dumping of waste at random sites in Europe and other countries. Dutch studies have revealed that waste material from the Netherlands is already finding its way to dumping sites in Belgium, France, the United Kingdom, Yugoslavia, the Soviet Union, Poland, and Rumania.

For the environmental criminal operating at an international level it is profitable to collect waste material in one country and dump it illegally in another, whether or not under false pretences.

One problem when dealing with this type of illegal operation is that it is not easy to exchange information internationally. The tackling of this crime is hampered by differences in

legislation and enforcement practices. The risk of being caught for illegal dumping is therefore slight, and the economic advantage for the suspect is considerable.

It has been shown that environmental crime conducted **on an international scale** is most profitable, and also that the combatting of such crime gives rise to problems.
Illegal operations carried out in different countries are less conspicuous than if they were conducted in a restricted (national) area. It is for this reason that there is such a slight risk of getting caught. The inevitable consequence is that professional environmental criminals will increasingly do their best to look within Europe for illegal dumping sites where unwanted waste can be deposited. This means that almost all European countries will face the risk of having to contend with this type of crime.

It therefore seems essential to coordinate the fight against international environmental crime.

3 THE CURRENT SITUATION

The combatting of international environmental crime makes use of ad-hoc cooperation structures and treaties. This type of international cooperation is sufficient for simple offenses, but becomes much more difficult if we are dealing with professional criminals who operate internationally.

In 1989 the National Criminal Intelligence Service conducted a study examining whether and to what extent illegally operating dealers and transporters were also involved in other types of crime. The study investigated 116 businesses and examined the criminal records of the management of these firms. It was found that of the 263 managerial personnel (directors, managers, board members) one quarter had committed other offenses. Their criminal records included the following types of crime: fraud, theft, breaches of the firearms regulations, and illicit drug trafficking.
Recent studies of environmental crime also reveal that persons involved in more "traditional" types of crime, such as illicit drug trafficking, also turn to environmental crime.

The above warrants yet again the conclusion that we are dealing here with a serious type of crime which the more professional criminal has taken control of. Analyses show that the involvement of professional criminals in environmental crime requires a thorough legal investigation.

In order to be able to tackle this type of environmental crime, an extensive preliminary investigation in an international context is often required. Experience shows that, in particular, the gathering of relevant information gives rise to problems because:

- The information is often spread over different sources;
- A central contact point is not usually available;
- There is no uniform international definition of the term "environmental crime";
- Professional (environmental) criminals usually arrange a legal facade for their illegal activities.

In addition to information from judicial bodies, information from other government bodies is also relevant to the tackling of the environmental crime problem, nationally and internationally.
There needs to be, for instance, a continuing examination of the extent to which permits and exemptions are issued.

Almost every European country has a government apparatus charged with monitoring the observance of environmental regulations. Nevertheless, the exchange of information
encounters problems here too because of the complexity of the systems in question, ignorance of these systems, as well as a lack of contact points.

After a preliminary (pro-active) investigation is completed, a decision may be made to proceed to a criminal investigation. Here the cooperation of legal authorities in other countries is essential. An often long and difficult course has to be followed before such agreements can be reached.

4 DESIRED SITUATION

As outlined above, the already present internationalisation of environmental crime is expected to continue. The waste issue is a growing problem, and for this reason there will continue to be a market for illegal practices.

There seems to be an increasing need within Europe and other counties for harmonisation and coordination in the fight against international types of environmental crime.

It would seem desirable for the cooperation and harmonisation to occur at two levels:

- Firstly, it is important to gather coordinated information about and for the purposes of investigation operations;
- Secondly, it is also important to collect information from government bodies in a coordinated fashion. As mentioned above, almost every (European) country has a supervisory apparatus that is responsible for monitoring the observance of environmental regulations. In order to combat international environmental crime, this information needs to be combined at an international level.

ANNEX

Information from the Ministry of Housing, Physical Planning and Environment (Source: General Directorate for the Environment, annual figures on chemical and toxic waste 1990, June 1991), shows that 195,000 tonnes of chemical or other toxic waste were exported from the Netherlands in 1990 and 200,000 tonnes of waste were imported. The quantity of toxic waste which passed through the Netherlands amounted to 38,000 tonnes.

The number of shipments of waste increased by 55% in comparison with 1989. This is three times greater than in 1987.

The large-scale transporting of waste gives rise to monitoring problems and provides criminals with opportunities to engage in illegal activities.

DEVELOPMENT OF THE POLICE'S ENFORCEMENT POSITION IN THE FIELD OF ENVIRONMENT

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1 HISTORICAL OVERVIEW

Various environmental laws were passed in a short period of time in the seventies. The way in which the legislation should be enforced was regulated, but very little attention was paid to this matter in the early years. This had certain consequences, of course. A number of scandals involving chemical waste revealed the shortcomings of the control mechanisms. In addition, the ways in which the laws were enforced, were very complicated. Every government body (national, provincial and municipal) had its own responsibility in the chain and this led to coordination difficulties.

2 DEVELOPMENT OF THE POLICE'S ENFORCEMENT POSITION IN THE FIELD OF ENVIRONMENT

The regular police, as well as special detective services and civil servants, play a role in the enforcement of penal provisions of environmental legislation.

Enforcement of criminal law in the Netherlands has traditionally been an area for the regular police. An increase of legislation and the workload, caused the police to give priority to relatively serious crimes.

Most offenses against environmental legislation were given a low priority, on the one hand through a lack of knowledge with the police and on the other hand, through the low degree of social moral indignation.

Especially because of this, a number of ministries and other administrative bodies at various levels felt the strong need for their own enforcement departments with an emphasis on administrative rather than criminal enforcement.

In past few years social environmental awareness had grown strongly. Offenses against environmental values have come to be regarded more and more as infringements of an essential code of behaviour and therefore as criminal behaviour. At the same time, a growing importance of penal enforcement has been observed. These developments have influenced the police in the serve that they have started a strong reorientation on task, role and position of the police in relation to environmental enforcement.

In 1987 the minister of the environment took the standpoint that: the enforcement, in the sense of detecting offenses against environmental legislation, belongs with the police. This general enforcement duty should not be diminished any further through the founding of new special detective services for environmental affairs.

Arguments for the role of the police

- the police are available and on patrol 24 hours a day;
- the police are specialists in conducting investigations;
- the police work falls under the authority of the public prosecutor;
- the police are objective and independent; and
- the police are familiar with their locations and have access to a great deal of information.

3 ACTUAL DEVELOPMENTS

In 1990 the Coordinating Police Council - an umbrella organization of all police services - drew up a policy plan for the police environmental duties and called this "to enforce or to lose". In this report, the police environmental duties were described as follows:

- detective duties, which are divided according to the following forms of environmental crime;
- minor environmental offenses, such as littering, noise nuisance, tinkering in the street;
- lesser environmental crimes: for example incidental discharges, illegal dumping of crude waste, illegal spreading of manure on the land, illegal car demolishing businesses;
- severe, organized environmental crime: for example illegal commercial processing of (chemical) waste, or crimes which cause severe damage to the environment;
- supporting the administration: assisting the administrative bodies, detection (eye and ear function), advising on permits (enforceability), registering and passing on environmental complaints;
- internal environmental care: from the exemplary function of the police itself to a change in the culture and mentality of policemen, the environmental aspect will have to be integrated.

This policy plan is not only directed at the development of the enforcement duties, but also at:

- demarcation of duties in this field in relation to other organizations which are involved in the enforcement;
- attunement - and cooperation - with other organizations (administration, Ministry of Justice, special detective services, monitoring officials);
- the consequences for the Dutch police manpower with regard to, equipment and financing, including training;
- the development of activity plans.

This all will be needed to substantiate the necessary conditions for the implementation of the environmental duties within the police. Following this, a re-structuring of the environmental care takes place. In this way regional environmental bureaus within the police organization have been founded in most police regions with financial support from the ministries of Internal Affairs and Justice. From these bureaus activities are planned to stimulate broad acceptance of the environmental duties within the police.

The concrete effort of the police in this field of lesser and severe environmental crimes has lead to a considerable number of criminal investigations that have been solved.

Apart from the above the police is also actively involved in monitoring projects in close cooperation with the administrative authorities. These projects may vary from checking certain businesses to dealing with environmentally unsound situations (problems with manure, car wrecks, discharges onto water). Evaluations of these monitoring projects have brought to light that it is most effective to involve the police in compliance monitoring visits to businesses.

In cooperation with the Ministries of Internal Affairs and Justice, mayor developments have been put in motion with respect to the conditions under which the police environmental duties are to be shaped, especially where training, information and automation and internal environmental care are concerned.

In 1990 the "Task Field Environmental Crime" was founded by the National Criminal Intelligence Service (CRI), at the Forensic Laboratory the main department of Environment was founded which, in close cooperation with the Environmental Assistance team of the Ministry of Housing, Physical Planning and Environment, professionally support the police in tackling severe, environmental crime cases in particular.

The Task Field Environmental Crime Intelligence Service (CRI) focuses on the following activities:

- investigative expertise;
- crime analysis;

- environmental accountancy;
- international mediating function;
- joining information flows at a national level;
- understanding developments in environmental crime; and
- recognition of the relationships with other types of crime.

One of the activities which calls for priority as well is the application of means of detection which are being used for other types of professional crime. This has led to pilot projects now being in force with the Regional Criminal Intelligence Services.

In relation to the often international character of environmental crime - just think of the illegal cross border shipping of waste - the Netherlands have asked for more attention on tackling international environmental crime at the TREVI-III conference (this is the EEC conference on police matters).

At the 8th Symposium on International Fraud held in Lyons in June 1992, a recommendation was accepted in which a working party was established to identify the various problems that arise in connection with environmental crime.

In developing the police environmental duties, the police run into a number of obstacles. The sheer size, the quality and the inaccessibility of the legislation form barriers against forceful enforcement by the police. The administrative context - just think of the problems that are related to administrative permissiveness and the enforceability of permits - also greatly influences the enforcement possibilities of the police.

Summing up it may be concluded that infrastructurally a fair number of activities have been started. The intention behind these activities is, of course, the improvement of the quality of environmental enforcement and the priority it gets.

The regional chiefs of police held an environmental conference on December 2nd and 3rd 1991. In the conclusive statement of this conference, the chiefs of police articulated a number of policy intentions to ensure that the effort of the police on a strategic as well as operational level, will be intensified.

- It is intended that, in relation to social effects on environmental enforcement, which will have to be further worded, the efforts will be doubled in 1995. In effect this means 4% of the police budget.
- In 1996 almost all police officers will have had environmental training.
- In 1995 internal environmental care systems will be operational in all police organizations.
- The police will offer its expertise more emphatically to other organizations in order to contribute to the enforceability of legislation and the resulting permits.
- The activities that have been put in motion in the field of information and coordination and attunement with other parties involved in enforcement, will be developed in an accelerated manner.

At this very moment we are charting the information which will be necessary for the execution of the police environmental duties. We are also investigating in what way police information may be given to other partners in the enforcement network. In accordance with privacy legislation, the police are ruled by the Police Register Act as well. This means that the exchange of information is bound by strict rules.

- The police want to give more content to its director's function in the area of detection as far as special detectives and their services are concerned. I have stated earlier that for several special laws, separate special detective services have been founded. Since the police have a general investigative competence, attunement will have to take place.

In order to realize these and other policy intentions, the CPB founded a special deliberation structure. The heads of the regional environmental bureaus meet periodically to exchange information and to learn from one another's experiences. The CPB also participates in many external national committees.

4 INFORMATION ON THE ROLE OF THE COORDINATING POLICE COUNCIL AND THE POLICE IN RELATION TO THE ENFORCEMENT OF ENVIRONMENTAL LEGISLATION

The police organization in general and the police environmental duties.

The Dutch police is currently working on a unique reorganization. 148 autonomous units of the municipal police and the national police will merge to form 25 regional bodies and a unit for nationwide services. The operation is meant to take place within a period of about 2 years. In April 1993 the new police organization is to be operational.

The regional organization is governed by the regional council, which consists of the police manager (the mayor of the largest municipality), the chief public prosecutor and the other mayors of the region. This body determines the allocation of personnel, the budget, the annual account and the policy plan. The daily control and management of the regional police force lie with the regional chief of police.

The authority over the police has been arranged as follows. Where the enforcement of the public order is concerned, the authority lies with the mayor; with regard to criminal law enforcement of the legal order, the public prosecutor is the competent authority.

The mayor, the public prosecutor and the chief of police of the municipality in which the police unit is stationed, confer at so-called "triangular deliberations", which are to be held on a regular basis. This will automatically mean setting priorities for the police.

The organization consists of geographical units and functional units such as criminal investigation, executive support, facilities and policy support units.

The employees who work at the geographical units are entrusted with the so-called basic police duties with general job specifications. Enforcement of environmental legislation is part of this job specification. At the criminal investigation and executive support units, there are specializations (in the field of environment) for fighting complex environmental crimes and for supporting the basic police units.

The future police unit of national services will comprise the national duties such as compliance monitoring and detection on the motorways and through waterways and supportive services (technology, environmental flights in relation to environmental duties, criminal investigation expertise, logistics).

The chiefs of the 25 regional services and the chief of the police unit of national services together make up the Coordinating Police Council (CPB).

The CPB has the following goals:

- developing and propagating the views on all matters that are relevant for the police
- acting as point of address for all matters that concern the police
- promoting the own professionality and up-to-date picture of the police
- advising authorities and controlling services regarding the police

Each chief of police serves a certain port-folio. One of these is the police environmental duty, which is now held by the chief-commissioner of the Rotterdam Police Region.

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ENVIRONMENTAL ENFORCEMENT BY MUNICIPALITIES IN THE NETHERLANDS

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ENFORCEMENT: Collaboration and persistence

1 GENERAL REVIEW OF THE ENFORCEMENT SYSTEM IN THE NETHERLANDS

Enforcement is the ultimate test of environmental policy - in fact, of every area of policy. Enforcement involves forcing the regulated society to conform to the rules. The fact that there are various means for doing this will be discussed a little later. Above all, enforcement is the final link in the policy cycle, and thereby the prelude to the first policy-making link.

Confronted with the regulated society, and thus the practical situation, the new policy-making requirements imposed by everyday practice become clear. I should mention now that the effectiveness of the instruments used certainly forms part of this feedback, which has the character of an evaluation. Enforceability and public acceptance are important assessment criteria in this test.

In the Netherlands, municipal authorities bear primary responsibility for environmental policy. These authorities are responsible for supervising the vast majority of the country's companies; 400,000 in all. This enormous number of companies includes many organisations which place a limited burden on the environment. As an example, I can cite the combined residential and office buildings, or which 50,000 are subject to licensing requirements. Provincial authorities are responsible for about another 3,000 companies, either because of the complexity of the industrial processes used or because of their high external impact.

The Netherlands covers an area of some 35,000 km^2, has a population of 15 million, and is divided into 12 provinces and 649 municipalities. The provincial authorities, and the municipal authorities in particular, have an open administration in which a large number of tasks are carried out within an integrated policy framework. The municipal tasks may be strictly autonomous duties, such as responsibility for drains and sewers, or duties imposed by national legislation, which can allow municipalities a greater or lesser margin for independent policy-making.

The entire territory of the Netherlands is also divided into water authorities. These are directly elected, functional regional organisations, which bear responsibility for water management and purification of waste water.

Naturally, the municipalities not only concern themselves with the companies within their boundaries, but also ensure that everyone in their territory complies with the relevant environmental regulations. They supervise moped noise levels, for instance, and discharges of chemical wastes into sewers (cleaning agents, paint remains, medicines etc.) or the street (from lubricants when engine oil is changed, to dog dirt etc.); they also monitor the composition and presentation of domestic refuse (compulsory separation of organic wastes, building and demolition wastes, domestic chemical wastes etc.).

In view of the enormous number of potential polluters and actual transgressions, formal enforcement can never cover the entire population in full. Priorities must be set, and a mix of instruments must be applied.

Municipal authorities are not the only enforcers: a multitude of different organisations may concern themselves with the same company. In addition to the general environmental licenses issued by local authorities under the Nuisance Act, many of the 400,000 companies are required to hold special licenses under other legislation. The water quality inspector may, for instance, call on certain companies to conduct checks of water quality control. In addition to the general administrative bodies, the police and the public prosecutor have their own powers of investigation for the enforcement of criminal law and could, in principle, operate independently of municipal administrative enforcement activities.

Environmental policy is made at different levels. Legislation and the relevant standards and directives provide the framework within which other tiers of government must operate. The aim is allow the greatest possible amount of local policy-making freedom, in order to ensure a customised approach. Naturally, the margins of freedom vary from one area of policy to another.

Unlike many other countries, central government in the Netherlands does not, barring a handful of exceptions (e.g. for nuclear power), perform first-line supervision of compliance with legislation. Central government inspectors supervise the ways in which other tiers of government perform their duties. Controls aimed at certain branches of industry can cut across municipal priorities in extremely aggravating ways. Coordination of the actions of different government agencies is urgently needed. For a company, it is incomprehensible and exceedingly annoying to have a succession of different enforcers moving in.

2 POSITION OF MUNICIPAL AUTHORITIES IN ENVIRONMENTAL POLICY IS NOT SELF-EVIDENT

The fact that municipal authorities have an important environmental task has not always been self-evident. Despite their statutory duties, municipal authorities have allowed many companies to operate without licenses and have certainly not conducted enough inspections. For more than a century, these authorities have been able to avail themselves of the Nuisance Act, which affords them responsibility for controlling local disturbances by companies.
When real environmental policy was developed, the government did not opt to extend the Nuisance Act, but introduced new legislation, with stringent rules, for each new approach laboriously agreed in Parliament. Consequently, each compartment was regulated separately in law and, moreover, the provinces were made responsible for the majority of the new tasks, rather than the municipalities. Responsibility for purification of waste water and the relevant installations was actually withdrawn from the municipalities by law.

With each new piece of legislation, new financial resources were generated to fund its implementation. In an era of stringent austerity measures, this became increasingly difficult (municipal authorities receive about 75% of their income from central government). Licensing also became increasingly expensive, due to the tighter requirements imposed in response to increasingly complex processes and the use of more hazardous substances.

For a time, municipal authorities were unpopular with the environmental movement and with many politicians, as they were felt to be too close to local industry to be able to take an independent view in the field of tension between economic and environmental interests. Gradually, the idea gained ground that environmental policy needs to be as close to the public as possible, and must be formulated in direct correlation with other areas of policy. In fact, it was precisely the political approach, rather than the technocratic one, which proved to be the most effective.

Relationships between municipal and central government, originally confrontational and marked by scepticism, has now changed into a partnership: tasks are undertaken jointly, using the strengths of both partners. Research established the number of officials required at each level for the different municipal environmental tasks, and the costs. The studies showed that a population of 70,000 is the minimum needed to carry a proper official apparatus. Collaboration between municipal authorities is therefore essential. Central government made financial resources available on a structural basis, issuing instructions that within five years, all companies falling under the responsibility of the municipalities should be properly licensed and should be inspected with the proper frequency. To encourage collaboration, a 25% bonus was offered over and above the basic amount in case of collaboration. At national level, the operation was led by a steering group in which the Environment Department, the inspectorate and the Association of Netherlands Municipalities (VNG) worked together.

The National Environmental Policy Plan Plus (NEPP-Plus) has since been published, operationalising national policy in a large number of action programmes. To clarify what is expected of municipal authorities in the execution of this plan, all the objectives have been translated to the municipal level, assigning priorities and the relevant official action. This document is known as the Framework Plan of Approach and is the pride of the Department and my own organisation. All

municipal authorities use the Framework Plan to define their own situation and to prioritise action. With the help of the Framework Plan, they have all prepared their own environmental policy plans, interpreting the points for action in terms of their own situation. This document serves as a basis for discussions with industry and environmental organisations and is included in the regional talks of the municipal authorities working in partnership. Local communities now know what they can expect of their municipal authorities.

3 REGULATION SYSTEM

Before continuing with the theme of enforcement, I must first explain the regulations themselves. In a large number of branches of industry, licenses are no longer required. Instead, these branches are subject to General Terms and Conditions. Individual companies themselves must ensure that they comply with the requirements. Plans to form, expand or change a business must be reported to the local authority. The municipal authorities do still conduct inspections to check compliance with the General Terms and Conditions.

The repeal of licensing requirements was a result of central government deregulation efforts. The branches concerned consist of small, fairly uncomplicated businesses of a homogenous nature: butchers, bakeries, LPG stations, etc.

The NEPP-Plus laid down a large number of target reductions in emissions, which must be realised within a specific period. The plan also names the branches of industry which must make a particular contribution to the reductions, known as the policy target groups. Target reductions are agreed with industry for individual substances and are laid down in a declaration of intent, which is then elaborated in a covenant. The three tiers of government hold joint talks with representatives of the branch of industry concerned, and each sign the covenants. A covenant has already been concluded with the basic metals industry and one with the graphical industry is almost complete.

Covenants are a national 'bubble': they show total national volumes of pollution levels considered admissible for emissions of a specific substance. This makes clear what is expected of a branch of industry. The municipal authority is given some indication of the standards which can be imposed in a license. The distribution of pollution control measures will have to be considered within the branch of industry itself. Clearly, this will demand a considerable amount of consultation. Industry feels that covenants should, in fact, serve as a package of standard conditions and that therefore, there should be no scope for further development by a municipal authority. The municipal authorities adhere to the target group policy, because this means that environmental policy is internalised in a branch of industry and is developed in a corporate environmental plan by the individual companies. This plan serves as the basis for negotiations with the local authority. However, municipal authorities explicitly want a considerable margin of policy freedom in order to tailor final licenses to the situation required locally. In the enforcement situation, that could lead to problems in future.

The licensing and enforcement situation is complex, as I have already shown. There is every reason for concerted action. Different parties in society must help to create a desired situation through coordinated action: a system of countervailing power. Strictly formal enforcement, on the basis of administrative and criminal law, is only one option within a wide spectrum of different instruments. An orchestra does not always want to use only its heaviest instruments, like the kettledrums and tubas: the same applies in government.

4 CONDITIONS FOR ENFORCEMENT

A number of conditions must be met in order to realise effective implementation of environmental policy, and thereby, its enforcement. Firstly, a municipal authority must clearly define what it wants and must make this visible in a proper document. Secondly, the policy must be discussed as far as possible with the different target groups, in an open procedure.

The partners must be told what has and has not happened to their contribution, and why. Where possible, the partners' requirements must be satisfied. This can mean adaptation of the policy itself, or changes in the phases of execution. Standards and figures often seem extremely hard and

fast, with a scientific basis, but on closer inspection, are ultimately a political compromise.

Operating in this way can sharply increase public support for policy. General public information must complete the process. The public, too, must be able to see how any compromises are reached and must be shown that high environmental returns have, nevertheless, always taken priority. In the negotiations with industry, the creation of a basis for sound control must be agreed: this could be a corporate environmental plan, but also a certain method of supplying information, together with the appropriate monitoring system.

I have depicted support for policy as a fairly harmonious process: in reality, of course, this is not always the case. A government organisation needs partners in order to pursue its policy, certainly in industry, where economic gain can quickly gain the upper hand. It can be made clear to banks and insurance companies that the government will not only bring licenses up to date, but that enforcement action will follow. Experience shows that the RABO Bank is by far the best enforcer if a guarantee is needed for a company loan. Trade unions have an interest in ensuring high standards of environmental hygiene in companies, both for the health of their members and for the continuity of the company. Finally, the public can be asked to keep a watch and to inform local authorities or the police if environmental transgressions are suspected, or to institute civil proceedings themselves.

Publicity is needed to let the public know the municipality's environmental plans. It can also be used to promote desirable environmental conduct. Some directors of municipal environmental services use publicity as a weapon to make reluctant companies conform more quickly to licensing requirements. Press announcements of targeted campaigns in a certain area or branch of industry markedly improve collaboration from the companies concerned. In any action against a company, the presence of the press, tipped off in advance, can make it clear to other potential transgressors in the same branch that the steps are being taken in earnest.

5 PRIORITIES ARE UNAVOIDABLE

I have already mentioned the enormous number of potential enforcement situations and the fact that it is impossible to pay the same level of attention to all of them, everywhere. A set of priorities will have to be drawn up for inspections, based on the potential burden which different companies can place on the environment. In other companies, unannounced random checks must be introduced. The enormous amount of work involved makes it obvious that butchers and bakers could mostly be left to their own devices and that one should rely on external tip-offs in these cases. Self-regulation should be encouraged as far as possible. I have already described how this could be done.

It must in any event be made clear to everyone that action will be taken if violations are discovered. An obvious step would be to require restoration of the former situation, for instance in the case of discharges into the soil by compulsory cleaning, or compulsory replanting, in the case of unlawful felling of trees. If no appropriate response is made to the detection of a violation, action must be systematically pursued, in escalating stages. Ultimately, criminal proceedings may be necessary. Naturally, these will be required where criminal activities are involved, and the closure of the company will be the obvious step. But Dutch law does not make matters easy for enforcers. If a municipal authority announces a company closure, the company concerned can appeal to the Council of State. If the company has been operating for a long time without a license, or in violation of license terms, the Council will tend to overturn the closure decision. Tolerance of a violation is then interpreted in the transgressor's favour: which is a rather remarkable situation. After all, a company should comply with the law, but it is not the company, but the supervisory authority which is held liable for such compliance. These roles urgently need reversal. A company which operates without a license, or in contravention of license terms, should be charged for the economic benefits it has illegally enjoyed. This would have a considerable effect as a preventive measure.

Enforcement is a difficult task, and it requires training. It is certainly not always an easy matter to identify the regulation which has been contravened from among the multitude of central government, provincial, municipal and water board regulations which simultaneously apply to one and the same company. The method of action and of gathering evidence also requires precision. It

can cost officials a fair amount of difficulty to act in a company which confronts them with large amounts of counter-knowledge. The right attitude also has to be taught. To assist municipal authorities in this area, the Association of Netherlands Municipalities (VNG) has published a Guide for Supervision and Action on Environmental Legislation, describing the successive phases.

6 COLLABORATION IS ESSENTIAL

Inter-municipal collaboration is essential in order to formulate and implement effective environmental policies. The whole of the Netherlands is, by now, covered by partnership areas. In the first instance, these involve joint use of sufficient official capacity. In time, collaboration grows towards a regional environmental service and a policy-making body. Ultimately, the absorption of these regions by genuine regional administrative bodies, which are directly elected, is inevitable.

Enforcement involves a variety of different administrative organisations: municipal authorities, provincial authorities, inspectorates, the police force and the public prosecutor. The Environment Department encourages the formation of enforcement regions.

We already have tripartite consultation between Mayors, in their capacity as heads of the police force, their local Chiefs of Police and the public prosecutors for the districts concerned, in which public order and investigation are discussed in general terms. In some cases, the municipal Alderman responsible for Environmental Affairs will take part in the talks, in order to coordinate enforcement of environmental policy.

A major reorganisation of the police force is currently on its way in the Netherlands. The country is divided into 23 police regions, which are far larger than the environmental regions. Separate enforcement regions, corresponding to the environmental regions, will now operate within the police regions. The enforcement regions will reach agreements on priorities, methods of action, where more than one local authority is involved, publicity and coordination of the action to be pursued. In many cases, persuasion is tried first when violations are discovered, followed by official action, with criminal proceedings as a last resort, or as additional action. However, where existing organisations are involved, the inspectorates and environmental organisations do tend take the view that matters have gone beyond the information and persuasion stage!

If necessary, the different stages of the enforcement process must be organised and followed in ways which ensure that procedural errors or inaccuracies in one phase cannot jeopardise the success of a later one. The use of standard procedures wherever possible, and the creation of a joint computerised data base, can be a great help here.

Environmental offenses do not always involve malicious intent. This is why information is so important. Many contraventions are inadvertent. Here again, information or a different organisation of the process should be used reduce the margin of error as far as possible. Where there is lack of interest, information will not be enough and corrective action will be needed, with or without a degree of publicity. In the case of criminal offenses, a mix of instruments should be used, including criminal proceedings. Sometimes the possibilities for official and criminal enforcement overlap. For instance, the judiciary can require significant improvements in environmental quality as part of a settlement.

Generally speaking, criminal law is not yet adequately geared to handle environmental offenses. The penalties are usually exceptionally light and as a result, limitation periods are short. In the Netherlands, many environmental offenses are still not covered by the Economic Offenses Act and even when they are, do not rank very high. Consequently, the instruments for tackling environmental offenses and the accompanying penalties are equally weak.

ENVIRONMENTAL ENFORCEMENT IN GREECE

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PLATO' S LAWS H 845

Water is easily polluted by the use of any kind of drug. It therefore needs the protection of a law, as follows: Whoever willingly (or: purposely) pollutes water shall de obliged, in addition to paying an indemnity, to purify the spring or receptacle of the water whatever method of purification is prescribed by ordinance, at all times and to everyone.

The country is located in the northeastern part of the Mediterranean Sea. The coastline of continental Greece is 7,078 purring, including Peloponnese, while that of the islands is 7,942 km. This makes a total of 15,020.9 km (National Statistical Service, 1970). Greece has an area of 132,000 sq.km and population of 9.7 million (population density of 73 inhabitants/sq.km). Although the average population is relatively low, 58% of the people, the greater part of those involved in economic activities are concentrated in urban areas.

The largest urban centers are located near gulfs (e.g. Athens, Thessaloniki, Patras, Volos, Iraklion). Due to the high urban/industrial waste load in those areas the pollution of the environment has become a major problem.

Due to the mountainous nature of Greece there is a strong competition among industry, agriculture and tourism for land in coastal areas. Those pressures have resulted in environmental degradation such as water and pollution.

Because of lack of adequate space in Greece, there is a strong competition among industry, agriculture, and tourism for land in flat areas especially near the coasts. The above antagonism leads to an irreversible environmental deterioration, which, also affects the natural resources and represents a serious problem for the future development of the country. Only a limited degree of planning and resource management has taken place in the last two decades.

Tourism has become a major economic activity.

Between 1962 and 1982 the number of foreign tourist arrivals in Greece increased by 890% to more than 5 million. Internal tourism has also increased significantly. 90% of all tourism activities occur in the coastal areas, resulting in additional environmental degradation.

Industrial activities have also increased with high rates. Almost 80% of the Greek industry is located in the coastal zone (all 4 existing refineries, 3 out of 4 fertilizer plants and all the metallurgical industries), especially in the Greater Athens and Thessaloniki areas.

Agriculture also contributes to the pollution of the coastal areas though fertilizers and pesticides. In 1985 2188 x 1000 tons of fertilizers and 2800 tons of pesticides were added to agriculture soil. Solid waste especially in tourist areas is another problem.

It must be noted that Greece is one of the few countries which have included in their constitution an article on environmental protection. In article 24 it is stated that protection of the natural and cultural environment constitutes an obligation of the state and the state is responsible for taking special preventative or enforcement measures towards its conversation. Articles 21, 22 and 106 deal with the protection ow workers, public health, urban development and physical planning.

The application of these constitutional orders was made possible by the introduction and adoption by the Parliament of law 360/1976 on environmental and physical planning. Certain articles of this law have been subsequently revised by law 1032/1980.

According to the law 360/1976 the policy for physical planning and environment is shaped and monitored by a National Council (NCPPE) chaired by the Prime Minister and composed by

the Ministers of National Economy, Finance, Agriculture, Sciences and Cultures, industry and Energy, Social Affairs, Public Works, Physical Planning and Environment and Mercantile Marine.

In order to strengthen the implementation and control procedures, a new Ministry for the Environment, Physical Planning and Public Works was created by law 1032 in 1980. From a small number of administrators in 1972 the new Ministry has now more than 250 employees and regional representation in all prefectures of the country. This Ministry is the main executive body carrying out the environmental policy and general enforcement of the Government.

In addition there are administrative units in almost every Ministry which have been assigned responsibility on environmental protection, such as the Ministry of Agriculture (forest, wild life, pesticides), the Ministry of Mercantile Marine (pollution by oil and other harmful substances from ships and land based sources), the Ministry of the Interior (solid wastes, municipal waste water). Also the Ministry of transport has established throughout the country, Technical Inspection Centers for conducting periodical mechanical and emission tests on all types of vehicles and the Ministry of National Economy formulates and coordinates the finances concerning environmental policy at national and regional levels-as it does for individual sectoral policy finances.

In sum, the institutional and legislative provisions for environmental management are being gradually strengthened. The intent is for increased capacity to develop and implement more consistent policies and programmes for environmental protection.

The use of those administrative agencies that already existed within various Ministries resulted to a significant facilitation of prompt law enforcement implementation and additional reduction of costs since we were able to use the existing infrastructure all over the country as well as the experienced and skilled personnel.

Law 1650 of 1986 determines the overall framework.

The law distinguishes 3 industrial categories, in relation to their level of pollution. The standards to be respected are defined at a regional level (prefecture). They are variables, depending on the receptors and the nature of the industry involved. Normally, prefectural decrees should conform to EC directives on water use.

Law 1069 of 1980 has compelled each municipality of more than 10.000 inhabitants to create a municipal enterprise for water supply, waste water collection and treatment.

An important legislative act is the law 743/1977 about the "Protection of marine environment from pollution caused by vessels and coastal industrial activities". This law provides, among others, for the organization of a marine pollution abatement service in the Ministry of Mercantile Marine and for fines imposed on violators of this law.

Certain provisions of this law were later harmonized with those of the Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention) and its two protocols on the Prevention of Pollution in the Mediterranean Sea from Dumping by Vessels and Aircrafts, and on Cooperation for Preventing Pollution in the Mediterranean Sea from Hydrocarbons and Other Harmful Substances in Cases of Emergency, which were ratified by Greece on 1978.

Two other protocols, for the protection of the marine environment from land based sources and for special protected marine areas been ratified in 1986. Greece has also ratified the MARPOL, STW and Civil liability Conventions.

Oil pollution is the biggest pollution problem in the Mediterranean Sea it represents a danger of national dimension for the Greek coast. That is the reason why Greece has developed a contingency plan. Since the early seventies she has created regional oil combating units, she has eleven skimmers and multipurpose ships, two airplanes and has installed oil antipollution equipment in 40 ports all over the country. Moreover, the fines which were imposed on violations by ships or land sources were 2.2 m US$ for the period 1987-1982.

According to the latest plan reception facilities will be created at the main ports of the Country. This project will be partly financed by the EC.

Another important development is the introduction of prefectural regulations on effluent standards per coastal area for Land Based Sources of Pollution of the Marine environmental and of other surface water bodies.

To promote regional development in Greece in the early 80's, the establishment of any industry in the area of Attica around Athens was prohibited. Establishing industries outside this area was encouraged by tax and customs exemptions. Since 1982 a serious of laws have come into force dividing the country into 4 development areas with different incentives.

Law 1892/90 supports industry's anti-pollution investments by giving incentives to:

a. Enterprises making productive investments which contribute inter alia to energy conservation, reduction of environmental pollution and the quality of life.
b. Enterprises which are related to the repair, restoration and conversion of houses or buildings (focusing on creating hotels and enterprises carrying out investments (for business settlements)under the preceding section in other areas which are entitled to a further 5% investment grant, provided that said traditional houses or buildings are located in significant traditional settlements.
c. Enterprises relocating industries from large urban areas (e.g. Athens) to other rural settlements with respect to decentralization.

The given incentives vary from 40% (in Athens) to 50% (near the borders) of the cost.

The prefectorial services are charged with the control of the proper application of laws and permits.

By the fundamental law 1650/86 the installation of environmental quality control units (KEPE) in any prefecture has been regulated. The prefect can nominate functionaries from the prefecture personnel including representatives from the Ministry of the Environment. Representatives of the local authorities can also participate. The units have all the necessary rights for proper supervision by entering premises, sampling, suggesting measures or sanctions.

Administration fines after prefectorial decision can be imposed up to 10 mil. Greek drs. or 44.000 ECU. In severe cases (e.g. accidental spill with victims) the Minister has the right to increase the fines up to 6 mill. ECU. Also temporary or permanent withdrawal of a permit is possible together with fines up to 6.000 ECU per day of illegal work.

The penal code is applied for violations of environmental legislation. Complaints can de made by those who are affected by actions that cause environmental damage.

For violation of the environmental legislation, imprisonment for up to 2 years and penalties can be applied.

The Administrative tools for enforcement are:

- Administrative penalty payments (for each) violation or for each day the company does not comply after issuance of administrative order);
- Partial or complete closure of a plant;
- Administrative coercion;
- Revoking the permit.

Criminal tools are:

- Imprisonment;
- Fine;
- Closing of the factory/company for at most one year.

Air pollution problems, especially the smog formation ("Nephos"), are severe in Athens, where 70%, of the economic activity and almost 40% of the population is concentrated.

The main pollution source are the vehicles which are responsible for 75% or the air pollution in the City.

Industry contributes about 20% and domestic sources 5%.

During recent years, severe air pollution episodes have taken place (there were ten episodes during 1987).

During the air pollution episodes measures for strict reduction of industrial activities and traffic have been taken in accordance with the existing emergency plan.

Photochemical smoke episodes that take place are comparable to the Los Angeles situation.

Sulphur Dioxide air pollution in Athens is under control due to the restriction of fuel oil use in central heating in the Greater Athens area and the reduction (to 0.2%) of the Sulphur content in Diesel for traffic and central heating.

The reduction of lead content in petrol from 0.84 to 0.15 gr/l. has resulted in decrease in lead concentration in the air. The ambient lead concentration of 0.8 ug per cubed meter of air, is within the guideline annual mean of 0.5-1.0 mg/cubed meters, set by the WHO.

Because of high taxation, the majority of the cars were old and small. According to L. Patas private communication, one third of the imported cars, registered in Athens in 1986, were second hand. The EC derived regulations with stricter car emission standards and lower taxes stimulated massive car purchases and resulted in lower emissions.Additional incentives were given for the replacement of aged petrol vehicles with new "clean" ones with 3 way catalytic convertors. These incentives which are in the form of a 50% to 60% discount on the special Consumption tax were put into effect as of January 1991. The rate of scrappage of aged cars and replacement with new clean ones has increased dramatically.

In order to improve further the industrial development, industrial estates have been established as a mean of decongesting the capital and major cities.

Industrial estates and for small and medium enterprises industrial parks, are areas especially organized for the establishment and operation of modern manufacturing plants.

Today 21 industrial estates and 2 industrial parks are in operation.

Legislation provides for the setting up of industrial estates in all the 52 prefectures of the country.

The main interest for setting up a unit in an industrial estate is likely to come from the following:

- all kinds of manufacturing and small craft industry units,
- ship building and repair units
- units processing, storing and trading agricultural products,
- common waste water treatment units.

Law 1982/90 includes incentives for enterprises willing to be established in the area of the industrial estates and industrial parks.

In the EEC context the progress in implementing directives applicable to the environment, has an average of 85% success (dated 31-12-91) which is quite good, though the delays in Italy and Greece (with 59% & 76% respectively) continue to give cause for concern.

Substantial improvement has to be expected after the establishment of the network on environmental. Enforcement authorities from the EEC member countries, based on a Ministerial decision during the informal Ministers meeting in October 1991.

The latest development towards the improvement of environmental law enforcement in Greece is the decision of the highest Administrative Court of Justice to create a special section dealing with environmental violations from the administration or the general public. Last but not least the Attorney of Athens announced a campaign in which he, with experts from the Ministry of the Environment, will check enterprises operating in the Greater Athens area, whether they comply to the of waste disposal and atmospheric pollution as well as investigate the existence of the mandatory environmental permits issued by the relevant Greek administration.

THE ROLE OF INDUSTRY: EMPOWERMENT & ENVIRONMENTAL PROTECTION

JONATHAN PLAUT

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1 SUMMARY

The focus of this paper is industrial environmental management and the ownership or empowerment which leads to good environmental management.

2 BASIC COMPONENTS

The basic components of managing for environmental assurance are all of the following:

- A policy that states the values of the institution, clearly and forthrightly as well as assuring that the operations of the institution will be in compliance with all environmental regulations, and that all environmental risks will be managed appropriately;
- A risk management philosophy that emphasizes the importance of managing for environmental assurance;
- A plan that sets forth environmental objectives for the future and delineates the manner in which implementation will be achieved;
- An organization design and management process that reinforces and facilitates the implementation of the plans for environmental risk management;
- Procedures and practices that guide the organization on how to operate so that the standards established in the objectives will be met;
- A communication and reporting system that (1) provides timely information to management on the institution's performance in managing its environmental risks and complying with environmental laws, regulations, and (2) effectively communicates the philosophy, needs and aims of management to all members of the organization;
- A control system that monitors and audits performance of the organization against the standards and objectives established for environmental assurance; and
- A system of review that provides for a fresh look at all activities of the institution and encourages revision and up-dates to reflect changing conditions in their operations or in the environment, as well as changes in the institution's understanding of their risks.

These components when carried into an environmental management process will lead to an effective environmental management system in which these basic elements are covered: Policy, Program, Standards, Professional Expertise, Disclosure, Training and Inspections in an integrated program of environmental, health and safety.

3 STAKEHOLDERS

Companies serve many interest. It is useful to think of those interests as stakeholders--literally those who hold a stake in the company's activities and future. Environmental Management works best when the stakeholders feel ownership and empowerment to protect long range interest and good environmental management of the company, including the interests of the communities in which the companies operate.

Stockholders: The stockholders represented by the Board of Directors are the owners of the company. Through shares publicly or privately traded they invest their funds in trade

for dividends (income) and the hope for growth in the value of the shares (investment). Thus, the shareholders have a stake in the profitability and long term good health of the company, including its good name engendered by its environmental conduct. They are due regular reports and the fidelity of the management to pursue their interests, since they are in fact the holders of the private property right in the company.

Employees: Employees require training and supervision. Their performance should be measured to assure safe operations and quality product or service, and competitive profit on a continuing basis. It is the obligation of the company to provide the information as to hazards and protective work processes and equipment to keep the employees safe. But it is the obligation of the employees to watch out for their own safety and the safety of their work mates. Employees have an interest in the stability and well being of the company, including a vested stake in the future of the organization. In many ways the employees and the stockholders have similar interests as stakeholders. Indeed, in many companies the employees are an important part of the stockholder family, and management encourages that stakeholding by employees to encourage a feeling of responsibility for the company.

Management: Of course, management is composed of employees at the top of the organization. But management - the chief executive and officers of a company - have great stake in the affairs of the company. While they are paid the most, their pay and even their careers are usually most at risk if the business does not go well or the reputation of the concern falters. Environmental liability and care for safety of the employees or community is a great responsibility of top management. It has generally been found to be useful to include oversight at top management and the Board level of environmental, health and safety activities to assure responsible action.

The Government: In the United States, environmental, health and safety regulations appear at every level. Laws and regulations must be obeyed and leadership companies try to do that in a manner that will give it competitive advantage (e.g. in product design, in packaging, in plant safety, in disposal, in quality product, in cost abatement). Government regulates and controls actions which are not in the public interest and endanger it. Leadership companies learn not to be in conflict with the government, but in partnership with its aims, to its (the company's) advantage.

The Community: Perhaps the interest group whose stake in company affairs became most obvious in the last few decades of the twentieth century is the community. Simply put, the community neighbouring or harbouring the factory or industrial plant has as obvious stake in the unit. This first became obvious, of course, because the work force (the employees and, to a lesser extent, the management) in the plant comes from the community. Thus, economic reality dictates an interest in the plant's well being. But reality also increasingly dictates that the community also be interested in the surrounding environment. As wastes are transported greater distances or products carry with them health or environmental concerns, the definition of community has broadened to include local, regional and even international interests. Rene duBois said, "think globally, act locally," and a cogent argument can be made that the community of interest is best viewed from both a local and an international perspective.

Non-Governmental Organizations: Many assessors of the environmental degradation in Eastern Europe feel that the greatest shortcoming in those Communist countries was not be form of government, but the absence of free press and effective forms of environmental conservation. NGO's advocate environmental positions. This idea of public advocacy for the environment reached its zenith, perhaps in the 1980's, when the United Nations adopted an advocacy stance in its world report, Our Common Future, and the United States when the head of a leading environmental organization (William Reilly) became the

EPA Administrator. Companies recognize the strength of the responsible NGO and encouraged dialogue as a part of empowerment. There are strong dissenters who say that the most vocal and radial environmental NGO's are irresponsible and playing at an elitist game of encouraging minimal economic activity to the great disadvantage of the large majority of the world's people who need economic growth and prosperity, but to many others that is simply an extreme.

The media: Perhaps the most influential outside force on the industrial organization, whether stakeholder or not, is the media - television and newspapers particulary. Environment issues are played out in a fish bowl, with daily events often overtaking reasoned and deliberate decision making. While industry and academia call for the application of good science, including analytic assessment of exposure and harm, the media's need for a daily story will overcome the ability for scientific certainty to evolve, or the patience of the community or government to be very deliberate. Thus, industry management will often have to act under the glare of the public spotlight to show prudence and protect its good name and shareholders, before sufficient evidence is in. Whether or not the media is a stakeholder in the environmental concern itself, it does represent the public interest and must be taken very seriously by the industrial organization.

The Academic and Professional Community: Perhaps one more stakeholder group should be mentioned. Universities and colleges do environmental and health research, teach environmental, health and safety management, and join with professional societies to set standards of professional conduct. They are the propagators and the beneficiaries of the development of environmental science and technology, and investigation into the vexing problems we place under the rubric of environmental concerns is often their role. They are also propagators of environmental literacy, as in the programs at Tufts University which my company supported as a sponsor.

What makes this system of multiple stakeholders work in my judgment - that was missing in Central and Eastern Europe - is a sense of ownership or empowerment relative to the problem. The rights and obligations of property encourage in investors that sense of ownership and obligation, as long as they are properly monitored and regulated by the other stakeholders.

4 PRINCIPLES

Companies have their own internal principles of conduct for environmental, health and safety standards of behaviour. Here is one from my company which has been in evolution for twenty years.

The key elements in carrying out this code of conduct or policy in Allied Signal are:

- obeying the law and having our higher standards of conduct, worldwide (one policy);
- promoting disclosure of problems so they can be fixed (open communication);
- adopting proactive programs, like safety management, waste reduction and formal review, that is environmental auditing (preventative action); and
- adopting a system to bind every employee to the policy and measure performance to assure the policy is being carried out (quality assurance).

While there still is much to be accomplished, such proactive environmental, health and safety programs have become the ethic of management of many of the largest multinational companies. The chemical industries of the U.S., Canada, Europe, Australia and Japan have joined together in association to sponsor and live by a code of conduct they call "Responsible Care". As a matter of continuity, it is interesting to note that my company, Allied-Signal (with the policy presented above), is a Responsible Care company. The overall Responsible Care Code says:

Allied Signal

Health, Safety and Environmental Policy

It is the worldwide policy of Allied-Signal Inc. to design, manufacture and distribute all its products and to handle and dispose of all materials without creating unacceptable health, safety or environmental risks. The corporation will:

- Establish and maintain programs to assure that laws and regulations applicable to its products and operations are known and obeyed;
- Adopt its own standards where laws or regulations may not exist or be adequately protective;
- Conserve resources and energy, minimize the use of hazardous materials and reduce wastes; and
- Stop the manufacture or distribution of any product or cease any operation if the health, safety or environmental risks or costs are unacceptable.

To carry out this policy, the corporation will:

1. Identify and control any health, safety or environmental hazards related to its operations and products;
2. Safeguard employees, customers and the public from injuries or health hazards, protect the corporation's assets and continuity of operations, and protect the environment by conducting programs for safety and loss prevention, product safety and integrity, occupational health, and pollution prevention and control, and by formally reviewing the effectiveness of such programs;
3. Conduct and support scientific research on the health, safety and environmental effects of materials and products handled and sold by the corporation; and
4. Share promptly with employees, the public, suppliers, customers, government agencies, the scientific community and others significant health, safety or environmental hazards of its products and operations.

Every employee is expected to adhere to the spirit as well as the letter of this policy. Managers have a special obligation to keep informed about health, safety and environmental risks and standards, so that they can operate safe and environmentally sound facilities, produce quality products and advise higher management promptly of any adverse situation which comes to their attention.

Alan Belzer
President
and Chief Operating Officer

Larry Bossidy
Chairman of the Board
and Chief Executive Officer

Revised April 1992

Guiding Principles for

RESPONSIBLE CARE

A Public Commitment

As a member of the Chemical Manufacturers Association, this company is committed to support a continuing effort to improve the industry's responsible management of chemicals. We pledge to manage our business according to these principles:

- To recognize and respond to community concerns about chemicals and our operations.
- To develop and produce chemicals that can be manufactured, transported, used and disposed of safely.
- To make health, safety and environmental considerations a priority in our planning for all existing and new products and processes.
- To report promptly to officials, employees, customers and the public, information on chemical-related health or environmental hazards and to recommend protective measures.
- To counsel customers on the safe use, transportation and disposal of chemical products.
- To operate our plants and facilities in a manner that protects the environment and the health and safety of our employees and the public.
- To extend knowledge by conducting or supporting research on the health, safety and environmental effects of our products, processes and waste materials.
- To work with others to resolve problems created by past handling and disposal of hazardous substances.
- To participate with government and others in creating responsible laws, regulations and standards to safeguard the community, workplace and environment.
- To promote the principles and practices of Responsible Care by sharing experiences and offering assistance to others who produce, handle, use, transport or dispose of chemicals.

CMA
CHEMICAL MANUFACTURERS ASSOCIATION

Responsible Care is not only a code of general conduct, but a specific series of specific prescribed guidelines on subjects like waste reduction, emergency preparedness and response, process safety and product safety to which the companies pledge processes of improvement and against which they measure performance.

Further in example, the International Chamber of Commerce (ICC) has promulgated a universally respected code on environmental auditing. All of these point to need for developing and embracing global standards of environmental conduct, which can be tailored and adapted to local needs and conditions to meet the interests of all the stakeholders.

Perhaps one final example of such a code -- the ICC Charter for Sustainable Development, subtitled the Principles for Environmental Management -- is exemplary of industry self empowerment. About 1,000 of the most important international companies have now embraced it. It is the most all encompassing industry action to meet stakeholders' needs and environmental concerns in a free market, and reflects the optimism and empowerment for good environmental management one cannot help but sense exists for continued progress.

5 ACQUISITIONS

When investing in a new project, a company responsible for its workers and the environment will investigate a number of factors, including:

- type of operation(s)/employees/location
- history
- process and materials
- plant site details
- past and present chemicals
- storage
- wastes and where discharged/spills/air emissions
- PCBs
- permits
- on and off-site waste sites utilized
- soil, groundwater, surface water studies
- employee safety and health data
- medical support/workers compensation cases
- boiler/facility inspection reports
- identification of environment agency
- litigation before environmental agency
- visitation

Detailed questionnaires utilized by companies in acquisitions demonstrate the care and diligence that potential ownership and responsibility for assets and problems will generate.

6 TECHNOLOGY COOPERATION

It is fair to say that the co-issues of technology transfer as a means of meeting local needs and sustainable development and safety requirements instituted and maintained at the local workplace are well understood. While they do not need to be, they are often competing priorities. At least neither should be advocated and advanced without due regard to be other.

Without proper safety, health and environmental programs and safeguards, properly maintained at the local level, technology transfers can and probably will become dangerous where hazardous materials or conditions are present, as evidence at Bhopal. The responsibility for such safety lies with the transferor and the receiver of the technology, and the governments of the host country. Adequate and continued training, maintenance and inspection may be required.

Without movement of new technology to lesser developed regions, however, the world picture will remain that of the "haves" (the rich North) and the "havenots"(the poorer South).

The multinational national companies and their environmental management often bridge this gap. After all, many MNC's have an ethic or practice taking their standards with them wherever they go. It is a clear responsibility of the transferor organization to assure that in the transfer of technology appropriate safety precautions have been assessed and are in place. It is an important responsibility that in many cases may require continued auditing and perhaps retraining, as well as financial support.

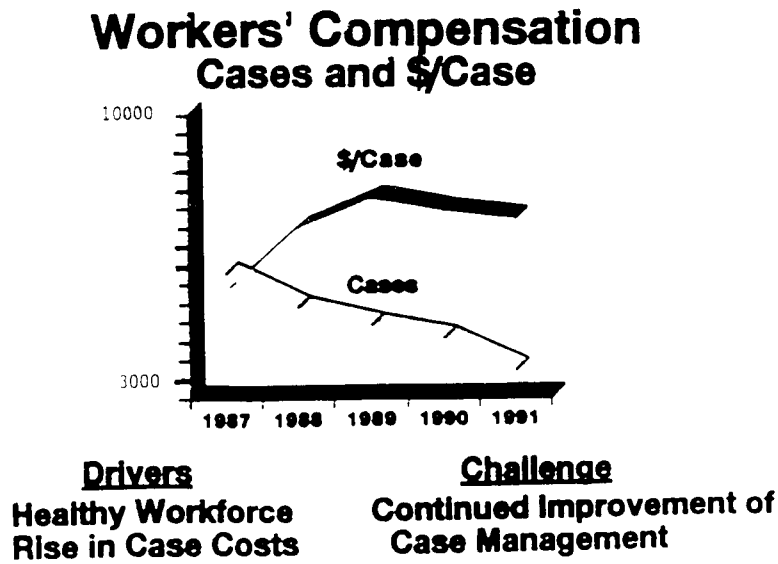
7 MEASUREMENT

Where a company or organization is empowered with the responsibility for its short and long term will being, it will measure its environmental status and progress to continuously improve, if it is to remain commercially competitive and viable.

There are many useful indicators of the level and, more importantly, trend of health, safety and environmental performance. Measurement is indispensable to risk assessment and hazard control. Furthermore, measuring performance not only tells the organization the status of operations and identifies deficiencies to correct, but gives the positive signal to the employees that management cares and they should care about such performance. Ownership or empowerment requires protection of the asset. Measurement and response to indicators is the good environmental practice of the empowered. Here are a few of the indicators for illustrative purposes, and how they can be most effectively used.

Total case incident rates (TCIR) using one of a number of standard formulas (e.g. No. of cases X Total Hours Worked/200,000) allows the organization to show trends in overall accidents and occupational illness on the job and to compare similar operations and operators against peers or even best in class. Charting lost work day case incident rates (LWCIR) will similarly allow analysis of performance and trends. The U.S. National Safety Council estimated 20,000 of cost for the average lost workday case, so considerable cost avoidance is possible by lessening the rate of those more serious cases. Of course, analysis and investigation of each accident or occupational illness will identify systemic problems and result in better safety and health performance and a safer and more productive workplace.

Workers Compensation or Social Costs



Safety of Employees

Figure 1

GLOBAL

SAFETY & LOSS PREVENTION PERFORMANCE

MONTH OF

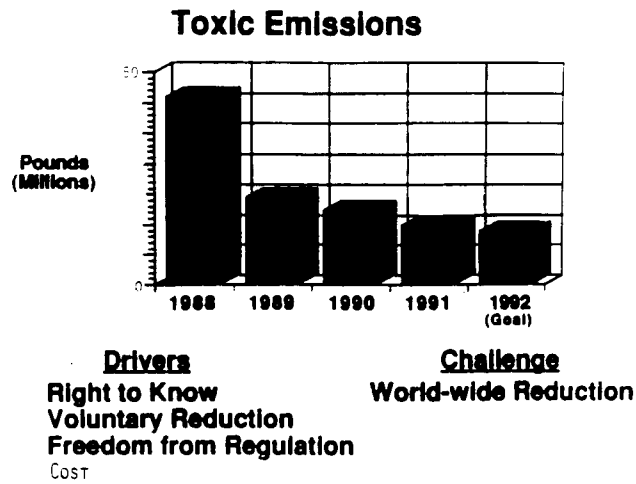
	TOTAL CASES INCIDENCE RATES			LOST WORKDAY AND RESTRICTED DUTY CASES INCIDENCE RATES		
	MONTH	YEAR TO DATE	OBJ.	MONTH	YEAR TO DATE	OBJ.
DIVISION A	1.80	3.06	3.35	0.64	1.34	1.31
DIVISION B	2.49	3.89	4.73	0.61	2.21	3.08
DIVISION C	3.52	3.03	3.54	1.12	1.36	1.60
DIVISION D	0.00	1.94	2.38	0.00	0.43	0.43
DIVISION E	0.00	1.44	1.15	0.00	0.18	0.49
DIVISION F	7.48	4.15	3.01	3.74	3.54	2.89
TOTAL	2.20	3.32	3.82	0.70	1.63	1.95

◇ Indicates 10% or more below Objective (more favorable than Objective)
○ Indicates 10% or more Above Objective (less favorable than Objective)

Figure 2

Annual workers compensation in the U.S. or social costs elsewhere are in the millions of dollars for many concerns. They result from injury or occupational illness, or other causes such as labor unrest or plant closings, or even fraud. Reduction in accidents will improve safety and at least partially decrease these costs.

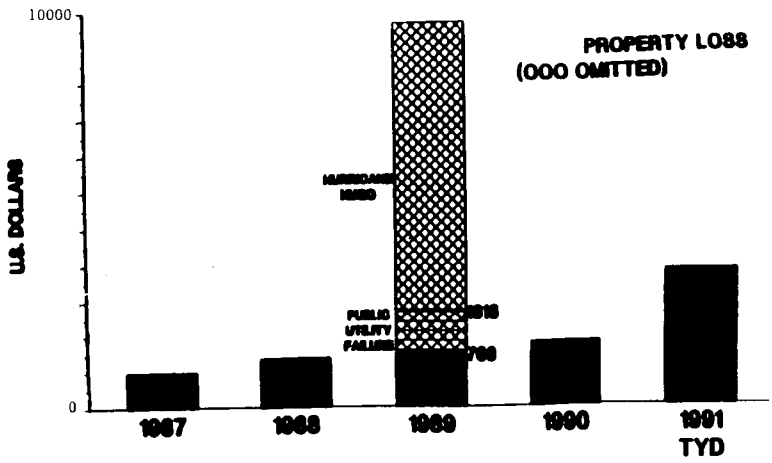
Hazardous Waste Reduction



One of the most productive monitoring programs management can pursue in improving environmental performance is reviewing facility and then in the aggregate reduction in hazardous emissions and toxic waste. Not only will the reduction of toxic materials probably result in a diminution of control procedures required in costs, because the transportation of hazardous waste is very expensive and there may be future potential liability problems connected with its disposal no matter what the safeguards, since state of the art changes.

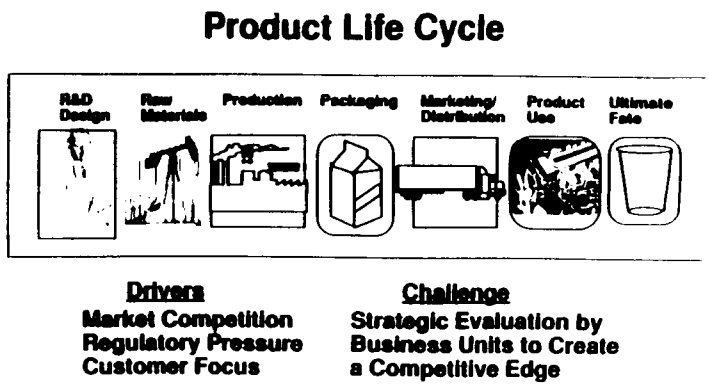
By requiring the operations to establish targets of reduction (similar to targets of safety improvement) and identifying projects and action steps to accomplish the targeted reductions, the management assures progress will be made (and communications its interest in such progress by measuring and requiring reporting through such a measurement system). The waste and toxic reduction prescriptions in legislation, such as in SARA or the clean Air Act, and as carried out in the EPA 33-50 program build on and stimulate these internal industrial programs.

Loss Prevention



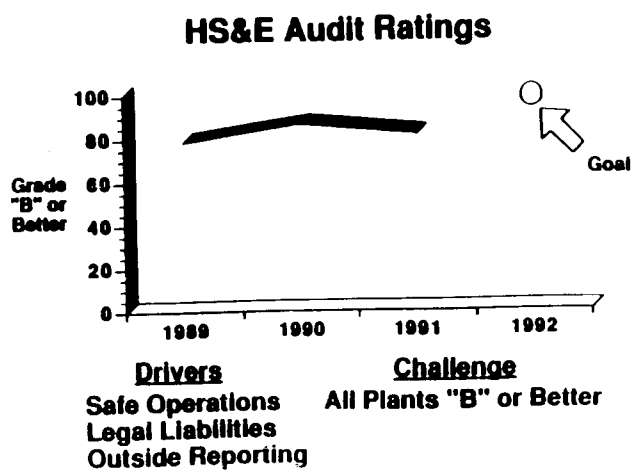
Losses at facilities from fire, explosion, machinery breakdown, storms, power failures, etc. are extremely expensive for operations, because not only do they result in costly damage and in lost productivity, but down time to the operations and thus expensive business interruption. In some cases the reputation of the company as a reliable supplier or as the operation of the company as a reliable supplier or as the operator of safe facilities may be at risk. Again, the monitoring of performance by capturing all losses facility by facility and then aggregating them will provide the basis for improvement. That improvement should include standardizing around good practice and training for good operation, as well as working with outside insurance inspectors so they can reinforce the company procedures and programs. An exception analysis of all deficiencies identified and not corrected as a result of internal or external inspections should be monitored and diligently followed, to assure safe operations, lessening of losses and reduction of future liability.

Life Cycle Analysis



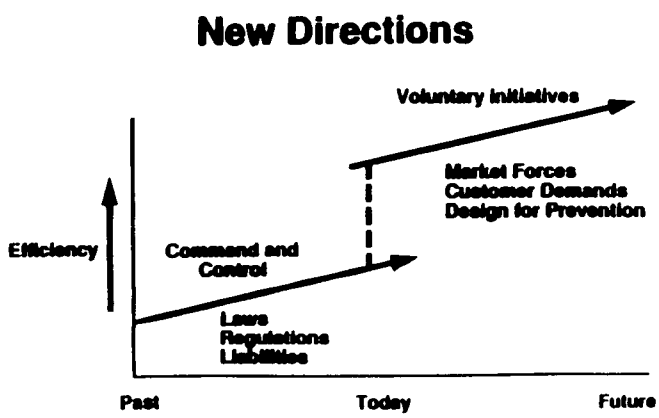
Analyses of new and existing products or processes for identification of risk and potential liabilities, and resultant modification or institution of greater control is more difficult to measure. A three tier system of review,from product design inception to pre-marketing and bench scale production to final production, with each step being more detailed as full production and sales eventuate will result in that greater control. To be effective, analysis should include detailed, check-off of environmental, health and safety factors including hazard identification and control, in design, manufacture, transportation, sale and disposal, across the life cycle as some would say.

Environmental Auditing



A system of environmental measurement and review, which checks on all processes, is environmental, health and safety auditing. Like a financial audit, environmental auditing relies on a regular system of spot measurement and verification of conduct and performance, as measured against government standards, company guidance and standards and local practice. It should be carried out by professional environmental auditors, who are technically trained and experienced, who may be within the company, with written findings of deficiencies which have to be addressed by the operations within a specific period of time to avoid future liability. The assigning of a value to each audit which may include air, water and land pollution factors, occupational health and medical practice, employee safety and process safety, emergency preparedness and response, and product safety and integrity, will allow comparison of performance from year to year and between facilities. the chart shows such a comparison, in one system on an A-B-C-D basis, with D being seriously out of compliance, C complying, B an acceptable level of assurance of performance, and a total quality approach. The Allied-Signal environmental auditing system and the environmental management process in which it operates is described in the UNEP Journal article of October/November/December 1988.

Proactive Programming



This last chart depicts, a causation to the lessons of this paper. While the tools of measurement shown, an others that can be devised, will provide a lot of information for management and the employees to improve the quality of the health, safety and environmental process, without proactive programs beyond what regulations require, the organization will find itself running hard just to keep up with regulatory requirements and liability issues. To get ahead of the curve, or to put it another way to be a "B" to "A" performer with full environmental assurance, the organization must design and implement its own programs of proactive environmental management, beyond what the law requires. Environmental auditing was such a program for the companies that adopted it in the 1970's an 80's. Voluntary waste reduction initiatives are such programs in the 90's. Other such programs are described, for example, in the World Resources Institute publication about company practices entitled, "Beyond Compliance", and the ICC book, "The greening of Enterprise: From ideas To Action," detailing company programs under the ICC Charter. The point is that with such proactive programming engendered by ownership and responsibility, the organization's return on good environmental, health and safety management will be better managed and more productive processes, people and products, as well as avoidance of compliance issues and cost avoidance. Ownership and economic competitiveness provide the incentive for good environmental management and sustainable development. This is the increasingly understood message in the global marketplace.

ENVIRONMENTAL PROBLEMS IN THE HUNGARIAN PRIVATIZATION

ISTVAN MÁNDOKI

Officer-in-Charge, State Property Agency, P.O. Box 708, 1399 Budapest, Hungary

The Hungarian State Property Agency is responsible for Privatization in Hungary. In addition to the procedure of selling companies we have to decide what to do about environmental damages.

Solving environmental problems is one of the main objects of the State Property Agency. this decision is not absolutely voluntary as it was partly forced upon us by foreign investors, but now we can claim that the SPA is very eager to solve environmental problems in the process of privatizing state-owned companies.

There are disclosed and undisclosed problems, and the second is the more significant.

In the case of known problems, there can be an environmental audit. the question then is only whether the audit is accurate or not. This situation causes a smaller problem, as both the seller and the purchaser know what they want to sell or buy. they can agree on a purchase price that includes the price of the cleaning, or they can agree on a warranty structure that achieves the same goal.

If the pollution is on the surface, it is fairly easy to conduct a good audit of it. It is the same if the company causes noise or water pollution. Everybody knows what the pollution activity is and what its effect is.

Real problems start when nobody knows what is the nature or the dimension of the environmental problem. In this case the environmental problem can jeopardise even the most promising transaction, as the investor is not willing to undertake burdens resulting from the time before its activity.

It is not easy to make a contract and to agree who will pay the cost when neither the buyer nor the seller knows what the cost of the clean up will be. In most cases the SPA is ready to do its best to solve environmental problems partly or sometimes totally at the cost of the seller but the SPA can not undertake unlimited liability. The SPA's primary duty is to sell companies and to generate income for the state and not to solve all the environmental problems.

Aid is needed if we want to solve all the environmental problems: The help of the domestic government and the help of international organizations. Today the SPA can handle the problems of environmental pollution only if the company still has a positive value after taking the pollution into account.

Which are the areas where domestic governments can help?

- to give preferences for investors in areas of environmental disabilities.
- to give preferences for investors undertaking fixing of damages.
- to give preferences for investors introducing technologies that do not harm the environment or manufacturing such goods.

Which are the areas where international assistance is needed?

- to give financial support to discover the problems
  to conduct an audit
  to clean up
- to coordinate efforts across borders

There is a third worry for foreign investors in connection with their deals. This is the question of future environmental legislation. As it is more strict throughout Europe they have fears that the same will happen in Hungary. Even a different way of applying the same law can be very confusing.

If the environmental law changes or if the standards of the environmental regulations change it could affect the profitability of an investment very considerably. This is an area where the SPA can not give any guarantee. we can only suggest making new laws as soon as possible to reduce uncertainly in Hungarian privatization.

The first step was taken by a new Act on Privatisation which states that if a State Company wants to be transformed into a commercial company it must to include in its transformation plan a program for solving its environmental problems.

To summarize our experiences, I can say that the SPA tries to do its best in solving the environmental problems of its companies. Where help is needed is in environmental auditing, which is often not sufficiently accurate. The other area where help is needed is the problem of companies with negative value (whether or not the reason is environmental pollution) where is SPA's only answer may be liquidation.

I apologize for not providing you with interesting case studies, but the details of our transactions are confidential.

NGO'S ROLE IN ENVIRONMENTAL ENFORCEMENT IN OWNERSHIP TRANSFORMATIONS IN POLAND 1990 - 1992, OPPORTUNITIES AND PROBLEMS

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SUMMARY

This paper presents conclusions from the surveys on the environmental context of ownership transformations carried out in Institute for Sustainable Development in 1992.

1 INTRODUCTION

The environment in Poland and in other East and Central European countries is highly polluted. Economies of that countries are being transformed into market oriented base. That means deep changes in ownership changes, creation of property rights for many people, freedom for policy-making and business doing individuals; simultaneously this means growing up responsibilities of new owners for the economic and environmental status of former state-owned enterprises.

Restructuring and privatisation are extremely strong tools of market-oriented transformations - they give into hands of policy-makers and representatives of administration great opportunities to stop environmental degradation and to perform the environmental recovery of high contaminated sites and areas.

In introducing the economic reforms and privatisation processes have been engaged institutions,organizations and individuals followed by their own interest. They are also under pressure of current situations and economic and social conditions. Ecological aims are very often postponed and treated as second-rate.

2 PRIVATIZATION IN POLAND

The persons involved in privatisation procedures perpetually solve the same dilemma: "Which way should be divided scanty funds among different aims?, What is more important: economic short-term effectiveness or ecological healthy sustainable long-term development?".

They represent different point of view on aims and methods of restructuring of economy; there are also distinctions in their political standpoints and in professional skills or experiences themselves. It is quite difficult to focus all these people on the single target: proecological recovery of the economy performed through restructuring, privatisation and liquidations non-effective state enterprises. It is needed for that:

- foreign financial and organizational support,
- highly qualified people,
- new technologies and management,
- clear internal industrial policy,
- transparent environmental policy principles,
- flexible and educated administration,
- fair business-doing investors,
- active self-governments, non-governmental ecological organizations, public opinion, mass media.

Poland has two years experience in introducing and performing of privatisation and liquidations into economy. We assume that it is higher time to try to make first assessment of the environ- mental results of ownership transformation undertakings. Our goal was also to estimate

effectiveness of current legal and economic system as a tool for enforcing environmental restructuring of Polish economy.

It was interested for us to fix level of environmental consciousness of policy-makers, representatives of administration, investors, representatives of self-governments, NGO-s, mass media and the way and the extent articulation of its in practical undertakings in the course of ownership transformation processes.

We have tried in the paper to identify :

- placement of non-governmental ecological organizations in concentration of public opinion on reaching ecological recovery aims in the privatisation processes,
- main targets to be achieved by the organizations,
- necessary conditions to be met so as the activities could finish with success.

Our considerations have been performed on a base of experiences that we have gathered in the course of surveying real situations and conditions of ownership transformation processes in Poland in 1991 - 1992.

Institute for Sustainable Development is the one and only of 167 non-governmental ecological organizations in Poland which has started regular monitoring of environmental context of privatisation and liquidation of former state-owned enterprises.

We have not only allowed for catching spectacular ecological positive or negative cases but first of all for disclosure of weak points of the organizational, institutional and legal environment for privatisation processes which have badly resulted in ecological recovery of the economy.

The financial and economic concerns of privatized or liquidated former state-owned enterprises have been included in our scope of interest. Nobody can imagine successful ecological recovery of the enterprises without financial sources. One of the strategic aims of privatisation is appealing of external financial sources to improve effectiveness of production by using advanced technologies and higher organizational methods. But that means introducing of clean technologies and energy or natural sources saving methods.

It is assumed that foreign investors would be able to come up to expectations of the Polish government in the field of pure economic development as well to contribute to environmental improvement within new and old sources of pollution.

We want to focus on methodological and organizational context of our surveys rather than on the results of the research. We try to describe the sources of information used and to assess them from point of view of work of non-governmental ecological organisations.

In the course of our surveys on the environmental impact of privatisation we try by occasion to answer some additional questions :

- what is the role of non-governmental ecological organizations in supporting of ownership changes ?
- to what extent the non-governmental ecological organizations are ready to be engaged into supervising of environmental impact of ownership changes ?
- are there in reality conditions that the opinion of non-governmental ecological organizations may be taken into consideration by decision-makers and policy-makers in privatisation and liquidation processes ?
- what kind of conditions should be met so as representatives of non-governmental ecological organizations could take part in policy-, decision- or opinion-making bodies ?
- is it possible that any information on single privatisation or liquidation cases might be revealed to representatives of non-governmental ecological organization to prepare and present opinion on the environmental impact to administration?
- is there any cooperation between self-governments, NGO-s and a public to prevent negative ecological results of ownership transformations ?

Those and many other question were discussed in the course of our surveys. Not all questions have been answered; some were only partly cleared up.

3 ROLE OF NGO'S IN THE PRIVATIZATION PROCESS

There are some restrictions for activities of non-governmental ecological organizations in the field of monitoring of restructuring, privatisation and liquidation processes in Poland. The restriction have resulted from external:

- disturbances in access to information on environmental status of single privatized or liquidated former state-owned enterprises
- documentation on either economic or environmental issues is confidential in the course of negotiations and afterwards, - lack of up-to-dated information about current environmental status of enterprises either on new sources of emissions or on old contaminations, resulted from passed economic activities,
- difficulties in gathering information on current ecological status of transformed enterprises resulted from very speed and complicated splitting real assets and changes in property rights take-overs; administration is not able to catch up with transfers of environmental liabilities from former state-owned enterprises to new owners,
- inflexibility of administration in passing over information needed to make right decisions in adequate time to privatize or liquidate state-owned enterprise, - using lower priority for ecological criteria in decision on privatisation or liquidation, and internal reasons :
- the surveys are very time-consuming and expensive,
- the surveys require highly experienced specialists with deep professional knowledge in economy, legal system, consciousness of environmental effects of business activities, legal and technology context of the environmental protection,
- the surveys require long and very intensive engagement of people involved (that is not always the case within non-profitable ecological organizations),
- the surveys require public relations skills, particularly in contacts with representatives of administration and world of business,
- it is difficult to set up an interdisciplinary team of professionals to be able to get adequate information on ecological concerns in restructuring, privatisation or liquidations and to assess them objectively.

The external and internal restrictions create serious obstacles for non-governmental, non-profit ecological organizations to be involved in opinion-making processes in advisory capacity on administrative decisions. Some of the restrictions are objective ones - lack of up-to-dated information and obstacles to get those information from primary sources, other restrictions are subjective ones - unwillingness of administration to admit the representatives of non-governmental ecological organizations to take part in decision-making processes.

However, there is a field of interest which is available to activities of non-governmental ecological organizations : assessment of adequacy of current economic and environmental law provisions to the needs of effective execution of environmental commitments and environmental liabilities in transition period to market economy.

Now we try to present and explain our point of view on the topic. It has resulted from our experiences gathered in the course of surveys on the environmental context of privatisation and liquidation processes in Poland in 1990-1992.

4 POSSIBILITIES FOR NGO'S IN POLAND

Scope of interest has been tailored to the current possibilities and requirements :

1. Compliance with fair ecological behaviour of new owners of former state-owned enterprises :
   - rational using of natural resources,
   - compliance with current emission standards,
   - conducting of identifications of sources of emissions and measurement of their intensity,

- keeping in proper status the facilities of environmental infrastructure,
- using of clean technologies,
- maintaining of protection zone around enterprises,
- environmental recovery of degraded sites and industrial areas,
- improvement the environmental security of products.

2. Addressing of ecological criteria in privatisation and liquidation decision-making :
   - preparatory phase of privatisation/liquidation procedure,
   - negotiation phase - environmental part of contract/agreement provisions,
   - transition phase after signature of contract/agreement,
   - follow up phase when the new owner has started his business activity.

3. Environmental liabilities transfer in the course of restructuring (splitting, acquisitions and mergers) and privatisation or liquidations of enterprises :
   - collections of outstanding and ongoing environmental fees and fines,
   - compliance with current environmental standards,
   - environmental recovery and environmental clean-up of old contaminations.

4. Involvement of central and regional (voivodship) environmental administration in privatisation and liquidation decision making :
   - cooperation of the Ministry of Ownership Transformations with the Ministry of Environmental Protection, Natural Resources and Forestry and the State Inspectorate of Environmental Protection,
   - cooperation of regional level administration in preparing and conducting of privatisation and liquidation decisions.

5. Economic and financial development of privatized or liquidated enterprises in the course of transformation processes.

6. Legal base of conducted transformation procedures.

7. Procedures used in reality in the course of restructuring and ownership transformations by founding bodies and the representatives of State Treasury with special emphasis on environmental concerns.

8. Compliance of the procedures used with environmental guidelines presented in :
   - the National Environmental Policy by the Ministry of Environmental Protection, Natural Resources and Forestry,
   - the State Industrial Policy by the Ministry of Industry and Trade.

9. Environmental context in the sector restructuring programmes prepared mutually by the Ministry of Ownership Transformations and the Ministry of Industry and Trade.

10. Environmental context of contracts signed by the Ministry of Ownership Transformations and the foreign investors.

11. Role of non-governmental ecological organizations in opinion making on privatisation and liquidation issues.

12. Opportunities and threatens resulted from ownership transformations of former state-owned enterprises to the environment in Poland.
    Directly after beginning of the surveys we have understood that primarily fixed scope of work has to be shortened because of problems with getting up proper information. The preliminary recommendations were as follow :

- get knowledge on legal framework of privatisation and liquidation of enterprises and corporate restructuring,
- survey legal base of procedures used by administration,
- research the organizational and institutional environment of privatisation and liquidation,
- realize that environmental context of privatization and liquidation is hardly recognized because the environmental criteria are of second priority for majority of people involved,
- understand that the access to environmental information in single cases is limited and depends on current local situation there is a psychological barrier by the administration not to reveal any information in the course of transformation procedure,
- there are objective causes for not to get the environmental information on voivodship level - lack of fund to collect information and to maintain computer information system,
- fix substitute sources of information on environmental status of enterprises transformed - direct contact with enterprises,
- research single cases only as illustrations of broader problems of environmental context of transformations - not as spectacular environmentally positive or negative undertakings,
- use rather personally direct contacts with the representatives of administration or with managers in enterprises; it gives you occasion to explain aims of the research and to limit doubts not to reveal information,
- prepare short lecture on transferring environmental liabilities and the environmental impact of ownership transformation to be ready to explanation and discussion on the topic.

Our opinion on information sources accessible to non-govern- mental ecological organisations is as follow :

1. It is possible to get reliable information on environmental status of transformed enterprises from local environmental administration or in enterprises themselves. The closest possible cooperation is condition for that.
2. The very valuable source of information on legal and procedural transformation framework are the Ministry of Ownership Transformations and other central and regional (voivodships) founding bodies. But it is only general information referred to common principles used in single paths of privatisation or liquidation.
3. The best source of information available to a public are newspapers referred to legal, economic and common issues.
   In a press were discussed general conceptions and conditions of ownership transformations,legal and organizational procedural principles, spectacular cases of privatisation and liquidation, economic and legal obstacles and results of transformations.

In newspapers were published privatisation prospectus on economic, technical and organizational status of enterprises referred to capital privatisation; there have been also published announcements on bidding procedures for sales or lending of real estates or land using of former state-owned enterprises.

4. Some difficulties arose with getting contact with consulting firms which generally were unwilling to reveal any information referred to started or finished privatisation procedures. Our intention was to assess to what extent the environmental criteria have been taken into consideration by advisory teams.
5. Another problem deserving our attention was to specify role of banks and other financial institutions in supporting (if any) of proecological restructuring undertakings of privatized former state-owned enterprises. The problem is open to further surveys because it has passed short time since the majority of privatisation procedures have been finished.
6. All legal acts and laws referred to regulations of privatisation, liquidation or restructuring procedures were scrutinized by us to identify weak points in enforcement environmental compliance with procedures used in practice.

7. We tried to get into the work other non-governmental ecological organizations. Generally our intention felt not because of lack of interest, but lack of time and financial support. The organizations were not helpful to us as a source of information. Also the question: "How should the environmentally accepted pattern of privatised contract look like?" was not answered by them.

The sine qua non condition to be involved into opinion-making processes on environmental issues of privatisation and liquidation of former state-owned enterprises is acquiring of reliable, complete and up-to-dated information, generally speaking on :

- planned privatisation /liquidation undertakings,
- environmental status of enterprises before, in the course and after finishing procedure.

What a role can play non-governmental ecological organizations in ownership transformation processes in Central and Eastern Europe :

- they can assess projects of regulations for privatisation/liquidation procedures from point of view of compliance with law on environmental protection,
- they can monitor activities of privatized companies in the field of environmental protection, for example they can track performing of environmental restructuring programmes prepared and accepted in the course of negotiations between the Ministry of Ownership Transformation or other founding bodies and investors.
- they can advise how to avoid negative (if any) ecological impact of privatisation or liquidation undertakings,
- they can co-operate with self-governments on local or regional level :
  a) in execution of environmental law,
  b) in balancing of social and environmental context of privatisation and liquidation,
  c) in tracking environmentally undesirable undertakings,
  d) in enforcement of principle of sustainable development in business activity of new private companies.
- they may serve as linking bodies between administration, world of business and a public in animation of people and institution around the environmental context of ownership transformations.

We can propose some organisation measures to make possible involving of non-governmental ecological organizations in opinionmaking processes of privatisation or liquidation :

- admit the representatives of the NGO-s to take part in meetings and discussions of advisory bodies for ownership transformations,
- reveal environmental information to representatives of NGO-s for example environmental clauses of contracts with investors or environmental part of sector restructuring programmes,
- provide projects of acts and law provisions to make possible to assess them from environmental point of view,
- make possible to present opinion to decision-making bodies on environmental impact of ownership transformation processes.
- set up on the central, regional or local level official bodies to make possible to change opinion between administration, world of business, self-governments, mass-media, a public and NGO-s on social, economic and environmental impacts of ownership changes,
- organize briefings for newspaper on environmental impact of ownership changes and on environmental profile of polish and foreign investors.

The NGO-s should be more active in the field of monitoring of environmental impact of ownership transformation of former state-owned enterprises. They should focus their efforts on tracking of activities of administration and investors in the field of compliance with principles presented in the National Environmental Policy (prepared by the Ministry of Environmental

Protection, Natural Resources and Forestry in 1991) and the State Industrial Policy (prepared by the Ministry of Industry and Trade in June 1992). We suggest besides that in the field of interest of professionally experienced environmentalists should be :

- compliance with environmental law,
- environmental clean-up of old contaminations,
- fair environmental behaviour from part of investors, new owners of former state-owned enterprises. Indispensable for that is close co-operation with administration, businessmen, self-governments, individuals: lawyers, economists, engineers and s.o. It is also necessary to co-operate with foreign NGO-s in other countries of the region and the NGO-s in high developed countries in Western Europe and the United States to get information on environmental profile of active investors in Central and Eastern Europe. In situation of great financial, technological, organizational prevailing of western investing firms, the environmental impact of investment undertakings depends more on their fair attitude towards the environment, than on our legal environmental or administrative regulations and execution measures.

5 REQUIREMENTS FOR COOPERATION

In the course of our research programme we have expressed some requirements towards administration; that may have been significant for NGO-s in other countries to make their work more effective in transition period to market economy.

Firstly, we hope the restructuring, privatisation and liquidation processes could be performed in more decentralized manner. But decreasing in central administration involvement simultaneously means increasing responsibility of local authorities, self-governments and a local societies in managing of ownership transformation in compliance with principles of sustainable development. Broader involvement of a public into supervising and monitoring of ownership transformation processes may create sustainable assurance against violation of environmental law or fair behaviour towards the environment. We do not expect that it can be executed without any obstacles caused by distrust from part of administration. The NGO-s should prepare themselves to be reliable partner irresponsible co-operation with administration, self-governments and businessmen.

Secondly, the administration should be more open to take into consideration opinion of the representatives of NGO-s on environmental impact of ownership transformations. Independent individuals scientists, professionals and experienced environmentalists can be in any cases more objective and more sensitive for local or regional environmental problems than administration. The mutual contacts should have to be more systematic. They have to be preceded by changing of adequate information to make possible working out independent opinion on the topic.

Thirdly, the administration should enforce the least possible requirements in the ownership transformations procedures :

- any privatisation or liquidation process could not have finished until the environmental liabilities had been satisfied,
- it can be impossible to start any privatisation or liquidation processes of former state-owned enterprises that rated to the greatest polluters without performing of ecological review,
- all legal successors of former state-owned enterprises under ownership transformation should be precisely fixed to make possible execution of environmental liabilities,
- introducing in the environmental law and in other legal regulations any provisions to make ownership transformation processes harmless to the environment, Fourthly, administration should reveal any information on environmental status of privatized or liquidated former state-owned enterprises to a public and to NGO-s to make possible to work out an independent opinion.

It seems to be to much, but our requirements create safety system for the environment in the transition period to market economy. It is minimum to make effective control by a public over

transformation processes and to prevent possible negative (if any) impact on the environment in the future.

THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

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SUMMARY

The Basel Convention comprises realistic measures to reduce and strictly control the movement of hazardous wastes, reduce their generation, ensure that such wastes are disposed of in an environmentally sound manner, and protect the global environment from the possible harmful effects of movements and disposal of hazardous wastes.

The generation and movements of hazardous wastes originate in activities in individual countries. National capability to reduce the quantity and manage hazardous wastes in an environmentally sound manner should be developed as a priority. The development of national technical and legal infrastructure, including legislation and regulation, also needs to be undertaken. Training, education and public awareness are important elements in the development of countries' capability. Where there is a lack of resources and expertise, technical assistance should be provided through bilateral and multilateral funding.

The arena of international environmental law is dynamic, and the Basel Convention is designed to keep pace with change and to allow for future amendments and strengthening of its provisions. The Basel Convention is still evolving. The elements of a Protocol to the Convention on Liability and Compensation were identified by a UNEP working group during 1990-91, and mechanism for the implementation of the Convention will be considered by the Conference of the Parties to the Basel Convention. Draft technical guidelines for the environmentally sound management of hazardous wastes will be submitted to the Conference for adoption. Draft model national legislation on hazardous waste management and disposal has been developed and will be also presented to the Contracting Parties meeting.

1 INTRODUCTION

The generation, storage, treatment, transport, recovery and disposal of hazardous wastes pose a real problem to society and represent a serious danger for man and the environment. There is great concern for the future if this issue is not properly addressed; it will necessitate vigorous actions by governments, business and industry, by people and international organizations for decades to come.

No one knows the true sum of man's toxic throwaways. In the last 30 years, billions of tons of hazardous wastes have been dumped or land-filled in or on the land, some in the sea and vast amounts still move across frontiers unregistered.

Uncontrolled or inefficient surveillance of transboundary movements and disposal of hazardous wastes result too often in long term exposure of the population to their hazards. Illegal traffic of these wastes can and often had adverse effects, both acute and long term, on human health and the environment with related detrimental consequences on the quality of life.

The potential damaging effects of hazardous wastes has led the world community to take measures to manage these wastes in an environmentally sound manner and to aim towards minimizing their production and preventing their generation. In this context, health and environmental factors have started to play a major part in the selection of appropriate hazardous wastes management practices.

In response to the growing recognition of the health and environ-mental risks associated with hazardous wastes, governments have brought into force a series of laws to control the generation, handling, storage, treatment, transport, disposal and recovery of these wastes.

2 BASEL CONVENTION

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted unanimously on 22 March 1989 by the 116 States participating in the Conference of Plenipotentiaries, which was convened by the Executive Director of the United Nations Environment Programme (UNEP) and held in Basel at the invitation of the Government of Switzerland. The Final Act of the Basel Conference was signed by 105 States and the European Economic Community (EEC).

The Basel Convention is the result of six sessions of the Ad Hoc Working Group (Budapest, 27-29 October 1987, (organizational meeting)); Geneva 1-5 February 1988; Caracas, 6-10 June 1988; Geneva, 7-16 November 1988; Luxembourg, 30 January - 3 January 1989; and Basel, 13-17 March 1989), in which experts from 96 States and representatives of over 50 organizations participated. Informal negotiations conducted by the Executive Director with governments, organizations and industry also played an important part in the success of the preparatory process. 53 States and the European Economic Community have signed the Basel Convention and as of July 1992, 25 countries ratified or acceded to the Convention which entered into force on 5 May 1992. The following are the countries which ratified or acceded to the Convention:

Argentina	Australia	China	Czech & Slovak F.R.
El Salvador	Estonia	Finland	France
Hungary	India	Jordan	Latvia
Liechtenstein	Maldives	Mexico	Nigeria
Norway	Panama	Poland	Romania
Saudi Arabia	Sweden	Switzerland	Syria
Uruguay			

3 THE PROVISIONS OF THE CONVENTION

a. The generation of hazardous wastes as well as their trans-boundary movements shall be reduced to a minimum. The wastes should be disposed of as close as possible to their source of generation.

b. Every State has the sovereign right to ban the import of hazardous wastes. The parties to the Convention shall not allow any transboundary movement of hazardous wastes to a State that has prohibited their import. Transboundary movements shall also be prohibited if the exporting State has reason to believe that the wastes in question shall not be managed in an environmentally sound manner.

c. A party shall not permit hazardous wastes to be exported to a non-party or to be imported from a non-Party, unless it is in accordance with a bilateral, multilateral or regional agreement, the provisions of which are no less environ-mentally sound than those of the Basel Convention.

d. The State of export shall not allow a transboundary move-ment of hazardous wastes to commence until it has received the written consent, based on prior detailed information of the State of import, as well as of any State of transit.

e. When a transboundary movement of hazardous wastes which is carried out in accordance with the Convention cannot be completed in an environmentally sound manner, the State of export has the duty to ensure the re-importation of the wastes.

f. Transboundary movements of hazardous wastes which do not conform to the provisions of the Convention are deemed to be illegal traffic. The Convention states that "illegal traffic in hazardous wastes is criminal". The State responsible for an illegal

movement of hazardous wastes has the obligation to ensure their environmentally sound disposal, by re-importing the wastes or otherwise. Every party shall introduce national legislation to prevent and punish illegal traffic in hazardous wastes.

The wastes covered by the Convention are defined in its Annexes which include a list of categories of wastes to be controlled (47 categories) and a list of hazardous characteristics. Hazardous wastes subject to transboundary movement must be packaged, labelled and transported in conformity with generally recognized international rules and standards. Since the authorities of many countries, especially developing ones, frequently do not have the trained specialists and technical know-how to assess information concerning hazardous wastes and handle it efficiently, the Convention calls for international co-operation involving, among other things, the training of technicians, the exchange of information, and the transfer of technology.

The Convention provides for the establishment of a Secretariat, the main functions of which shall be to process and disseminate information provided to it by the parties, to ensure co-operation between parties, and to provide assistance to them in implementing the Convention.

4 IMPLEMENTATION OF THE RESOLUTION ADOPTED IN BASEL (1989)

The Interim Secretariat for the Basel Convention (ISBC) which was established by UNEP in November 1989 in Geneva finalized in 1992 the implementation of the Resolutions included in the Final Act of the Conference of Plenipotentiaries which adopted the Basel Convention.

The Ad hoc Working Group which was established by the Executive Director of UNEP in order to implement Resolution 1 to consider the necessity of establishing mechanisms for the implementation of the Basel Convention, recommended the establishment and terms of reference of an open-ended Ad hoc Committee to meet between the meetings of the Contracting Parties.

In pursuance of Resolutions 2, 5 and 7, UNEP has taken requisite action for the harmonization of procedures provided for in the Basel Convention and other relevant international instruments. As a result of the cooperation with other organizations, the General Conference of the International Atomic Energy Agency (IAEA) adopted by its resolutions GC (XXXIV) Res. 530 (1990) a code of practice on the International Transboundary Movement of Radioactive Waste. Also, several resolutions were adopted within the framework of the International Maritime Organization regarding the control and prevention of dumping of hazardous and other wastes at sea as well as in respect to the rules and regulations related to the transport of hazardous wastes by sea.

As for the implementation of Resolution 3 on Liability and Compensation, the Ad hoc Working Group of Legal and Technical Experts which had two meetings was able to finalize its work in March 1992 by developing elements which might be included in a Protocol on Liability and Compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

In accordance with Resolution 8 of the Basel Convention, the Executive Director established a Technical Working Group to prepare draft technical guidelines for the environmentally sound management of wastes subject to the Basel Convention. The Technical Working Group met twice in Geneva (in February and May 1992). A third meeting is scheduled to take place in Geneva in September 1992. The work undertaken, and recommendations made by the Group will be submitted for considerations by the parties at their first meeting and eventual adoption.

The main purpose of the technical guidelines is to:

a. provide information on the controls expected to be exercised at national level by governments of countries which are parties to the Basel Convention over the management of wastes, and in particular hazardous wastes, produced within national territories;
b. provide guidance to Competent Authorities designated by the parties to the Basel Convention in making a decision whether to consent or reject a proposed

transboundary movement of wastes subject to the Basel Convention into or out of their country.

5 ENFORCEMENT IN THE CONVENTION

The Convention obligates parties to manage hazardous wastes in an environmentally sound way. This means that the States party to the Convention shall aim towards activities for the reduction and minimization of all risks of harm caused by hazardous wastes to health and the environment. Such activities should include, inter alia:

- steps to reduce or avoid the generation of hazardous wastes;
- steps to ensure proper recovery of such wastes;
- steps to reduce to a minimum or eliminate the export/import of hazardous wastes. This entails the planning of environmentally sound disposal facilities, located as close as practicable to the source of generation, and the identification of the generators;
- identification of the type of wastes subject to the Basel Convention and the total annual volumes by type acceptable for import, if any, and the corresponding environmentally sound disposal facilities to be used;
- identification of all conditions required for granting of consent to exporters/importers desiring to move hazardous wastes through the territory of a transit country;
- identification of the adequate and most effective process by which to optimize the environmentally sound disposal of wastes;
- elaboration of contingency plans including risks analysis and emergency responses in case of accidents;
- steps required to rehabilitate polluted landfilled areas or to redress ecological deterioration due to improper disposal of wastes;
- steps needed to comply with recognized international transport rules, regulations, standards or code of practice;
- steps to monitor pre-and-post disposal operations and effects;
- steps to develop liability and compensation measures for damages resulting from transboundary movements and/or disposal of hazardous wastes;
- timetable for implementation of the various and interrelated elements of a strategy for waste management.

6 ENFORCEMENT MEASURES

The importance of enforcement measures is particularly evident in the case of the Basel Convention.

A number of articles in the Convention obligate Parties to take appropriate legal, administrative and other measures to implement and enforce its provisions, including measures to prevent and punish conduct in contravention of the Convention as well as monitoring of measures taken. Examples are given below:

Article 4 (General Obligations), paragraph 13 requests Parties to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes which are subject to transboundary movements.

Article 10 (International co-operation) obligates Parties to co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment.

Article 13 (Transmission of information) states that Parties shall inform each other, through the Secretariat, of:

a. changes regarding the designation of competent authorities and/or focal points;
b. changes in their national definition of hazardous wastes;

c. decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction;
d. decisions taken by them to limit or ban the export of hazardous wastes or other wastes.

The Parties shall also submit an annual report, through the Secretariat, to the Conference of the Parties. The report shall contain information on:

- The amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification.
- The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods.
- Disposals which did not proceed as intended.
- Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movements.
- Measures adopted by them in implementation of this Convention.
- Available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes.
- Bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 to this Convention.
- Accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them.
- Disposal options operated within the area of their national jurisdiction.
- Measures undertaken for the development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes.

Article 15 (Conference of the Parties) states that the Conference of the Parties shall keep under continuous review and evaluation the effective implementation of the Convention. Also, this article obligates the Conference of Parties to undertake three years after its entry into force, and at least every six years thereafter, an evaluation of its effectiveness and, if deemed necessary, to consider the adoption of a complete or partial ban of transboundary movements of hazardous wastes in light of the latest scientific, environmental, technical and economic information.

At the international level the Convention contains various provisions related to enforcement. A number of these outline the procedures in some detail, spelling out the responsibilities of the Party States towards each other (i.e. duty to re-import). The Convention Secretariat has the function of co-ordinating these efforts and checking performance through annual reporting by parties and other information provided to it.

At the national level some provisions of the Convention provide a framework for enforcement and delegate the elaboration of concrete measures to Party States. Measures also have to be adopted which are not explicitly spelled out in the Convention. In both cases relevant measures have to be adopted by national legislation, and government authorities have to be established to assume the responsibility of carrying out enforcement measures. The role of industry in this context also needs to be examined.

The Basel Convention has entered into force in a limping way as the majority of the main generators have not yet ratified or acceded to the Convention. Although, these countries are adamant to become party to the Convention as soon as practicable, enforcement of the provisions of the treaty remains a difficult task without their presence and full participation. However, practical achievements in this field can be accounted for.

In order to provide assistance to the States to comply with obligations of the Basel Convention, which requests the parties to take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention, the Interim Secretariat for the Basel Convention has prepared a Model Law on the Control of Transboundary Movements of Hazardous Wastes and other Wastes and their Disposal.

Such model law focuses on both control of transboundary movements and the management of hazardous wastes. This model law which is being used by a number of countries, provides for elements to be included in national legislations in order to implement and enforce the Convention provisions, including measures to punish offenders.

The work undertaken by the Basel Convention Secretariat, and funded in great part by UNEP, in addition to voluntary contributions received from States, has greatly helped providing a frame for enforcement of the Convention in particular through the implementation of the Resolutions of the Final Act.

As mentioned earlier, the implementation of the Resolutions provides a foundation upon which parties can effectively comply with the provisions of the Convention.

In this regard, the following Resolutions are of importance for the development of enforcement mechanisms:

Resolution 1 - Mechanism for the implementation of the Convention

The Ad hoc Working Group of legal and technical experts set up by the Executive Director of UNEP recommended the establishment of an open-ended Ad hoc Committee to meet as necessary in order to present to the Conference of Parties proposals and recommendations. The proposed functions of the Ad hoc Committee are to:

a. Collect, through the Secretariat, information from parties and other sources on the operation of the Convention to provide the basis for the evaluation of its effectiveness.
b. Identify factors which might inhibit countries from becoming parties to the Convention.
c. Examine the practical implementation of the Convention.
d. Identify the specific needs of different regions and sub-regions for training and technology transfers regarding the sound management of hazardous waste and the minimization and the elimination where possible of their generation including clean production techniques. Taking into account existing structures, particularly UNEP, to consider the establishment, as a model in a region where the need is greatest, of a centre for the training and transfer of technology; such a centre of excellence should take into account the work on cleaner production and also draw on the work of existing institutions, particularly the Basel Convention Secretariat.
e. Review the technical guidelines for the environmentally sound management of wastes subject to this Convention, prepared by the technical working group established by Resolution 8 of the Basel Final Act, which might be required to continue its task after the first meeting of the Conference of the Contracting Parties.
f. Harmonize non-technical and administrative aspects such as notification, movement documents and corresponding procedures for transboundary movement, as a matter of priority.
g. Co-ordinate assistance to parties which may be in breach to enable them to comply with their obligations under the Convention.
h. Examine reports received from global, regional, sub-regional and other sources to monitor and assess all forms of illegal traffic of hazardous wastes, as well as the report of the Secretariat of the Basel Convention on the implementation of Article 16, paragraph 1(i) to assist parties upon request on their identification of cases of illegal traffic.

This Ad hoc Committee shall have the power to establish any other sub-groups to facilitate the performance of its functions.

Resolution 3 - Liability and Compensation

The set of elements developed by the Ad hoc Working Group will be recommended by the Executive Director of UNEP to the first meeting of the Contracting Parties to the Basel Convention for consideration with a view to adopting, in accordance with Article 12 of the Convention, a protocol setting out appropriate rules and procedures on the field of liability and compensation for damage resulting from transboundary movement of hazardous wastes.

These elements provide for a comprehensive regime to ensure adequate and prompt compensation from damage from the transboun-dary movement and disposal of hazardous wastes and other wastes, promote the protection of human health and the environment, and to enable the restoration of the environment.

At the request of the Ad hoc Working Group the ISBC elaborated draft articles of a Protocol on the financing, operation and management of an International Fund for immediate response and for compensation which will be considered by the first meeting of the Conference of Parties.

Resolution 8 - Technical Guidelines

The Secretariat for the Basel Convention prepared a draft Framework document at the request of the Technical Working Group set up by the Executive Director. The Framework document provides principles and elements for consideration by the parties to comply with the obligations of the Convention to manage wastes subject to this Convention in an environmentally sound way.

Although the Basel Convention provides for very stringent control mechanisms, dubious or illegal traffic in hazardous wastes continue. Developing countries, Eastern/Central European countries and the Russian Federation are particularly vulnerable to such abuses. There are many recorded cases of hazardous wastes destined for recovery which end up being dumped. Shortcomings in controls on the transport of wastes or discrepancies in the definition of wastes lead to many suspicious movements. Customs documents do not always correspond to the "product" transported. Illegal storage of hazardous wastes is often reported as interim storage which becomes later on a disposal operation. In addition, criminal acts still occur when hazardous wastes are illegally shipped into another country without the consent of that country.

7 CONCLUDING REMARKS

With the Basel Convention, the world community has the opportunity, for the first time, to implement a truly global legal instrument dealing with the control of transboundary movements of hazardous wastes and their disposal.

The Organization for Economic Co-operation and Development (OECD) estimates that in 1984, on average, a consignment of hazardous wastes crossed an OECD frontier every 5 minutes all year round. Over two million tonnes of those wastes are estimated to cross national frontiers of OECD European countries annually on the way to legal disposal sites. This figure represents 8 to 10% of all such wastes generated in these countries.

Other movements, which are illegal, are motivated by the possibility of important gains in transferring the problem to where controls or standards are less strict or because the vastness of the territory and the scant resources at the disposal of the importing country makes any attempt at serious surveillance impossible.

Such criminal acts prompted strong reactions by governments, international organizations and non-governmented groups.

In addition, faced with the increasingly higher costs of safely treating or disposing of hazardous wastes in countries where they are produced, many companies prefer to get rid of the problem at a lower cost by transporting them to another State.

Taking into account the fact that the quantity of wastes of all kinds is increasing, that the rapid pace of industrialization will necessitate careful attention to hazardous wastes prevention and management for decades to come, and that with the development of new chemical products, new sources of hazardous wastes are created, much remains to be done to properly address this complex challenge.

In exceptional cases and until the appropriate technology and adequate infrastructure are available, or if adequate storage or treatment is not possible in the generating country, it may be safer for human health and the environment to export hazardous wastes to a country capable of eliminating them in an environmentally sound manner.

Increased international co-operation is necessary to assist developing countries to manage and treat the wastes they generate in an environmentally sound way.

The Basel Convention will contribute substantially to improving the situation world-wide by reducing transboundary movements and by promoting environmentally sound management of hazardous wastes. The parties to the Convention will co-operate actively with each other to implement the Convention and, in particular, will assist developing countries in the development of sound management practices and adoption of cleaner production methods.

It is therefore of great importance that the provisions of the Basel Convention be implemented as soon as possible, effectively and efficiently, and in a spirit of solidarity, to be able to truly contribute to solving problems world-wide and to render accessible, practicable and environmentally acceptable options to deal with hazardous wastes.

TRANSITION AND IMPLEMENTATION OF WASTE MANAGEMENT POLICIES IN CENTRAL AND EASTERN EUROPE

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SUMMARY[1]

Significant economic and environmental transition is taking place in the former Socialist Countries of Central and Eastern Europe. Environmental consequences are evident, but remedies are complex. This paper focuses on the problems of improper waste management and provides information on developing and implementing a successful waste management strategy for those countries in transition. While the problems are somewhat unique to the region because of recent past history, many policy and technical remedies experienced by Western countries may be appropriate and are discussed. In particular, significant attention is given to developing strategies which emphasize implementation. Implementation measures include compliance, enforcement, legislation, broad public participation and education measures. Pressure exists to act quickly on various waste problems. Although available information is limited, inaction is not an option. Waste management decisions have a significant impact upon the vital economic transition of that Region, and must be considered jointly. Expectations should be reasonable, yet comprehensive. Programs for each Nation must consider current and future needs. Various options are presented.

1 INTRODUCTION TO THE REGION

This meeting provides an excellent opportunity to share experiences since new WASTE MANAGEMENT policies are quickly evolving in Eastern Europe. Enforcement requirements will play a vital role in successful environmental transition. Implementing waste management policies and programs is impossible without considering compliance and enforcement provisions. On paper, Governments can adopt many environmental waste management initiatives. **But to be successful, waste management programs MUST be embraced with practical and comprehensive approaches, and must receive Government and community wide endorsement, and financial support.** Regional countries have already experienced disappointment in meeting sound waste management objectives; not necessarily because of a lack of laws, but partly because the proper elements to implement and enforce the laws were lacking. Further, in the Regional countries, industrialization focused almost entirely on output - number of products, often without regard to quality or environment. Waste generation per unit of GDP resulted in high waste volume. For example, the U.S. volume based on GDP[2] was about 20% of Hungary's; Germany's (former West) about 10% of Hungary's; and Austria's less than 10% of Hungary's waste/GDP. Industry was inefficient, and most remain inefficient. Significant restructuring is necessary to solve the problem and must be an available option in development of an enforcement policy for waste management. However, the countries in the region are also quite different. For example, in the former Yugoslavia, waste problems are unique and priorities are naturally different because of the war and other changes. Some areas face the need to deal with wastes from war reconstruction. Other emerging countries of Yugoslavia (e.g. Croatia, Slovenia), are faced with building an entire environmental infrastructure, and contending with new

[1] The views expressed are solely those of the author, and do not necessarily express the views of the Regional Environmental Center.

[2] World Resources Institute, P. 325

borders that suddenly restrict wastes and allow for almost no disposal options. This presentation provides options and experiences for implementing effective waste management programs, while recognizing that the former Socialist countries face a variety of problems, and require a variety of options.

2 POLICY CONSIDERATIONS DURING TRANSITION

Waste management is increasingly at the heart of environmental-economic policy discussions. Three important goals are integral in policy discussions.

1. **a successful transition to a market economy;**
2. **cost-effective environmental improvement; and**
3. **prevention of new and costly environmental problems**

To meet the three goals, here are five waste management objectives that should be met by the Regional countries.

1. the need to deal with problems from **improper historic waste practices**, and the related past liabilities that remain - who will absorb these costs?
2. the need to plan for environmentally sound and **cost-effective options** for currently produced wastes;
3. the need to develop **legislative certainty** to successfully manage new wastes and to define future costs;
4. the need to encourage state-of-the-art **waste management facilities;**
5. the need to encourage **waste prevention** or recycling alternatives in conjunction with promoting the necessary Legislative and Economic tools, and discouraging alternatives which undermine those practices.

At this time, waste management issues are controversial and sometimes confrontational. Should this facility or technology be approved, and on this site? Do we need it? Why? What effective alternatives do we have? What alternatives meet short term objectives, yet are compatible with long term needs? Can we assure the safety and health of people affected by our decisions? Is the information adequate to decide these questions? If not, do we wait to make the decision? If I enforce against this violator, what impact or consequences will occur? What is really known about a particular waste, and its effects? Extreme pressure either now, or soon will exist, to make important waste management decisions, to answer these and other questions. Often, those decisions will have economic and compliance consequences. Unfortunately, required information is limited, data is often unreliable, and the pressures for achieving economic development and environmental results overwhelming.

3 EARLY WESTERN EXPERIENCES

Waste problems of the Region are not so different from those of Western countries. Only in the past 15 years have Western governments begun to systematically address the waste problems. Early environmental remedies included end-of-the-pipe technology. Such remedies often discouraged facilities from developing non-waste producing technologies. Examples include: waste streams were often collected and concentrated, only to return to the environment at other locations, and transferred to other medium (e.g. air to water to soil); recycling was sometimes a sham, designed to find inexpensive remedies for the facility; poor recycling and treatment practices, improper handling and storage of wastes, and faulty landfills and incinerators resulted in significant risks. The impact of poor waste management practices became widespread and many people lost faith in the regulatory process designed to protect them. The industrial sector was blamed both for causing the problem, and for failing to develop prompt reliable solutions. It

would be too simple to say the problem was merely lax enforcement. It was also the case where adequate policy considerations, adequate information, and technological understanding were lacking. With limited resources in regulatory agencies to adequately investigate problems, and with a lack of adequate information, cost ineffective options were chosen. The full cost of these mistakes has been extremely high in terms of health, environment, and financial remediation. **Past experiences provide a valuable learning opportunity, and effort must be made to share this information quickly.**

4 INFORMATION IS CRITICAL

Today, we have information which enables better decision-making by managers. Science and technology allow us to discover pollutants at very low levels in soil and groundwater; often, below our ability to explain the effects. Research has given us a better understanding of health and environmental impact. **Today, there are far more technological options to solve problems. However, new technology may embrace significant problems as well. It is necessary that we carefully evaluate the apparent environmental solutions to determine if there are hidden future waste problems.**

Compliance and enforcement require a comprehensive information process; from generation of waste to ultimate disposal; from cradle to grave. While information in the Regional countries may be lacking, decisions must be made. **Information on waste quantities, qualities, sources, etc. must be gathered to develop an effective waste management strategy.** Recognition of data problems exists, but severe understaffing of Ministries in the Regional countries does not provide the timely opportunity to gather, and assimilate the information needed to develop a strategy. **Adequate trained staff are vital for effective implementation.**

5 WHY ENFORCEMENT?

5.1 Introduction of Guiding Principles

- Solutions to waste problems are often costly, and therefore do not lead to voluntary compliance. This means that good strategic planning and implementation principles become even more important. **The integrity of Government is enhanced where there is successful implementation.** Unsuccessful implementation leads to loss of credibility for everyone, especially, government and industry. To be successful, **compliance programs must be based on sound principles and benefits.** Compliance in waste management can often have hidden benefits which result in unforeseen economic savings to the facility. When the enforcement pressure becomes significant, the facility seeks alternatives. Process changes are sometimes chosen as a compliance method, resulting in waste stream elimination and beneficial product loss reduction. This choice can enhance company competitiveness and profits.

All Regional countries are developing some forms of waste management legislation. Some are further along than others. Many countries are receiving direct legal assistance in development of this legislation. In one country, a new waste law has emerged, but it may be difficult to implement for the following reasons: massive recycling requirements without an existing private sector to process materials and develop markets may impede progress; industry in the country is still very much government owned, thereby insulated from market pressures and possibly compliance and enforcement; experience with environmental implementation is limited, and the Government commitment is questionable given economic pressures. These factors may undermine emerging citizen trust in new Governments if implementation is not effective. But it is an example of one country which has forged ahead and established an important waste management effort. It is clear that what is critical to this effort, is an education program for

citizens and facilities, and resources and programs to encourage development of safe waste disposal facilities. Indeed, predictability and enforceability of waste management laws may be as important as the content. Again, it is necessary that the information learned from these efforts be shared quickly. Success can breed success in the Regional countries, and it is in everyone's interest to identify problems and solutions early.

Current economic conditions will make enforcement of waste laws difficult. However, there are thirteen enforcement related areas which are identified for consideration. Addressing these areas and recognizing their potential impact early on in the process, should make implementation of waste management strategies more effective.

5.2 Penalties

The current limited penalty and fine structure available to enforcers in the Regional countries needs to be changed. However, even then, fines and shutdowns may conflict with sensitive national priorities such as market reform. Therefore, regulations for waste management must be fair and practical. Penalties must have impact containing clear financial disincentives for non-compliance, and punitive measures for wilful violations. There is no greater disincentive than jail terms for wilful violators; especially when top management is responsible and is punished. At the same time, economic incentives to comply, and strict but flexible standards are necessary.

5.3 Enforcement Fairness

Any enforcement program must treat both domestic and foreign investors equally. Effective options are important, and fair competition will encourage new investors. Necessary adjustments can be defined as discussed under 5.3 Compliance Schedules.

5.4 Compliance Schedules

One helpful tool used by the West, especially for economically strapped facilities, is to establish compliance schedules. These schedules consider:

a. that practical barriers be taken into consideration to achieve environmental objectives, and an agreed upon plan of action, with interim milestones, be developed.
b. that when developing a schedule, considerations include: facilities unique problems and priorities be evaluated; risks of further non-compliance be weighed; low cost or low technology methods be applied in the interim to the highest risk areas; a comprehensive plan and reporting schedule with both self-audits and inspections be developed; and schedules consider controls which eliminate or reduce waste streams. Longer term environmental and cost-effective options are important if waste streams can be eliminated or reduced.
c. that communities affected be involved early and often in this decision, with information provided freely.
d. that measurement of success - what constitutes compliance from non-compliance-be carefully identified in the schedule. This should include specific standards of reduction, minimization of waste, effluent standards, schedules for equipment installation, etc with penalties for unexcused failure.
e. that for the regulator, it is resource intensive to periodically review progress. Nevertheless, compliance, or at least major environmental improvements are often the result if reviews are adequate. When the information is routinely provided to the community, an important trust begins to build between diverse interest groups. After all, everyone has something at stake.

5.5 Harmonization of Laws and Enforcement

In this developing period, those countries in the Region behind in implementation will be vulnerable to improper waste disposal practices. Many facilities needing to dispose of wastes will seek out opportunists wishing to make fast money. This serious situation can have increasing long term devastating effects for countries that lag behind as regulations in Western countries, and in the Region tighten-up. Actually, unimplementable or non-comprehensive laws and policies in the Countries of the Region provides an opportunity for harmonization of laws and policies which result in the implementation of regional cost effective solutions to waste management; both between and within the countries.

5.6 Privatization

Only a small percentage of the waste generating manufacturing sector has been privatized. The privatizing difficulty is confronted with several enforcement waste related issues. Without sufficient environmental information and appropriate laws, how can the potential investor define its liability? How can the investor be offered waste disposal options if there are no available options or strategies demonstrating that one will soon exist? How can the States define their national waste strategy, when many active waste generating facilities might close due to market forces? How does one adequately calculate the current waste stream disposal needs when the problem is so dynamic? If new facilities for disposal are constructed (e.g. landfills, incinerators), how can they encourage prevention and minimization in this era of uncertainty, instead of excess capacity for importing waste? The questions are difficult, but the Environmental Ministries with Western assistance are attempting to confront them, develop interim solutions, and secure necessary implementation and compliance. Of course, international lending institutions also have a responsibility when providing loans to confront these questions; not only to provide for the economic development, but also the long term environmental interests as well. Those interests play an important role in the long term health of the economy. As these issues are resolved, the enforcement process for waste management will become more clear.

5.7 Permit Process Approach

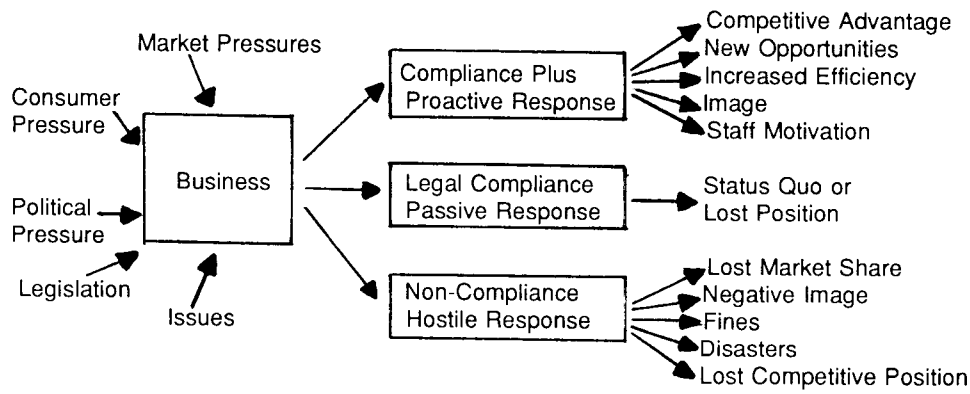
An effective Permit Process is critical to monitor performance of operating waste disposal and other facilities having significant waste streams. Public involvement, environmental assessment review, and excellent technological skills are required by the responsible regulatory agency. States must consider that high salaries may be necessary to retain this type of staff. The assessment should review all aspects including those relating to the facility, off-sight potential impacts, and waste transportation related issues. Modern hazardous waste operations are complex engineering and scientific facilities. Reviews of the facility plans, process, safety systems, report procedures, adequacy of trained operators, analytical facilities, waste controls, etc are critical. Experienced people with specific skills and qualifications are required by government to ensure that the process is permitted correctly, audits and inspections are conducted, and expertise is available for compliance-enforcement issues. If this part of the waste management scheme is not addressed in facility planning, failure to implement effective options might result. These requirements must be met regardless of whether one considers waste treatment or storage, incinerators, landfills, site remediation, or redesign of existing facilities. When developing appropriate permit requirements, consider that permit fees could be levied upon the investor to support the regulatory process. A strong enforcement agency is also a good investment for the waste facility. The broader the environmental enforcement nation-wide, the more potential for both pollution prevention and disposal at the well permitted facility.

5.8 Private Sector Involvement

In the West, some of the success for hazardous waste management depends upon the existence of a private sector that makes its profits from handling and managing wastes. They

have an economic incentive to dispose of wastes as economically and practically as possible. Often, as enforcement of these regulations grows, so do the respectable businesses; important options in the waste management strategy. The bad actors drop out of the business; either through enforcement, or loss of business. They cannot compete legitimately. In the countries of the Region, the State probably manages over 90% of the hazardous wastes because industry is not yet privatized. Companies were, and generally still are insulated from market pressures. They may receive state subsidies and are therefore insulated from real environmental enforcement that serves as a disincentive NOT to pollute. Further, communication between facility management and environmental personnel regarding compliance has been quite weak. These two important elements, privatization and communication, are necessary for compliance success. This issue has also been difficult in the United States when dealing with Federal Facilities, which are owned by the Government. But waste laws cannot shield these major facilities from compliance. Figure 1 depicts the importance that four pressures (market, consumer, political, legislation) have upon business. The benefits of compliance are extremely positive, non-compliance is quite negative to business. Successful regulatory implementation is required to make this process happen.

Figure 1.[2]



5.9 Achieving Voluntary Compliance

Voluntary compliance makes up a significant part of achieving environmental goals. Voluntary action is rare when compliance costs are high, benefits of compliance are not known, incentives to comply are lacking, and when a strong regulatory program is absent. Facilities in the Region will soon compete with others for delivering products at competitive prices. Why should one industry add costs if the competitor does not? Clearly, Ministries cannot enforce against all facilities not in compliance. By carefully selecting targets and educating, voluntary compliance can be significantly enhanced. Economic incentives and recognition to facilities doing a good job will also enhance the voluntary process. Currently, in the absence of laws or with the impracticality of enforcing outmoded laws of the former Socialist countries, there is the hope that EC, US, or other advanced standards might become self-promoting or voluntary by responsible facilities privatizing.

5.10 Pressure from the Private Sector

Private interests have identified waste disposal market potential in the Region. Western needs have created a desire to construct landfills and incinerators in the Regional countries. This

[2] PA Consulting Group Brochure p 3

may be both good and bad news. This could help solve existing and historical waste problems using best available technologies. However, the need for hard currency and jobs are obvious and subtle pressures exist upon decision-makers to allow facilities. These facilities would often include excess capacity provisions for disposal of waste from outside the region and to provide for growing needs for the new developers. Co-generation of energy is sometimes offered as a way to improve the financial opportunity for the investor. The excess capacity provided by a state-of-the-art facility may be especially important to potential Western investors wishing to reduce potential liabilities caused by future mishandling, the accompanying negative publicity that it might cause, and reduce insurance costs. Existing outdated waste facilities that are not viable, and cannot be upgraded justifiably in a cost-effective manner will close more quickly; especially when compliance is required enhancing market system forces. However, it is not that simple. There is a dilemma. What options to select, and what is the process for making that choice? Will the new facilities solve problems in the short term, but merely delay waste prevention alternatives from facilities? Carefully planned approaches, citizen input, and a nationwide strategic plan with broad regional considerations, will provide the necessary steps for implementing a process of decision-making.

5.11 Personnel Requirements

The regulatory implementor in the waste management field must be technologically and legally astute to understand all the subtle environmental relationships. As a matter of education in waste management, working terms for reduce, reuse, recycle, reclamation, recovery, etc. must be understood before one can consider the proper implementation option. A good regulatory program is synonymous with good people. Training and educating does not end at the staff level. All players in the process need to be educated, including Lawmakers, Judges, the Press, etc. Solving the air pollution problem by capturing a waste which will then contaminate soil and groundwater is not a solution. This requires that staff from different Ministries work together under a common strategy, or set of principles.

5.12 Integrated Regulatory Principles

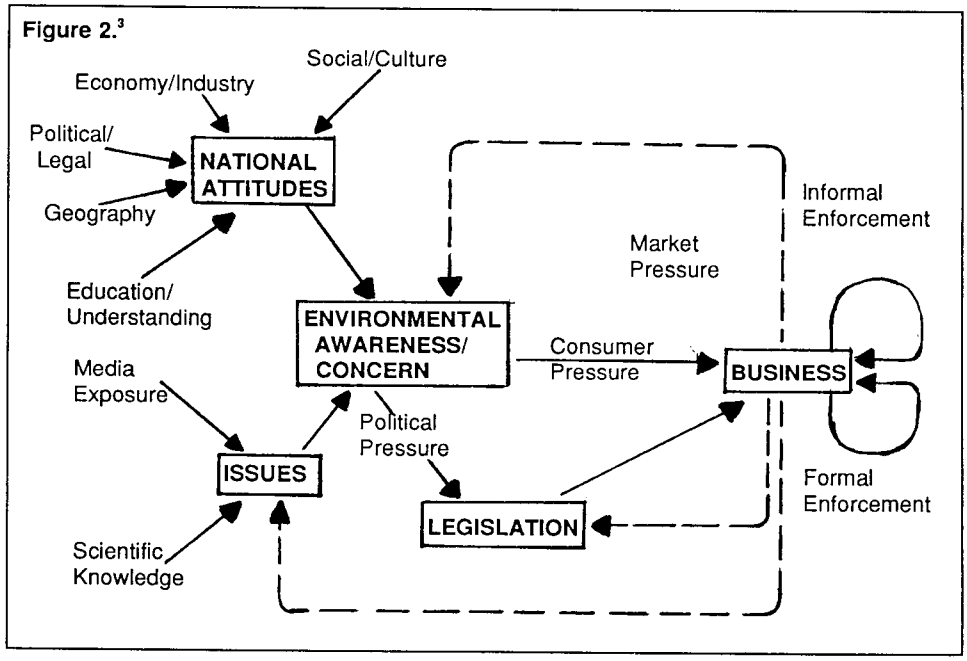
A waste management strategy is designed to improve safety and environmental quality; to meet both short and long term goals. The strategy must incorporate all related complementary programs for pesticides policy; toxic chemicals control; hazard materials transport; water and air pollution control; solid waste management; and accident prevention and response. The more one tightens any one policy, the more impact on waste and ultimately on problems at disposal sites with complications in the enforcement process. Strategies in each country should reflect the differences of infrastructure, timing, and priorities. While strict enforcement requirements are important, flexibility to select the optimal environmental option is necessary to promote holistic (integrated) waste management approaches best for the whole environment. Decisionmakers from different Ministries and Local Governments must work together to address issues which may undermine a national waste management strategy.

5.13 Critical Public Involvement

Unfortunately, there is no easy answer to implementing sound waste management practices. Different people have quite different views of the issues. Public opposition to most any facility can be anticipated, as some of you already know. The public generally trusts neither the government, nor the facility or its owner. While the Regional countries wish to solve their waste problems, the problems are often not well defined. Citizens do not believe that there is an existing program to ensure compliance and availability of public information is limited, even today. Access to environmental information has become an important element in the West over time. Passage of the Environmental Protection and Community Right to Know Act in the United States, has revealed to the public all facility waste streams, and resulted in substantial voluntary reductions. These reduction amounts may total amounts as significant as those that resulted

from many other U.S. pieces of environmental legislation. Government regulators who failed to provide information sometimes learned the hard way why it was necessary. Many regulators exhibit scars from not addressing public involvement and information access in creating waste management strategies. To repeat: building trust with the citizenry and all Government levels requires creation of a proper short and long term strategy focusing on waste prevention, that has early and frequent citizen input in the design and recommendations. Providing excess capacity where there may be no need for such capacity only further alarms citizens, and may encourage waste production and not prevention, if not carefully addressed. Therefore, the strategy must be supported with excellent waste generation documentation (present and future). Information gathered by facilities and Governments to define environmental impact, should be routinely required and freely available to the public. **Informed citizenry would result in pressure upon facilities to act where reliable data warrants such action.** Informed citizenry will serve to fortify the Environmental Ministries, increased resources for all levels of Government agencies to implement the necessary compliance, and a much improved strategy overall. Lastly, communications between all the diverse interest groups should take place frequently and informally in developing the plan and individual compliance strategies, not wait until it reaches the stage of last resort - often the courtroom. Figure 2 demonstrates the importance and aspects affecting environmental awareness, impact upon business, legislation, and enforcement.

Figure 2.[3]



5.14 Direct Citizen Impact

An excellent example of citizen involvement in enforcement in Eastern Europe is best summed up in the article from The Wall Street Journal of April 8, 1992.

> The headline: ENVIRONMENTAL GROUPS IN EASTERN EUROPE FLEX THEIR MUSCLES - THREAT OF A CLASS-ACTION SUIT IN HUNGARY SHOWS THE RISE OF A NEW SORT OF POLITICS.

[3] PA Consulting Group Brochure, P.12

In this example, which is common in the West, some environmentalists are learning how to apply pressure through lawyers and scientists against neglected environmental problems; to recover damages from past contamination of lead and other heavy metals in soil, and groundwater affecting nearby residents. Although the current laws and costs to litigate in the region will probably not support many such actions, only a few well publicized activities like this will send concern to those who might be less scrupulous. This action by a well informed and involved environmental organization will not discourage the responsible investor. In fact, as mentioned the responsible investor is waiting for appropriate enforceable regulations and an aware citizenry. Moreover, strong regulations open markets for pollution control manufacturers and the talented technicians of the region. Most importantly, such suits from citizens or Government, involving old waste sites, will make present company managing directors and investors take notice of their responsibility. For the manager, he does not want to be cited for neglect nor be a cause for health and environmental impact in his community, upon his neighbour. For the investor, he must consider the future. Failure to eliminate the waste stream or prevent pollution to the maximum extent practicable, only subjects the company to future liability situations. Obtaining development investments, and buying environmental impairment liability insurance has become a nightmare worldwide. Perhaps, even more significant is the fact that responsible international companies pay a significant amount of money for good public relations and advertising. They do not wish to see their product, or company reputation undermined by lack of attention to requirements.

In summary, there is no single waste management blueprint for the region or for any one country. In that context, any environmental policy, especially waste and enforcement, must focus on manageable, high priority, cost-effective approaches. Thirteen issues have been identified for your consideration. Figures 3 and 3a provide a comprehensive summary or checklist of other short and long-term factors that potentially impact the development and implementation a successful waste management strategy in this transitional period. This does not imply that all must be addressed immediately for success. Merely, that they be recognized, and that each Country consider those most important at the time of their strategic planning process.

6 CURRENT ORGANIZATIONAL ISSUES

6.1 Import Pressures

Waste management strategies of the Regional Countries must consider international implications. Waste fears in the region mount when reports in the press reveal that waste shipments from the West are arriving in the Region. Strong enforcement measures in one part of Europe must be matched with similar measures in the Region. Recent new waste laws and their implementation in the West will cause increases in Western disposal costs. Boundaries are now more accessible here, and the necessary legislative structure to protect the environment is either not in place, too difficult to enforce, or too few resources are available for implementation. It is feared that some of the Western waste shipments may be designed to take advantage of the economic situation here creating opportunities for needed hard currency. If the illegal risk taking reveal minimal chance for prosecution, or penalties well below profit potential, the opportunity for unscrupulous waste handlers is obvious. Pressure will continue to mount to transport waste to the Region as: Western waste disposal options are reduced; markets for recyclable materials are diminished; public opposition mounts against disposal options in the West; fewer options mean more cost for disposal; the most concentrated and toxic wastes remain because of limited disposal alternatives; and, rigorous time consuming permit procedures slow development of new important options in the West. Without laws or programs to adequately prevent, or effectively deal with such waste imports, there is little wonder why the Region is attractive. Regional Local Governments are also under

pressure to make decisions which may undermine national policies, and could cause international problems. Therefore, harmonizing waste management laws and procedures within and between countries, and at all Government levels, is crucial.

Figure 3. Framework for Waste Management

COMPLIANCE CONSIDERATIONS

- effective waste programs depends on a variety of actions and measures, not a single regulatory or technical approach
- successful programs must be both cooperative and coercive and rely on the regulator, waste generator, disposal company and others for information and support
- implementation and enforcement must be practical and educational, within current or prospective limits of government capability
- compliance of waste management laws is only effective if the Company Management takes notice; especially if their personal liability or reputation is at stake
- enforcement approaches, priorities, monitoring, and infrastructure development requires a cradle to grave approach from the generation to ultimate disposal
- where it makes sense take immediate and appropriate actions to move forward the waste management strategy; consider interim facilities to provide temporary solutions
- commence a comprehensive training process to include investigative/enforcement techniques (field citations, administrative, and judicial action)
- combine the carrot and stick; while legislating and enforcing, support viable treatment or storage alternatives, waste exchanges, information transfer, and programs that enhance waste minimization
- correspondingly place minimization controls and incentives to minimize waste under air and Water Pollution laws as a way to impact waste reduction
- establish an award scheme for waste abatement, clean technologies, and products to those waste generators who lead by example and advertise the success stories
- apply interim measures to include a real reduction in risk, measure the success and make information freely available
- establish a practical implementation procedure for National border disputes
- assure that interim waste management approaches consider firm deadlines, allow for later recovery of segregated wastes, does not eliminate further site use, and has appropriate record-keeping and strict operational controls
- develop mechanisms for imaginative implementation of laws; (e.g. can current EC policies for environment and economic competitive advantage, affecting Associate Member States be used to further environmental objectives

RESOURCE DEVELOPMENT CONSIDERATIONS

- build measures gradually as capabilities and resources increase, with more progressive strategies developed and implementation

ECONOMIC CONSIDERATIONS

- find economic incentives to encourage preventers, discourage polluters and influence competitiveness
- promote Best Available Technology without excessive cost
- establish a co-operative waste exchange with a suitable industry or association; someone's waste may be another's raw material; monitor the option closely
- provide an incentive system where retrofit of older equipment attracts a subsidy
- require separation of potentially hazardous wastes to avoid incineration and land disposal; in conjunction, consider imposition of costs/fees (deposit refund system) for the packaging (e.g. cans, batteries, vehicles
- exchange experiences in the region; it will lead to a more coherent implementation of programs; establish a scientific/policy exchange that will meet and exchange views/experiences
- obtain all appropriate quality assured information, and environmental data to set cost-effective priorities for legal and enforcement options

Recent experiences in Bulgaria and Rumania, and previous ones in Poland are examples of the pressures to import waste into the Regional countries. The countries are attempting to respond. For example, this past June the Government of Rumania proclaimed in a policy decision document a number of prescriptive requirements relating to waste import requirements. Whether or not the Governments have the necessary resources to routinely monitor and enforce all the provisions is critical.

Figure 3a Framework for Waste Management

INFORMATION CONSIDERATIONS
- learn about the local situation; past damages, exchange all available data, understand industrial processes, and obtain inventories of chemicals used, manufactured, or imported
- survey generators and disposal outlets; quantify and identify wastes
- prepare (training) parliamentarians and the court to face the waste management challenges

PUBLIC AWARENESS CONSIDERATIONS
- public support is critical; invest in awareness raising and training
- promptly respond to complaints by citizens and provide follow-up; trust enhances the opportunity to implement plans
- develop fact sheets for involved constituencies about wastes, technology, issues, requirements, minimization, import/export, etc
- develop model curbside pick-up programs for limited marketable solid wastes to create recycling markets
- Inform the public early and ensure its participation in the decision making process to encourage implementation of appropriate waste management decisions

PLANNING CONSIDERATIONS
- encourage and promote treatment of communal waste for regional areas; leads to results that are easier to enforce and manage and are more cost effective
- build waste management and existing prevention considerations into development planning
- understand regional and global interdependence of waste issues leading to a holistic and integrated environmental (air, water, waste) approach towards solutions
- define potential/actual high risk facilities; develop specific strategies

TECHNICAL CONSIDERATIONS
- begin to eliminate co-disposal of non-solid wastes
- consider solidification of selected wastes prior to landfill disposal
- consider off-site treatment of some chemical wastes (e.g. electroplating, textiles)
- limit co-incineration of combustible oily wastes, pesticides or similar materials in cement kilns and only under controlled conditions
- export special wastes (e.g. Polychlorinated Biphenyls) to specially designed incinerators following all requirements and monitor results
- consider entombment of non-treatable toxics
- secure storage of special materials currently not readily disposable which have high risk potential (e.g. batteries)
- provide and allow for alternative solutions
- give adequate attention to small business facilities who may have acute problems with potential high risk impact; includes storage of chemicals

6.2 Support from Outside the Region

Western industrialized countries recognize that there is a burden on them to provide the legal structure to prevent exploitation of waste shipments to the region. The European Community's Waste Directive promotes the principles of self-sufficiency and proximity in waste disposal, requiring management of the wastes near the point of generation. This EC effort is also supported by a hazardous waste Transport Directive to deal with requirements of

international transport and associated risks. Much international focus has come from The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes. Disposal requires prior informed consent before waste can be shipped to a receiving country. If countries can provide proper treatment, transport is restricted. However, monitoring compliance and enforcement by both the sender and recipient countries is crucial. This process is only a first step; more needs to be done, including extending the scope and application of agreements to achieve more comprehensive actions to control waste. Some countries, like Bulgaria, used the Basel Convention as the basis to draft its Waste Law.

6.3 International Assistance

Western Governments are supportive in determining the extent of the waste problem in this region, and providing solutions. Recent strategies from the European Community include studies on waste management in Poland, Hungary, and the CSFR. Application of the proximity principle, and clean technology options are also part of the overall strategy. When these efforts are completed, important information relative to developing waste management strategies for the region will be available. USEPA has provided direct support to review specific soil contamination problems caused by past waste management practices. Risk assessment reports have been completed which will serve as model approaches for similar problems. Similarly, visits to cities experiencing waste management problems have been made and guidance given to establish appropriate cost-effective manageable strategies. Lastly, through the efforts of the Regional Environmental Center in Budapest, a number of grants have been awarded to support waste management project initiatives. Other activities of the Center include: support in the development of both framework and waste management legislation through a legislative task force: support for relative workshops on waste management bringing together the diverse constituency groups, and undertaking projects for different constituency groups to serve as models for solutions. The Center's information network and resources serve as an important clearinghouse to provide support within the region, and identifies available resources where solutions and contacts may be appropriate. Another important initiative that may affect waste management and enforcement efforts includes an extensive program by the EBRD to review all legislation in the Region and determine areas and problems related to harmonization.

Sixty-seven Contracting Parties to the London Dumping Convention supported a Global Waste Survey. Although primarily dealing with eliminating the disposal of wastes at sea, information was gathered in a broader context to eliminate and minimize waste. Goals included: manual of sound waste management practices and clean technologies; waste profiles by country; development of several management plans; and promotion of international cooperation on waste. While the U.N. International Maritime Organization is responsible for this effort, other international organizations and States are supporting this and similar efforts. A compendium providing a clearinghouse of all these opportunities will soon be available. Other institutes have compiled excellent industrial waste minimization or training manuals as noted in the references. One new draft waste assessment procedure is also found in the Reference List.

One very useful output of the Global Waste Survey is the graphical summary from a questionnaire to 153 countries. Results from 80 questionnaires reveal some interesting findings about the waste problem in the Regional countries compared to others. Findings included: existence of waste management regulations but lack of enforcement; the perceived seriousness of the problem; exports from the region are not a problem but imports are; lack of effective recycling facilities is apparent; and inadequate information to quantify waste production exists.

7 SOLID WASTE RESPONSIBILITIES

7.1 Observations

Most of the previous issues and policies discussed refer to the broad solid and hazardous waste management questions. Some issues may apply more to the hazardous waste situation; e.g. transport, uncertainty of quantities, and risk. However, given the fact that waste definitions are still not completely clarified, and waste disposal in landfills is often co-mingled (hazardous and solid), it is difficult to separate issues by definition alone. However, household and office waste problems, sometimes defined as solid waste, are significant. Landfills in most communities are at or near capacity. They are generally unlined, waste is co-disposed as mentioned, and groundwater contamination is frequent. Major recycling facilities are virtually non-existent, and waste streams are increasing. Personal experiences over two years reveal new packaging changes in the Regional countries, large increases of plastics and other heretofore non-existent waste. Discussions with soft drink manufacturers confirm that the demand for such packaging of 2 liter plastics is overwhelming supportive, if judged by purchase demand. Since Western markets are generally saturated for new packaging, and reductions are planned resulting from public pressure, new paper, can, and plastic opportunities are contemplated for this Region. Good habits ingrained in the culture, such as returning glass or paper are being lost to lightweight non-returnable plastics.

Specific observations over the past two years include:

- soft drinks are now more often sold in cans and plastic containers, with costs for such products continuously decreasing as packaging plants are successfully established here
- fewer returnable bottles for water, beer etc. are evident, fewer places to return them, and fewer people returning bottles evidenced by shorter lines
- evolution of fast food restaurants and their resulting packaging wastes
- frequent new packaging displays in markets
- more plastic shopping bags available at check-out counters

Are these indicators of success or failure? Westernization has occurred, but with an accompanying environmental downside. To the consumer of the Region, attractive consumer goods are important, and convenience becomes increasingly important. Designing environmental programs must consider these values. Recycling was part of the culture because of resource limitations. Problems of waste management cannot be solved outside the context of society, culture, and experience of the people.

As one soft drink plastic supplier said to me: "it is far easier to carry shopping bags long distances up many stairs with lightweight plastic. It is much more difficult and costly here to design collection programs for separables (separate curbside collection), and apartment size does not leave much room for separation and storage." Financial resources are limited for separate collection systems. However, without such recycling efforts imposed by Government, the necessary private recycling facilities will not be built and markets for recyclable by-products will not materialize. Investors are not now guaranteed source and quantity necessary to satisfy the investment for recycling facilities.

7.2 Serious Effects from Improper Waste Disposal

Solid waste problems of today in the Regional countries may lead to more serious and costly consequences. Battery disposal is but one example that continues to concern many in the region. Without options or obvious solutions, disposal is haphazard. Few safe recycling disposal options exist in the Region, and some, like Metallochemia in Hungary, proved to be a major environmental hazard. However, interim implementable and enforceable solutions must be found. Even designating a secure site for containment, with a financial incentive for people to bring their batteries to the location, would allow for a simple viable option. However, interim options require education to insure that people do not feel cheated because final solutions are

not provided. Not only will the interim option help save the environment in the long term, but the people will learn about the value of recycling potentially hazardous wastes and their potential impact if not handled properly. With storage of batteries concentrated at a place by regulatory requirement, **properly monitored and permitted,** future ultimate solutions become more cost-effective to a potential investor. The investor is guaranteed both a source of supply to recycle and a predictable quantity. This equation is important for those recycling any materials, and for both the recycler and source of the final recycled materials. Legal requirements with effective efforts, balanced by early education, insures that the equation will be implemented.

8 HISTORICALLY CONTAMINATED SITES

8.1 Background

Many of us are aware of the experiences in the West dealing with abandoned waste sites. Contamination over many years resulted in massive environmental impact. Major costly programs like Superfund in the United States evolved to identify, evaluate, and implement solutions to eliminate the wastes, and reduce the environmental impact and risk. What began as a limited effort, expecting to solve the problems in a short time, resulted in an underestimating of the problem, cost, solutions, and time required for remediation. Countries of this region are now awakening to a similar discovery. Problems caused by old abandoned facilities, mining, former military bases, municipal landfills are some of the thousands coming to public attention. While some countries have preliminary estimates of site numbers, it is too soon to evaluate the full extent of the magnitude of this waste problem.

8.2 Information Availability

There are differing reasons why sites are now drawing public attention. These include: information revealing contamination of water supplies; re-privatization of land to original owners as restitution with accompanying knowledge of environmental problems and required clean-up; information from environmental impact assessments required by privatization and by investors; and old audit or other information now becoming available from facilities or individuals. Data is more freely available. Regional countries have an important interest in taking action, for environmental, health, and economic reasons. Further, it is critical that in developing strategies for the historically created problems, we do not neglect the potential for new sites developing from existing poorly operating facilities. This includes facilities and landfills, the potential random dumping from lack of properly operating disposal sites, and improper storage of wastes or products.

8.3 Enforcement

Where does enforcement and compliance fit into this process? With regard to the historical abandoned sites, determining liability is a difficult issue. These facilities were generally owned by the Countries of the Region, or Government agencies, creating insulation from a general enforcement process. However, as these sites are privatized, liabilities will be established for both the old waste and potential new waste problems. To establish the liabilities, it is extremely important that evaluations of the environmental problems be made both on the site of the facility, as well as effects caused off-site (e.g. groundwater). In this way, any additional contamination caused by the new owner is clearly defined, liability can be assessed, and necessary compliance and enforcement remedies undertaken. Sometimes it may be in the interest of the States to have the investor assume liability for remediation for past historical waste problems, with a reduction in cost for the asset sale as an incentive. This is being done in some countries. In this case, an opportunity is provided for the Ministries to obtain resources for the clean-up when resources are otherwise unavailable. However, to assure that proper clean-up is attained, a compliance schedule (as mentioned previously) should be developed and carefully monitored. Of course, even where there is no agreement

to clean-up past problems, intensive monitoring and comprehensive permitting of the facility will prevent future waste problems.

8.4 Experiences

In developing strategies for identification, assessment, containment and remediation, a great deal can be learned from Western experiences. Costly mistakes were made in both policy and technical areas in the West. But there are many successes as well in reduction of risks. Developing successful compliance agreements, appropriate technology, and adequate risk levels are some of the important areas ripe for technology. However, it is not a simple matter to transfer information or technology. Demands for clean-up, sociological/historical conditions, cultural values, and resource availability are quite different in countries worldwide. The waste sites are also different, although many fall into similar categories. Therefore, while fully understanding the procedures used by different countries, carefully tailored approaches are important. It is important to establish a program that: carefully identifies the problems; defines the risks; assigns National priorities; implements efforts to reduce immediate and major risks first; defines resource needs; establishes a legal/policy process; and continuously evaluates efforts making necessary programmatic modifications. As stated previously, Local Governments, citizen groups (NGOs)[4] and residents impacted by sites MUST be involved continuously in the process to receive Government support, and to reach a successful outcome. Site reclamation may have a significant cost, but for some sites the highest cost is to do nothing. Financial costs are often recoverable when formerly unusable property can be sold, groundwater is fit to drink reducing risks to health, or surface water is restored to industrial process water quality or recreation use.

The Waste site clean-up program can be incorporated into a major legislative effort, or individual cases can be handled. There are merits to a combination of approaches, especially in the beginning where gathering experience and the need for flexibility are important. However, in any case a comprehensive Nationwide strategy is important to ensure that all relative Ministries are working together, Local Governments and citizens are involved and informed, investors understand their requirements, and to measure successes, define problems, and incorporate modifications. At the Regional Environmental Center, we have had the opportunity to provide some support for limited site evaluation, and outline a model site and National approach.

9 HUNGARY - PROBLEMS AND PROGRAMS

Background information on the Hungarian Waste program is provided to show relative problems, and initiatives to affect waste management strategies. Problems appear typical to those experienced by other countries of the region. The list[5] provides an orientation for priority setting for compliance purposes.

- For municipal waste, a complete database does not exist.
- Current databases are based on incomplete information, and necessary improvements are under way.
- About 2600 waste dumps exist in Hungary with 58 percent failing to conform with public health and environmental regulations.
- Only 52 percent of households is linked to systematic waste collection, with figures varying between areas of the country.
- The quantity of wastes produced compared to international levels is high while utilization (recycling ratio) is low.
- The introduction of low waste producing technologies is just beginning
- Only 3 % of total material use is recycled.

[4] NGOs = Non-Governmental Organizations

[5] Ministry of the Environment, State of the Environment pp 11, 12

- 3.2 million of the total 5 million tons of hazardous wastes produced annually are stored on-site.
- Of the remaining hazardous wastes, 2/3 are disposed of in lagoons or landfills.
- Disposal for the other 1/3 is unknown except that only 10 % is treated to accepted standards.
- Municipal waste dumping is common, but capacity is being exhausted, and 60 % of the dump sites do not satisfy environmental protection specifications.
- Recent calculations demonstrate that a significant portion of the hazardous (dangerous) wastes are probably generated from untreated waste water; a significant portion going into public sewers; 146 million cubic meters is produced.

On site historical contamination of wastes is not fully understood. This is similar to some situations in the West. For some cases, like BVK, in Kazincbarcika or Metallochemia in Budapest as mentioned, contaminated soil and groundwater is evident and significant amounts of wastes and products are unaccounted for. Studies are under way for some sites, with priorities set for state owned companies under privatization, and former Soviet Bases.

New environmental waste management laws are in draft to "modernize waste management policy", but have been delayed in passage and therefore implementation. Older and less effective laws are in force. Many view this period as an opportunity to avoid some major mistakes of the West. A holistic environmental approach is being considered to avoid transference of environmental problems between media. If done properly, the result will be a more cost-effective approach for both the long and short term for Government and industry. The laws may be designed to force pollution prevention and cleaner technologies, as opposed to end-of-pipe control in this reconstruction period. However, a market economy must develop quickly and economic incentives are vital. As in many countries of the region, a legal restructuring may be necessary in Hungary to insure successful implementation; that compliance and enforcement measures will result. How does one build a system from the ground up to assure success? Some of the Western countries would love to have this opportunity considering the often incredible complex environmental laws and implementing process. However, in the countries of the Region, the process is complicated by the economic conditions, urgent demands to resolve and prevent new problems, and outright conflicting values.

9.1 Hungarian Environmental Strategy (Waste Management Priorities)

In December 1991, the Ministry for Environment and Regional Policy in Hungary issued a strategic plan outline entitled: THE SHORT AND MEDIUM TERM ENVIRONMENT PROTECTION PLAN OF THE GOVERNMENT. The objectives and tasks of this plan provide a needed and ambitious effort to address many of the issues presented in this paper.

Those principles related to waste and enforcement include:

- PRINCIPLE OF ENFORCEMENT - prioritized the use of resources by risk;
- PRINCIPLE OF THE PREVENTION - reduce pollution at the source;
- PRINCIPLE OF PARTNERSHIP - governments and market participants;
- PRINCIPLE OF "THE POLLUTER PAYS"- all polluters bear the responsibility for damage

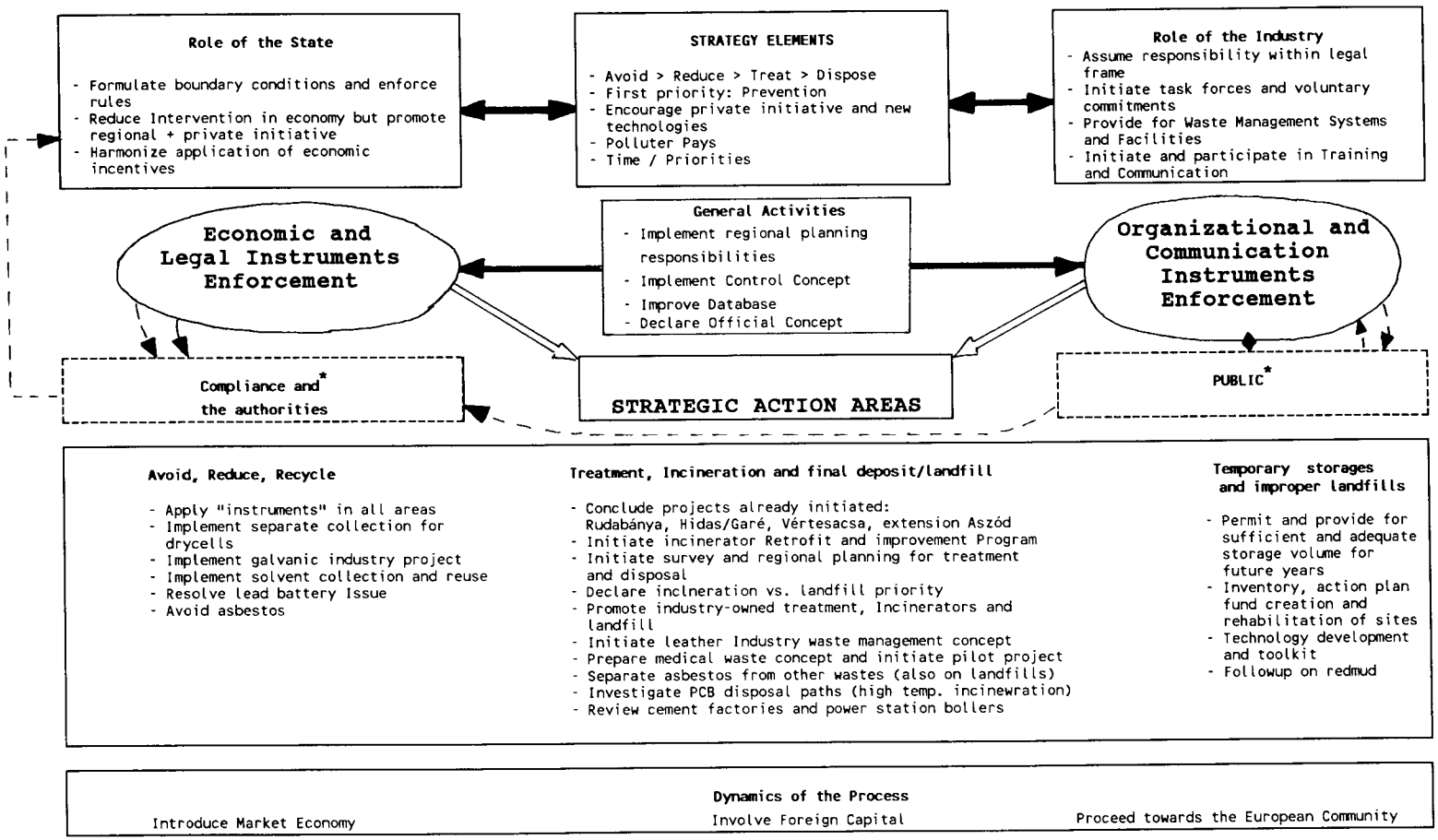
To achieve the elements of the action program, some enforcement planned related steps include:

- modifying present fines with system for use and load on the environment
- implementing cost-effective system for both development and environmental improvement
- strong enforcement
- economic incentives for waste reduction and recycling

Some other observations regarding the Hungarian plan would include considerations for: compliance schedules; taxes on packaging for environmental reinvestment; immediate dissuasive penalties; strict monitoring and some elimination of untreatable waste imports; training and implementation of an investigative environmental team; holistic environmental

Figure 4.

Hazardous Waste Management Concept[5*]



* Authors Amendments — — — — —

[5] KMPG FIDES, p. 17

assessments and application in privatization; low-waste low-cost technology implementation to reduce immediate risks; privatization agreements including low waste incentives; a complete national waste profile for priority setting and public awareness; waste disposal storage options for potentially high risk wastes with strong compliance incentives; public participation opportunities and free open access to information; opportunity for direct citizen suit; appropriate criminal actions against responsible officials; publicizing waste violators (toxicity and volume); performance goals and accountability of government officials to monitor and enforce when appropriate; establish labs with strong quality control procedures; training of local officials of environmental objectives and responsibilities; regular and frequent information transfer for clearinghouse and assessment/audit purposes; demonstrate success with strategy selection. Overall the plan is ambitious. It is a good start, and needs to be followed closely and evaluated frequently. Implementation through appropriate legislation and a compliance process is necessary. What is critical, is that some early successes are necessary in developing case studies which would have model application. Past history reveals that in the late 70s and 80s, recycling companies and some local NGOs designed initiatives for selective collection of wastes, but the program had major setbacks because of lack of citizen interest. Those experiences must be analyzed, and new methods employed.

9.2 Hungary WASTE Management Planning

In May 1992, a report was completed on Hazardous Waste Management in Hungary[6]. For the hazardous waste management issues, are exposed, recommendations are made, and a proposed strategy is developed. Enforcement is a continuous theme in the study, identified as a requirement for successful implementation. The concept of integrated environmental approaches and industrial restructuring is emphasized. Figure 4 which was taken from the study is a diagram depicting many of the concepts required for successful waste management implementation. While enforcement was mentioned in this diagram, minor changes as noted were made to denote some additional enforcement mechanisms.

10 CONCLUSION

In conclusion, options and potential problems have been presented for consideration to make a successful transition to a waste management program. While there may be problems with any option, this does not mean that inaction is acceptable or excusable with regard to waste management and enforcement. But we must be realistic about our goals, as we learn more. Expectations should be reasonable, but provide some elements requiring a high degree of challenge and effort. Pick targets of opportunity carefully, where we can achieve success and reduce or prevent risks; sometimes called the worst-first approach. Work closely with facilities to educate and train about environmental laws, and environmental responsibilities. Use compliance schedules and adjustment periods, but continuously monitor the facilities with trained staff, and consistently apply standards in practice. Most importantly, inform and work with the communities and groups of citizens; those potentially impacted, and those interested. Include them in the process early, and continuously to gain their insight and support. Select facility role models who have achieved success and publicize their efforts, just as you target violators and publicize prosecutions. Review your efforts continuously to determine whether they contributed to the extent intended to improve the environment. Convince political leaders that environmental costs are consistent with the Nation's priorities, especially economic development. Local data can be quite convincing, especially if the Waste Strategy is carefully constructed to meet the most critical environmental and economic needs

[6] KMPG Fides

of that Nation. Further, obtain information showing that environment is a growth sector which can be stimulated through compliance and enforcement, or recycling incentives. Convince local leaders that worsening environmental conditions are clearly economic liabilities.

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THE ENFORCEMENT EXPERIENCE IN CATALUNYA ON INDUSTRIAL WASTES

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SUMMARY

A general view of the industrial waste situation in Catalunya is given. Some statistical data on generation and management of waste, as well as how is organised the control system are also provided. The enforcement organization, namely inspection, analysis, penalty application are also illustrated with some statistical data.

1 INDUSTRIAL WASTE SITUATION IN CATALUNYA

1.1 Administrative framework

Catalunya is the Northeastern Region of Spain, having 32000 Km2 and 6000000 people, being also the most industrialized of the country. Environmental concern and industrial pollution have moved the Regional Government (Generalitat de Catalunya) to create a Cabinet Department only on environment (the single case in Spain).

Industrial waste concern moved the Catalan Parliament to approve an Industrial Wastes Act in 1983, creating a specific autonomous administrative body, Junta de Residus. The Spanish countrywide Act came in 1986. New modifications on the Catalan law were enacted by the Parliament in 1991. Junta de Residus, nowadays attached to the Department of Environment, whose President is the Cabinet Minister on Environment, has the overall responsibility to enforce the Industrial Waste Act.

The Junta de Residus has a Council of member that dictates its policy. Those members ares representatives of the Regional Government (8), of the Catalan municipalities (6), of the trade unions (2) and of industries (2).

The Junta de Residus objectives are:

- Control all industrial wastes flows occurring in Catalunya.
- Let the permits for transportation agents.
- Verify the yearly declaration on waste made by generators.
- Keep alive all data bases on industrial waste managed in Catalunya.
- Prevent wild dumping of wastes.
- Promote incentives for waste reduction, process modifications and waste quality improvements through technical and economical instruments.
- Promote direct or indirectly waste management facilities through waste management planning.
- Clean and enforce to clean old dirty sites. Generally speaking, Junta de Residus, by law, has the double objective of promotion and prevention.

1.2 Sizing the problem

1.2.1 Definition and classification of waste

Industrial wastes are classified in two basic categories, according to Catalan regulations (4.10.84 Regulation). In Spain the situation is very similar.

a) Inert industrial wastes and domestic type wastes (included in the same group). A specific list is included in the regulation.
b) Special industrial wastes.

EEC Directive on industrial wastes is adopted to identify hazardous wastes. Notwithstanding a battery of tests is used to classify a waste as non special, even if a substance of EEC list is present.

Basic features of those tests are:

a) Flash point over 23oC.
b) Corrosivity.
c) Reactivity.
d) Explosive.
e) Non carcinogenic (content less than 0,1% of IARC lists).
f) Toxicity.
g) Leacheability and toxicity of leachates.

1.2.2 Some statistical data

Through the yearly self-report system, Junta de Residus has a fair knowledge of what is produced in Catalunya. This declaration includes waste production, raw materials used and products made by each industrial activity.

Since 1984, the strategy in waste generation self-reporting has been to request directly the document to an increasing number of industries, as seen in figure 1 and 2. Every request has been selected according to the following criteria.

a) Industrial sectors potentially producers of special wastes, with bigger members of employees.
b) Progressively include smaller companies of those sectors and new sectors apparently non-producers of special wastes.
c) Final target will be all industrial activities.

The wastes declared, according to the present regulated classification, are shown in fig. 3. The waste generation ratios (tonnes waste/year per worker) have been during those years, the following as showed in fig. 4a, 4b and 4c.

According to those figures, and by industrial sectors, the results have been the ones displayed in fig. 5. The distribution of final destinations has been the one showed in fig. 6a, 6b and 6c. Data on treatment facilities show a great shortage of capacity, specially related to thermal treatments. Figure 7 gives the general numbers. Taking into account the generation figures, shortage is evident.

2 THE FRAMEWORK FOR ENFORCEMENT

2.1 Basic features of the control system in Catalunya.

2.1.1 Waste flow control

Waste generators have to declare every year the waste produced, the way how they have managed them as well as their final destinations.

A trip-ticket system has been implemented for waste flows in Catalunya. An agreement sheet between generator and the treatment facility is also established.

All participants in the waste cycle have to be registered officially. All documents (trip-tickets, agreement sheets, transportation permits) are only delivered to those registered, each document is precoded and Junta de Residus knows to whom it has been delivered. A cross-checking system of trip-tickets and generators declarations has been computer-implemented.

The inspection team has to let the permit for a waste towards its destination or treating system.

A sampling and analysis procedure through its own control laboratory is being used and some agreed laboratories are being used as cooperative teams too. Moreover, mobile analytical labs are used by the inspectors. Quick tests and special samplers, some of them designed by our own team, are usually performed.

The Inspection team works often with the cooperation of a specialized Brigade of the Regional Police (Mossos d'Esquadra) or National Police (Guardia Civil) for specific investigations. (For example following up of truck, illegal operation of treatment facilities, controlling wild dumping, following up of illegal importation of wastes, etc.)

2.1.2 Waste treatment facilities

The permitting procedure includes a technical evaluation by Junta de Residus technical experts, a public communication through the official Gazette and a final decision through Junta de Residus Council.

The permits for waste treatment facilities contain a caution to be delivered by the promoter to the Public Administration, and civil responsibility insurance to cover third-part harms.

A manual of Reference is also established through the permit. It includes running procedures, identification systems, self record-keeping conditions and features to be checked by inspectors during their visits.

Some regulations are being periodically implemented and/or revised, that relates to waste acceptability in the facilities (e.g. wastes banned in landfills), analytical identification tests on procedural conditions.

For facilities specifically promoted by Public Administration the permitting procedure requires an independent environmental impact statement (reference to the modification of the 2/91 Law and its working out) whose conclusions are compulsory for the Junta de Residus Council in order to avoid non-defense to those affected.

2.2 Violations

Present status in industrial waste management enforcement is based in two sets of penalties for law violations: administrative penalties and criminal judicial enforcement.

2.2.1 Administrative penalties

The administrative penalties include a wide range of monetary penalties and the obligation of soil and landscape reclamation if needed. Penalties until 200 million pesetas (2 million dollars) are foreseen.

The law allows the temporal or final closure of the industrial activity or plant as well as the removal of the licences for an activity.

It is also established the possibility of a enforcement penalty for those cases in which a enforcement time is dictated. Those enforcement penalties cannot be bigger than 1/3 of the maximum penalty for the violation.

2.2.2 Criminal judicial enforcement

The Spanish Constitution, in its article 45, sets that environmental violations can be prosecuted criminally.

The Penal Law, in developing this article, sets monetary penalties and the possibility of imprisonment if the violation is judicially considered as "environmental violation".

That way is a parallel instrument of the administrative one. It is the judge's privilege to decide if the facts are a criminal or administrative violation.

The Penal Law is being revised actually and in the future the monetary and personal penalties against violations will be increased.

3 THE PRACTICAL IMPLEMENTATION OF ENFORCEMENT

3.1 Public resources

Junta de Residus has 50 people, normally divided in promotion and enforcement activities. Twelve people are involved in the trip-ticket system, self reporting control and data base maintenance. Six full time and two part time high technical staff are devoted to inspection. Ten analysts (6 of them, chemists) work on waste analysis and testing in our own labs. Mobile sampling and quick testing are routinely used. The 1991 Junta de Residus' budget was 60 millions dollars, 12% of which is directly spent on enforcement.

3.2 Control of activities.

An overall amount of 750.000 tones of industrial wastes has been controlled by the trip-tickets system during 1991 in Catalunya, showing a 22% increase in relation to 1990 data.

Our data base has registered 11000 agreement sheets between generators and treatment plants.

The number of trip-tickets used during the last three years, 1989-91. which are included in our data base are:

	YEAR		
	1989	1990	1991
NUMBER OF TRIP TICKETS	40.000	95.000	115.000

3.3 Enforcement activity

More than 300 cases have been revised by the technical services in 1991. Technical services have performed 600 visits to waste generators, to treatment plants and to wild dumps. More than 18000 analytical tests have been performed by our laboratories. Some agreements with external laboratories are established for more sophisticated analysis (dioxines, etc.).

3.4 Administrative procedures against violators

Junta de Residus enforcement activities are either directly promoted or induced by request. The number of procedures has increased steadily since 1985. In figure 8 it is shown the number of requested actions, administrative procedures, penalties as well as the economic size of monetary penalties.

It should be pointed that the size of sanctions until the 2/1991 Act were much lower than those showed in 2.2.1.

4 FUTURE PROSPECTS

The experience during the last 8 years gives us the feeling that although a lot has been done, it is only since 2 years ago that industry and waste agents have realised the need of a real change of attitude.

The enforcement system that we have designed is rather involving and hard to have it fully implemented.

It is highly important the availability of the computer data base to be able to have a real cross checking of the information reported.

We think that the trip-ticket system based on a public administration delivery is a powerful tool to make wastes appear.

High technical level inspection is of great importance although is quite expensive.

A better coordination with other inspectorates is highly desirable. This is a project that our Department of Environment has decided already to promote.

A new and growing difficulty for a better waste management enforcement is the classification and definition of wastes, as well as the dicotony waste-by-product.

In the Catalan regulations, by-products and wastes are included (no exemption is legally accepted), and only the sophistication or complexity of administrative procedures are different.

The legal difference between domestic waste and industrial waste (and the different authorities that rule their management) give opportunities to potential violators to "hide" some special wastes in the municipally ruled domestic wastes. And, for this reason, a unique control authority is highly desirable.

How to deal with packaging wastes is also a challenge. Our regulations shall be revised to establish clean responsibilities.

Irrespective to all that has been said above, a clear conclusion can be extracted from our experience.

Some success is only possible if the technical and professional qualifications of the inspectorate are high enough, meaning by that a good knowledge of the problems of industry, technical and organizational, as well as a big dose of environmental "common sense".

It is not a question of the compliance of a figure (a concentration level, a % of efficiency, etc.) but a real understanding of the overall process industry waste-neighbourhood-environment.

How to incentivate those professionals and how to involve them in the overall environmental strategy are the clue of an efficient work.

NUMBER OF COMPANIES GIVING POSITIVE SELF-REPORTS ON WASTES (CLASSIFIED BY GROUPS)

INDUSTRIAL		NUMBER OF FACTORIES					
GRUP CODE	ACTIVITY DESCRIPTION	YEAR 85	YEAR 86	YEAR 87	YEAR 88	YEAR 89	YEAR 90
1	OIL REFINING	2	3	4	4	5	5
2	IRON WORKS	2	7	13	15	15	16
3	METALLURGICAL	3	9	15	19	22	22
4	NON METALLIC MINERAL PRODUCTS	12	11	19	115	180	197
5	CHEMICAL AND PETROCHEMICAL COMMODI	23	28	33	31	38	40
6	INORGANIC CHEMICAL COMMODITIES	15	20	23	25	24	23
7	RAW PLASTICS	25	35	37	36	37	40
8	FERTILIZERS	3	6	6	7	8	9
9	PEST CONTROL CHEMICALS	5	6	7	9	9	10
10	PHARMACEUTICAL COMMODITIES	23	29	30	32	41	45
11	OTHER CHEMICALS	148	168	212	241	310	352
12	METAL FOUNDRIES	4	5	25	33	41	41
13	NON FERRIC FOUNDRIES	3	4	6	16	27	34
14	METALWORKING	4	8	37	62	74	88
15	METAL SURFACE TREATMENT	63	91	115	138	164	194
16	CABLE AND WIRING	5	7	18	25	31	32
17	BATTERY MANUFACTURING	1	1	3	2	3	4
18	ELECTRONIC COMPOUNDS	3	4	5	19	23	25
19	OTHER METALLIC INDUSTRIES	52	77	451	802	1088	1200
20	FOOD	49	44	155	246	345	386
21	TEXTILE AND CLOTHING	20	54	67	316	441	464
22	TEXTILE FINISHING	7	59	81	106	132	130
23	LEATHER AND TANNING INDUSTRY	5	38	47	71	109	111
24	WOOD AND CORK	0	1	3	148	289	339
25	PAPER PULP INDUSTRY	5	6	6	6	6	6
26	PAPER AND CARDBOARD MANUFACTURING	5	33	46	50	50	53
27	PAPER AND CARDBOARD TRANSFORMATIO	9	63	85	112	149	153
28	PRINTING AND EDITING	1	4	9	50	114	140
29	RUBBER-PLASTIC TRANSFORMATION	12	86	115	247	406	462
30	OTHER INDUSTRIES	44	36	30	146	452	526
31	OTHER PHARMACEUTICAL SPECIALITIES	70	68	73	82	101	101
32	PRODUCT RECOVERY	2	4	6	19	78	99
	TOTAL NUMBER OF FACTORIES	**625**	**1015**	**1782**	**3230**	**4812**	**5347**

FIGURE-1

NUMBER OF WORKERS BY INDUSTRIAL GROUP CODE GIVING POSITIVE SELF-REPORTS ON WATES

INDUSTRIAL		NUMBER OF WORKERS					
GRUP CODE	ACTIVITY DESCRIPTION	YEAR 85	YEAR 86	YEAR 87	YEAR 88	YEAR 89	YEAR 90
1	OIL REFINING	1065	1113	1160	1132	1179	1179
2	IRON WORKS	523	928	1190	1697	1696	1724
3	METALLURGICAL	280	563	1187	1338	1624	1572
4	NON METALLIC MINERAL PRODUCTS	6897	6444	7024	12280	14903	14933
5	CHEMICAL AND PETROCHEMICAL COMMOD	2033	2298	2355	1963	2202	2341
6	INORGANIC CHEMICAL COMMODITIES	3278	3491	3767	3812	3532	1543
7	RAW PLASTICS	5777	8449	8439	8462	8398	8150
8	FERTILIZERS	128	217	217	181	248	250
9	PEST CONTROL CHEMICALS	249	267	491	341	324	360
10	PHARMACEUTICAL COMMODITIES	1618	1949	2029	2044	2487	2509
11	OTHER CHEMICALS	13406	14723	17067	17683	19253	20077
12	METAL FOUNDRIES	1267	1287	2501	2993	2590	2554
13	NON FERRIC FOUNDRIES	585	598	711	1070	1105	1178
14	METALWORKING	486	573	2409	3688	3979	3935
15	METAL SURFACE TREATMENT	2541	3114	3972	5001	5137	5565
16	CABLE AND WIRING	2138	2961	4102	4774	4924	4982
17	BATTERY MANUFACTURING	227	227	320	93	320	338
18	ELECTRONIC COMPOUNDS	908	1288	1334	2266	2050	2071
19	OTHER METALLIC INDUSTRIES	26986	29648	83112	98074	109662	112657
20	FOOD	10113	9737	21161	27248	30807	32171
21	TEXTILE AND CLOTHING	5936	7262	9828	27463	34591	33795
22	TEXTILE FINISHING	1373	5239	7391	8132	8896	8603
23	LEATHER AND TANNING INDUSTRY	1181	2526	2891	4007	4462	4456
24	WOOD AND CORK	0	68	319	5110	7770	8342
25	PAPER PULP INDUSTRY	1384	1498	1498	1498	1498	1498
26	PAPER AND CARDBOARD MANUFACTURING	522	2029	3191	3331	3196	3247
27	PAPER AND CARDBOARD TRANSFORMATIO	1534	3963	4529	6269	7421	7436
28	PRINTING AND EDITING	398	497	681	3624	7079	8151
29	RUBBER-PLASTIC TRANSFORMATION	4069	9545	11383	19390	23273	24038
30	OTHER INDUSTRIES	3490	4440	5279	16915	32615	32381
31	OTHER PHARMACEUTICAL SPECIALITIES	10759	10547	11153	11524	12308	12185
32	PRODUCT RECOVERY	43	71	83	252	839	1036
	TOTAL NUMBER OF WORKERS	**111194**	**137560**	**222774**	**303655**	**360368**	**365257**

FIGURE-2

WASTES REPORTEDBY WASTE TYPES

TYPE	WASTE DESCRIPTION	QUANTITY Ton/vear					
		YEAR 85	YEAR 86	YEAR 87	YERA 88	YEAR 89	YEAR 90
10	SURFACE TREATMENT WASTES	63000	67000	80000	123000	95500	100000
12	WASTES CONTAINING SOLVENTS	10000	24000	29000	58000	41200	52800
14	LIQUID OILY WASTES	4000	7000	15000	36100	31300	23000
16	PAINT AND VARNISH WASTES	4000	19000	20000	32500	8400	19000
17	SLUDGE FROM METALWORKING	1000	1000	2000	6900	2500	3000
18	S. WASTES FROM MEC. AND THER. TREATMENTS	31000	38000	68000	83000	95800	90000
20	INCINERATION, FUSION AND SLAG WASTES	242000	223000	147000	229000	250000	271900
22	ORGANIC SYNTHESIS WASTES	31000	71000	75000	101600	75400	87500
24	CHEMICAL TREATMENT SLUDGES	197000	132000	114000	139000	163900	168500
26	SOLID MINERAL WASTES	31000	30000	27000	39300	37300	38400
28	WASTES FROM TREATMENT SLUDGES	123000	119000	100000	205000	184400	215800
30	DIRTY MATERIALS	6000	9000	13000	21600	37500	33800
32	SPILLS, LOSSES AND OUT OF SPEC PRODUCTS	27000	32000	22000	23000	35200	35200
80	PACKAGING INERT WASTES	166000	270000	426000	636000	946200	904300
90	DOMESTIC WASTES	44000	38000	77000	116000	180400	206800
	TOTAL OF REPORTER TONS	**980000**	**1080000**	**1215000**	**1850000**	**2185000**	**2250000**

FIGURE-3

WASTE GENERATION RATIOS (TONS/YEAR/WORKER)

WASTE TYPE	YEAR 85	YEAR 86	YEAR 87	YEAR 88	YEAR 89	YEAR 90
SPECIAL	4.2	3.1	1.8	1.9	1.9	1.8
INERT	3.2	2.9	2.1	2.3	2.0	2.0
DOMESTIC WASTE TYPE	1.4	1.9	1.6	1.7	2.0	2.3

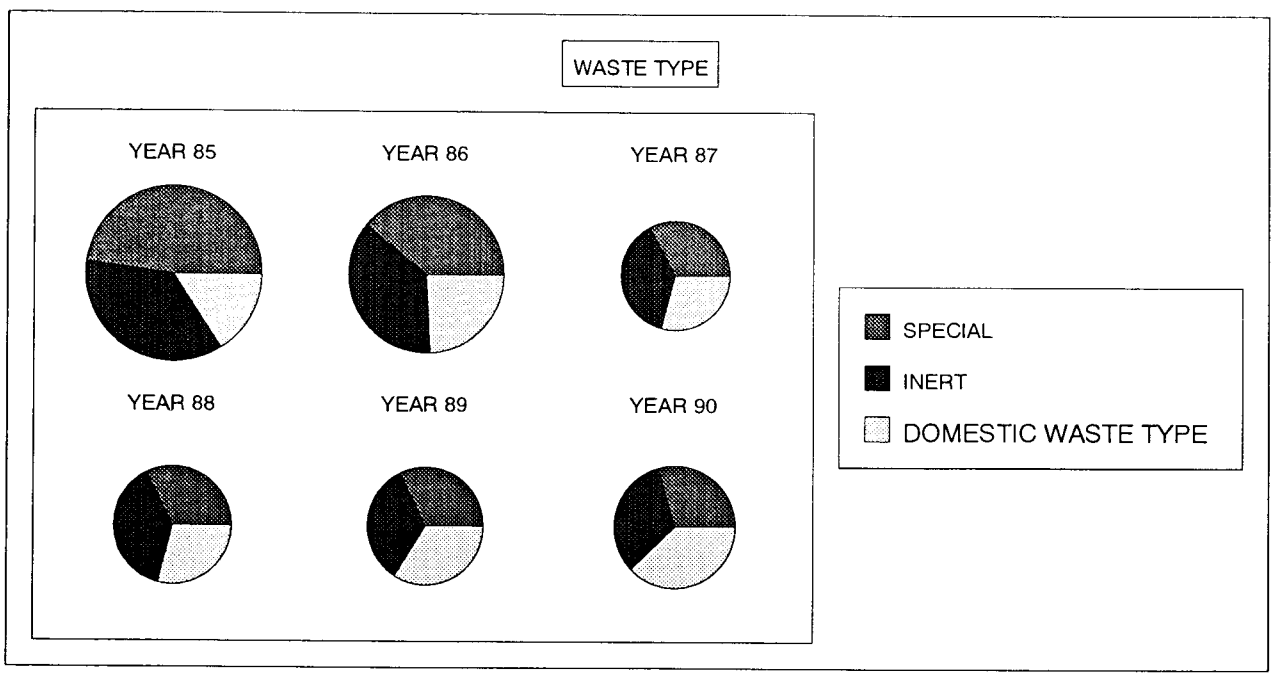

FIGURE-4A

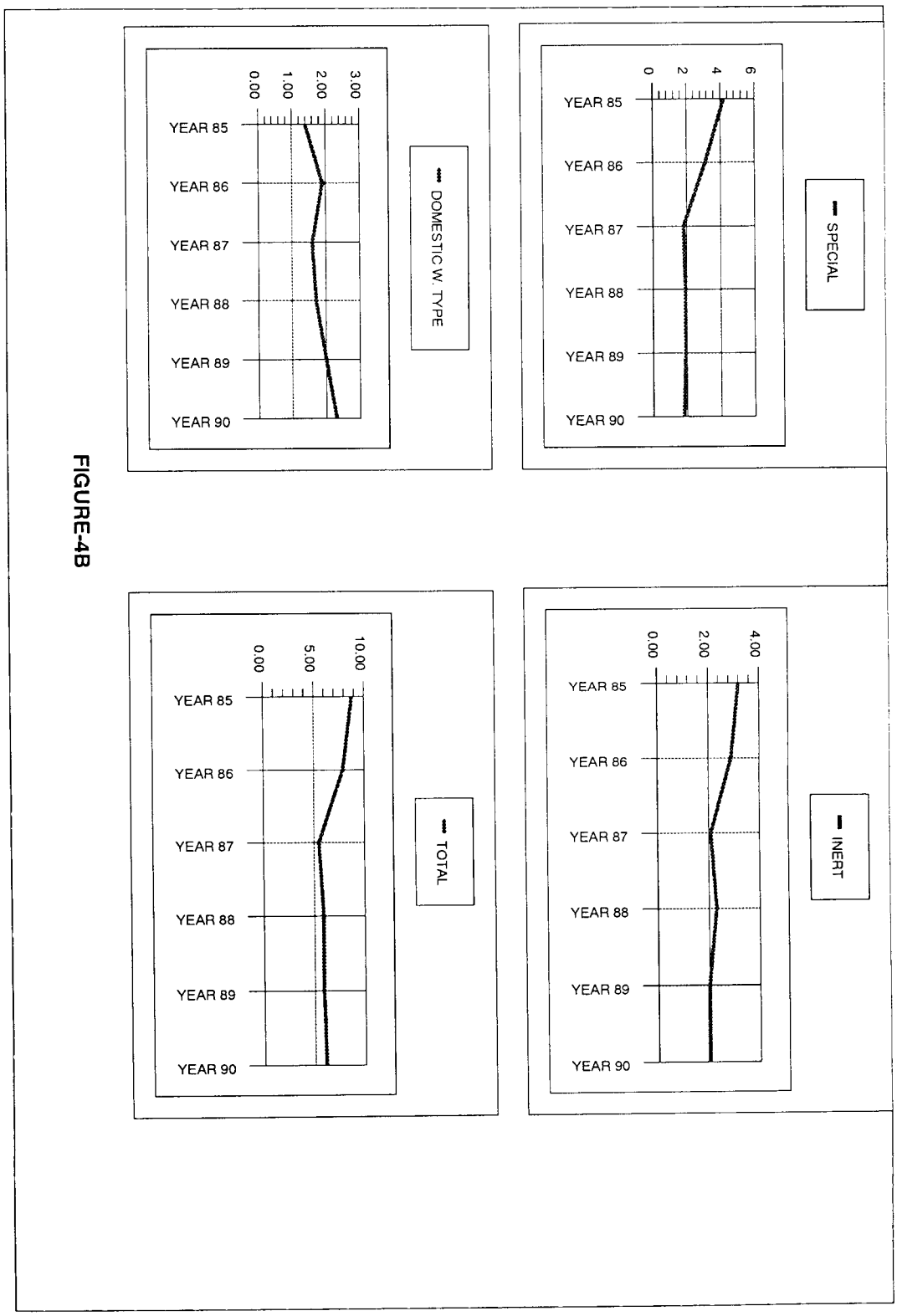
0.00
1.00
2.00
3.00
YEAR 85
YEAR 86
YEAR 87
YEAR 88
YEAR 89
YEAR 90
DOMESTIC W. TYPE
0
2
4
6
YEAR 85
YEAR 86
YEAR 87
YEAR 88
YEAR 89
YEAR 90
SPECIAL
0.00
5.00
10.00
YEAR 85
YEAR 86
YEAR 87
YEAR 88
YEAR 89
YEAR 90
TOTAL
0.00
2.00
4.00
YEAR 85
YEAR 86
YEAR 87
YEAR 88
YEAR 89
YEAR 90
INERT

FIGURE-4B

WASTE TYPE	YEAR 85	YEAR 86	YEAR 87	YEAR 88	YEAR 89	YEAR 90
SPECIAL	4.2	3.1	1.8	1.9	1.9	1.8
INERT	3.2	2.9	2.1	2.3	2.0	2.0
DOMESTIC TYPE	1.4	1.9	1.6	1.7	2.0	2.3

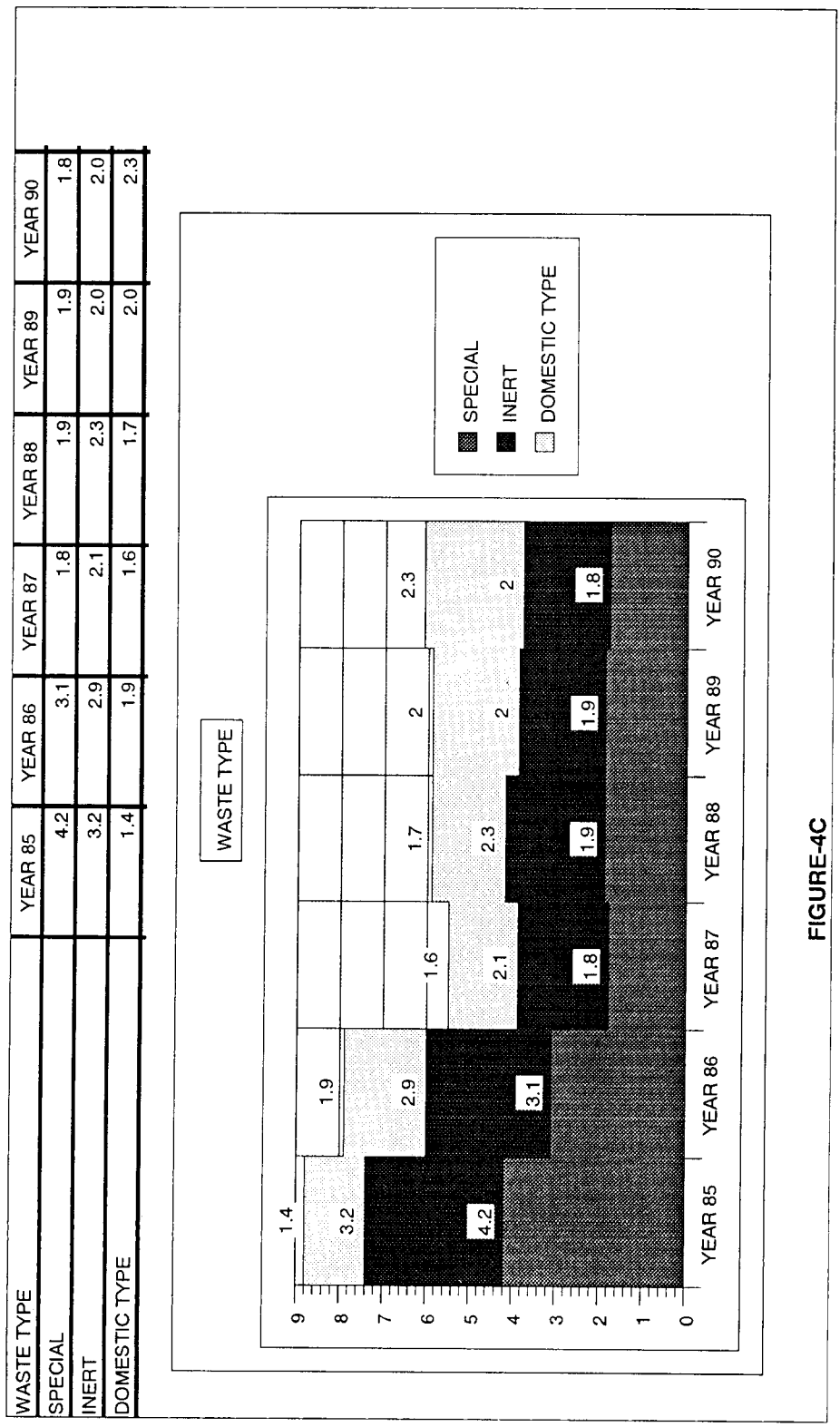

FIGURE-4C

WASTES SELF-REPORTED CLASSIFIED BY INDUSTRIAL ACTIVITY GROUP

INDUSTRIAL GROUP CODE	ACTIVITY DESCRIPTION	QUANTITY Ton/year YEAR 85	YEAR 86	YEAR 87	YEAR 88	YEAR 89	YEAR 90
1	OIL REFINING	11400	10800	7300	16600	7000	9500
2	IRON WORKS	102800	98500	6800	133700	110400	103200
3	METALLURGICAL	4000	9900	9400	9400	9200	7900
4	NON METALLIC MINERAL PRODUCTS	83000	43100	51800	143200	182000	213000
5	CHEMICAL AND PETROCHEMICAL COMMOD	34700	29800	27700	26100	20700	18200
6	INORGANIC CHEMICAL COMMODITIES	70300	69300	71100	95700	89400	82400
7	RAW PLASTICS	19300	26700	29900	42300	39600	46800
8	FERTILIZERS	700	600	600	300	200	200
9	PEST CONTROL CHEMICALS	400	400	600	900	1700	1000
10	PHARMACEUTICAL COMMODITIES	14400	56600	59100	70600	52900	69800
11	OTHER CHEMICALS	39300	57300	57400	65200	77500	88100
12	METAL FOUNDRIES	118000	89300	115900	79700	31700	44200
13	NON FERRIC FOUNDRIES	9000	12200	9000	13400	11300	11000
14	METALWORKING	6000	5700	16200	24300	22300	17200
15	METAL SURFACE TREATMENT	38300	41500	51500	52200	31000	30600
16	CABLE AND WIRING	2800	4100	6500	7500	7300	8600
17	BATTERY MANUFACTURING	200	200	200	100	100	100
18	ELECTRONIC COMPOUNDS	800	600	800	4500	1700	2100
19	OTHER METALLIC INDUSTRIES	85500	106000	293500	346500	348500	295400
20	FOOD	52600	60700	151000	199200	242700	255200
21	TEXTILE AND CLOTHING	30800	33500	31200	58800	68800	57000
22	TEXTILE FINISHING	9500	45600	19100	25000	61700	32800
23	LEATHER AND TANNING INDUSTRY	4000	14100	17000	32600	41700	54800
24	WOOD AND CORK	0	1600	1300	53200	65300	52600
25	PAPER PULP INDUSTRY	154600	66800	62500	132000	146500	140500
26	PAPER AND CARDBOARD MANUFACTURING	21000	59800	34800	36600	26900	29600
27	PAPER AND CARDBOARD TRANSFORMATIO	28000	54700	40600	47800	47100	50200
28	PRINTING AND EDITING	3500	3000	3500	9800	29000	30900
29	RUBBER-PLASTIC TRANSFORMATION	7700	54000	16800	32100	54900	40900
30	OTHER INDUSTRIES	2600	1300	1100	42900	233100	319000
31	OTHER PHARMACEUTICAL SPECIALITIES	10800	13100	11200	10800	24600	23600
32	PRODUCT RECOVERY	14000	9200	9700	37000	98200	113600
	TOTAL OF REPORTER TONS	**980000**	**1080000**	**1215000**	**1850000**	**2185000**	**2250000**

FIGURE-5

FINAL SELF-REPORTED WASTE TREATMENT SYSTEM (IN %)

TREATMENT SYSTEM	YEAR 85	YEAR 86	YEAR 87	YEAR 88	YEAR 89	YEAR 90
RECYCLING	18.71	19.75	25.45	24.06	19.08	21.65
TO SOIL OR UNKNOWN DESTINATION	26.26	21.20	14.84	15.10	13.02	10.71
WASTE WATER AND LIQUID TREATMENT PLANTS	6.96	6.76	7.06	4.19	4.65	4.90
INCINERATION	0.48	1.36	1.52	1.11	2.47	1.99
LANDFILLING	15.85	14.79	13.83	14.30	27.32	32.39
OTHER	22.88	24.92	23.22	25.48	21.66	21.05

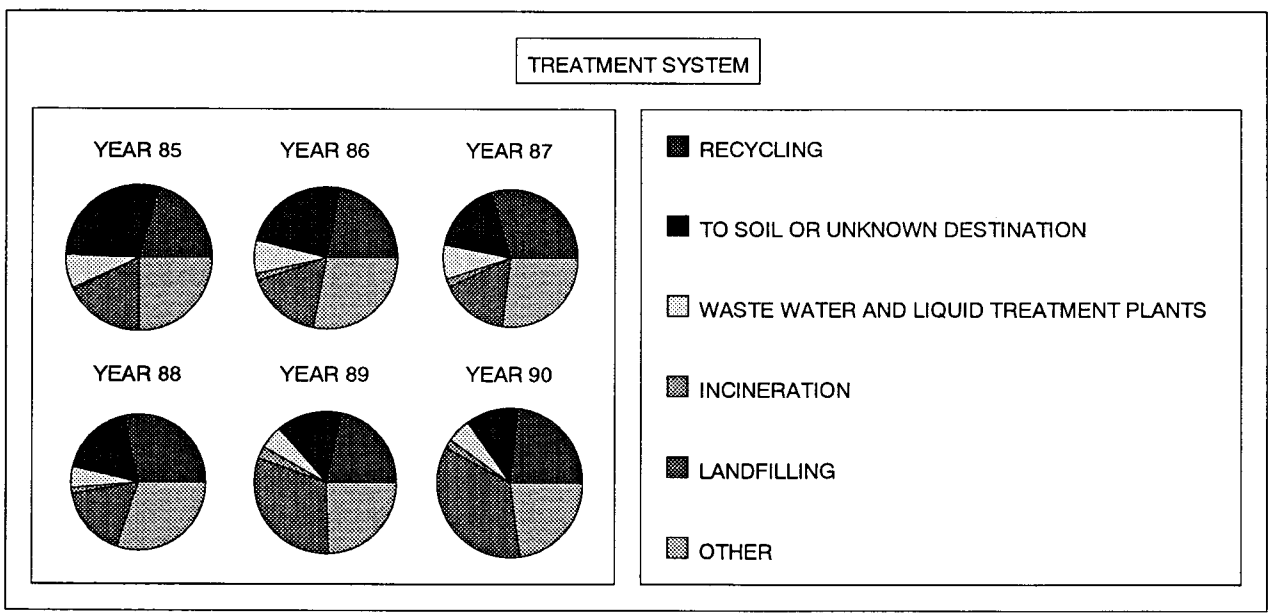

FIGURE-6A

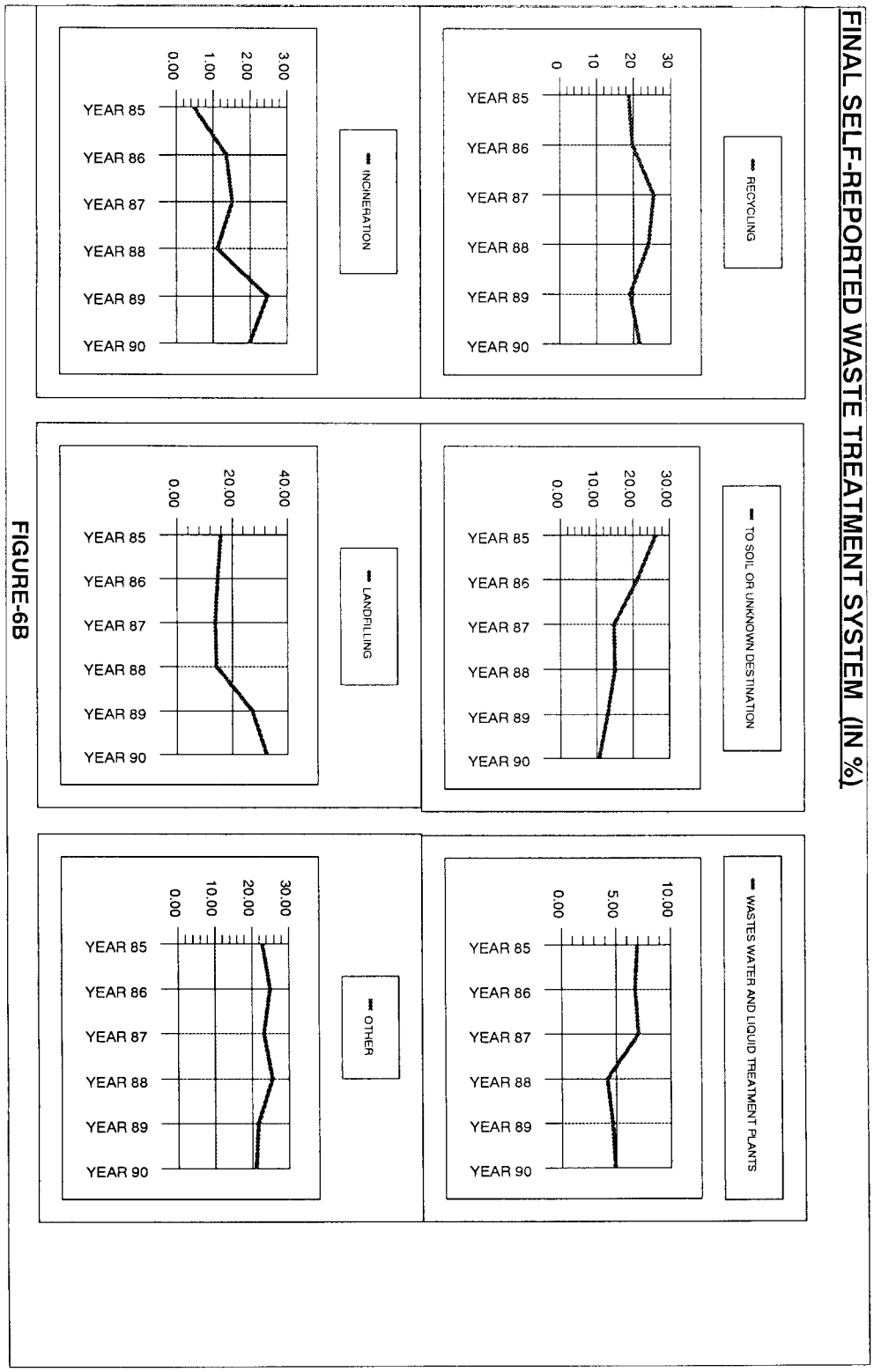
FINAL SELF-REPORTED WASTE TREATMENT SYSTEM (IN %)
RECYCLING
0
10
20
30
YEAR 85
YEAR 86
YEAR 87
YEAR 88
YEAR 89
YEAR 90
INCINERATION
0.00
1.00
2.00
3.00
YEAR 85
YEAR 86
YEAR 87
YEAR 88
YEAR 89
YEAR 90
TO SOIL OR UNKNOWN DESTINATION
0.00
10.00
20.00
30.00
YEAR 85
YEAR 86
YEAR 87
YEAR 88
YEAR 89
YEAR 90
LANDFILLING
0.00
20.00
40.00
YEAR 85
YEAR 86
YEAR 87
YEAR 88
YEAR 89
YEAR 90
WASTES WATER AND LIQUID TREATMENT PLANTS
0.00
5.00
10.00
YEAR 85
YEAR 86
YEAR 87
YEAR 88
YEAR 89
YEAR 90
OTHER
0.00
10.00
20.00
30.00
YEAR 85
YEAR 86
YEAR 87
YEAR 88
YEAR 89
YEAR 90

FIGURE-6B

FINAL SELF-REPORTED WASTE DESTINATION YEAR 90

TREATMENT SYSTEM	TON/YEAR
AUTHORIZED PLANTS	601000
IN SITU TREATMENT	565000
RECYCLERS	255000
MUNICIPAL SERVICES	114000
STORAGE	32000
SEWERAGE	65000
DELIVERY TO SERVICE COMPANIES	385000
DESTINATION NON SPECIFIED	46000
OTHER	187000
TOTAL OF TONS	2250000

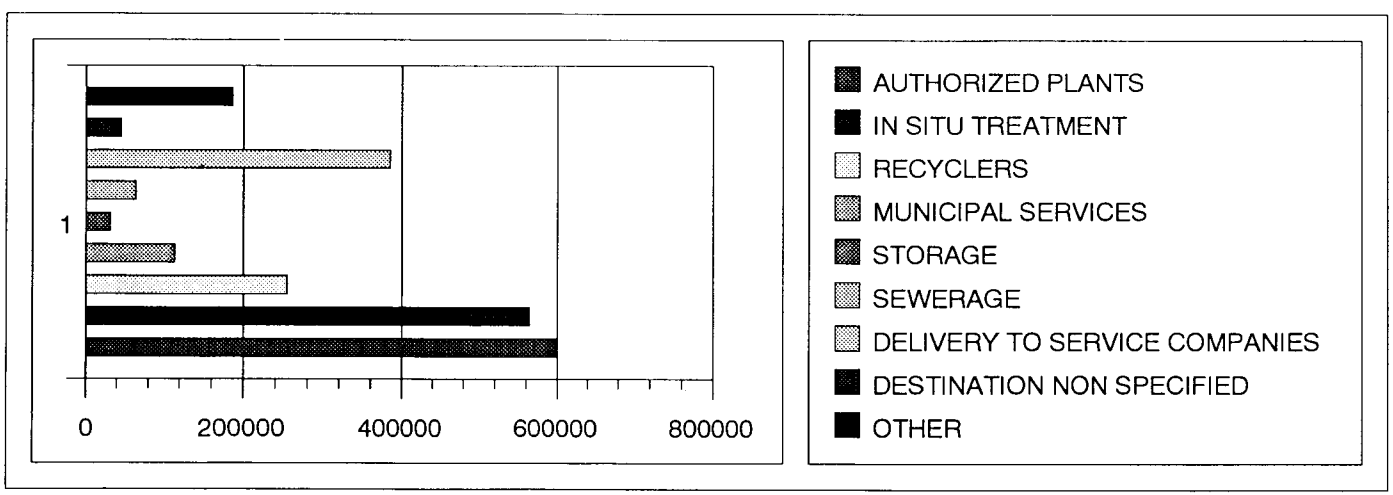

FIGURE-6C

FIGURE 7. AVAIABLE INDUSTRIAL WASTE TREATMENT CAPACITIES IN CATALUNYA.

TREATMENT SYSTEM	CAPACITY TON/YEAR
PHYSICOCHEMICAL (LIQUIDS)	20.000
PHISICOCHEMICAL (SOLID)	16.000
SOLVENT RECOVERY	30.000
INCINERATION	500*
LANDFILLING (VOLUME IN m3)	
MONO LANDFILLS	1.000.000 m3
MULTI PURPOSE	3.000.000 m3

* ROGHLY 3000 TON/YEAR LEFT IN FACILITIES ON GENERATORS.

ADMINISTRATIVE PENALTIES AND SANCTIONS TO VIOLATORS

YEARS

	1985	1986	1987	1988	1989	1990	1991
NUMBER OF REQUESTED ACTIONS			47	58	101	155	244
NUMBER OF ADMINISTRATIVE PROCEDURES	4	7	13	28	33	37	55
NUMBER OF PENALTIES	5	10	42	95	182	242	212
SIZE OF MONETARY PENALTIES (IN PESETAS)	810.000	2.380.000	4.950.000	10.900.000	18.550.000	39.850.000	85.440.000

FIGURE 8

SPECIFIC DETAILS REGARDING HAZARDOUS WASTE TRANSPORT AND DISPOSAL

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1 INTRODUCTION

The human activity is directly generating pollutants having different degrees of toxiousness for environment and for society implicitly.

For economic and technological reasons, the ideal to achieve a closed revaluation cycle and reintegration into the circuit of the pollutants is still far from obtaining a real finality, although in the future, this will be the only way out of the present ecological deadlock.

2 ELEMENTS OF THE LEGAL SYSTEM FOR ENVIRONMENTAL MANAGEMENT AND ENVIRONMENTAL ENFORCEMENT

For the purpose of ensuring the compatibility between the economic activity and the environment protection in Rumania, the legal and institutional system was created before 1989 for protecting and improving the quality of the environment, including the ecosystems and the whole natural biologic resource.

The principal Romanian environmental law dates from 1973 (Law no. 9). It provides a conceptual framework for environmental regulation, including principles and duties for the protection and improvement of all environmental media. These principles were developed through special laws, such as:

- The Law on Water no.8/1974;
- The Law on the disposal of wastes and recovery of materials, made in 1975 and up-dated in 1988;
- The Law on the protection of forest, 1987;
- The Law on the installations for the protection of the environment, 1986.

The inventory covers also the following areas: hunting and fishing, pesticides, nuclear activities, hygiene and health standards, air, water and soil quality, levels for noise, construction, permits and authorizations for the environmental protection and water management. Nevertheless, despite the intentions set out in the law, structural inadequate, including particulary political and soft budget constraints, rendered the laws largely ineffective.

A government decision in 1991 began the process of organizing an overall system of environmental management by establishing the present Ministry of Environment (no.264/1991). The ministry has began the process of drafting a new general environmental law and new law management. In the future, the Moe should be involved on reviewing all legislation which may have an impact on the environment.

3 HAZARDOUS WASTES TREATMENT AND DISPOSAL

The effect of the hazardous wastes may be insidious, of wide spectrum and persistent. Rumania as a country of considerable industrial potential; that operated at full capacity until 1990, has annually produced important quantities of wastes and industrial residues, to which there are added municipal wastes, those wastes derived from livestock farms, as well as untreated waste wasters discharged from industrial enterprises or towns.

It is estimated that annually, over 75 mill, tons of various residues or wastes were deposited on the soil, out of which a great amount (about 22 mill.t) is represented by the ashes

from coal-using thermal stations, sludge deriving from waste water treatment plants (about 15 mill.t/year), municipal wastes (over 2 mill.t/year) and so on.

Until now, from the point of view of the collection-separation-transport-disposal-revaluation process, the problem of wastes and residues has not been approached in a unitary way, showing great shortcomings, although there was, ever since 1979, a Decree of the State Council regarding collection, handing in, management and revaluation of wastes and other raw material resources, more often than not it was not observed.

The collection and transport stage shown and still shows great shortcomings, due to the shortage of adequate equipment and technologies. This generates a diffused pollution, difficult to trace or, if it is noticeable, hard to control and eliminate.

The separation stage was nearly lacking, therefore, the town stockpiles, for instance, are mostly mixed ones, including at the same time both street domestic wastes and treatment sludge and industrial sludges.

As far as the disposal stage, the existing data bring into relief over 1900 areas with waste deposits, out of which 696 belong to the communal administration, 660 to agriculture, 315 to the mining and oil production, 44 to the chemical industry, 33 to the metallurgical industry, 12 to the building materials industry and the other sectors.

The surface affected by wastes and residues is about 18 thousand ha., out of which 11,9 thousand ha. arable land. Out of these, about 2700 ha. agricultural lands are covered with ash from electric and thermal stations and about 2000 ha. are occupied by sterile deriving from metal treatment.

Besides the great occupied surface, the deposition lands were not always correctly selected, taking into account the waste characteristics and the risks they may generate. Moreover, the deposits are some times only scarcely developed, not ensuring protection of all environmental factors.

It should be mentioned that disposal of industrial wastes in stockpiles, pits, ponds lagoons is not always arranged and controlled, certain enterprises not giving importance to the noxious generated into environment. Therefore, nearby these deposits the underground waters, surface waters, soil and air are frequently polluted, and the landscape is modified.

The town dumps are generally located in areas which offer only a relatively natural protection as to the effects of the deposited materials; they are not equipped with the necessary developments as well as with bottom waterproofing, enclosing, infiltration and exfiltration drainage.

In the view of reducing waste quantities that would need unpolluted and controlled disposal some technologies have been promoted and they are at present available for the turning to good account the energy and the useful compounds of wastes, Thus, municipal waste and pig and cow slurry digesting has become a current practice which allows to obtain a quantity of digestion has equivalent to over 530.000 t.c.c. annually.

But the waste and residue reserves that can be evaluated are much higher. The calculations carried out for the industrial area of the city of Bucharest together with its outskirts have indicated that the metallic compounds recovery from waste waters and galvanization sludges may lead to the annually recycling of the following quantities of metals: 32 t copper, 23 t zinc, 8 t cadmium, 8 t nickel, 50 t chromium. Moreover the quantity of heavy metals recovered annually from waste waters and galvanization sludges in the industrial area of Brasov city amounts to: 11 t copper, 5 t cadmium, 9 t zinc, 3 t nickel, 10 t chromium.

The phosphogypsum, slag and ash deposits as well as untreated waste waters from the manufacture of pulp and paper also represent important secondary raw material sources which are waiting to be put in value. For this purpose rather reduces financial efforts are needed, but which Rumania cannot undertake in this transition period.

The ministry of Environment of Rumania, in its present structure, has been founded in 1991. One of its main lines of actions in the field of waste management was that of correctly estimating what has been produced up to now and of assessing the ways of doing away or evaluating the existing waste quantities. Until the end of this action, Rumania could not accept the idea of waste imports, especially those belonging to the category of highly dangerous wastes, whose elimination requires great financial efforts. However the paradox took place. Taking

advantage of the fact that there are no strict regulations in the field and under the mask of certain unusable products but whose guarantee term was not specified, great quantities of toxic wastes were brought into the country by fraudulent means and then deposited under precarious conditions in densely populated areas.

Rumania is at present making efforts in solving this problem. But personally I think that we shall be able only to apply an old Romanian proverb saying "catch the blind pluck his eyes" while our country will be left with severe damages both at internal and at external level.

Recently, in order to avoid such situations, the Governmental Decision no.340/1992 regarding the importing regime any kind of wastes and residues as well as other health and environmental hazardous goods, has been passed.

The structural changes taken place in the Romanian society call for structural changes also in the outlook regarding the organization of the environmental protection activity and implicitly of the wastes management as part and parcel of this activity. Therefore, the ministry of environment and the environmental monitoring and protection territorial agencies were organized, while with the support of the World Bank the Strategy on Environmental Protection was drawn up; this Strategy has a chapter concerning waste management. We are far from attaining our aims, sometimes due to financial means, sometimes due to a poor ecological consciousness, but there is something that we know for sure: we live in an Europe in which ecology has no boundary and we must unite our efforts lest we should be faced with an ecological disaster.

THE ROLE OF INTERPOL IN ENVIRONMENTAL ENFORCEMENT

SØREN KLEM, transcript of a contribution to the Conference.

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My name is Søren Klem, I'm working in the I.C.P.O. Interpol General Secretariat in Lyon France, in the Economic Crime Group. Apart from a large number of different kinds of fraud I also deal with the field of environmental crime.

The illegal transboundery movements of hazardous wastes is of special interest to Interpol for many reasons:

First and foremost because the crime is international and this is, as you know, what Interpol is dealing with. Another reason is that traffic in hazardous waste is normally organized crime and associated with violations in other fields of law, such as fraud, breach of trust, bribery, document forgery etc. Furthermore, the criminals are very often experienced and previously known to the police for other offenses such as for instant trafficking in drugs and different kinds of frauds.

So far, only a few number of cases on environmental crime have been reported to the General Secretariat from the Interpol member countries. However, all of these cases are in fact dealing with traffic in hazardous waste and dangerous substances. Now, to get some more information and a more global picture about this specific kind crime, we recently sent out a questionnaire to all the 158 member countries and the result of this study was published last week.

It is obvious, that if this problem is to be dealt with effectively, the enforcement agencies in the involved countries will have to collect, process and exchange as much information as possible. In this connection Interpol can play an important role as the central point and platform for this information exchange and case coordination.

Let me briefly give some reasons for this:

- All the countries represented at this conference are either members of Interpol or will be members in the near future.
- The service Interpol can offer in the fight against international environmental crime is:
  - Firstly, rapid and safe exchange of information through our independent and world-wide telecommunication network.
  - Secondly, a highly performing Criminal Information System.
  - Thirdly, legal and police and translation expertise and excellent meeting and conference facilities.

When we receive information on for instant traffic in hazardous waste we will immediately respond to the involved countries if elements in the message are known to the files of The General Secretariat and of course if this information is not already known to the countries. This response is sent out immediately and as a rule at least within 24 hours. Furthermore, If we see a pattern or a trend of criminality we will send out a diffusion to inform and warn the countries against f.g. a group of criminals or a special kind of MODUS OPERANDI. This message can be diffused all over the world within seconds.

We can also invite investigators for member countries to join together in working groups in the auspices of Interpol - either on a case to case basis or on a permanent basis. We already have a number of these working groups going on in other field of crime. Apart from the working groups our department hosts each year a conference on International fraud and the subject of environmental crime was in fact the main topic on the agenda on our latest conference in June this year.

Recognizing the seriousness of environmental crime, Interpol will in the future give priority to this subject and especially the hazardous waste traffic. It is our intention to include the subject of environmental crime in our future fraud conferences.

Finally, I think you should know that Interpol can in fact, through the national central bureaus, cooperate with any government agency concerned with combating criminal offenses, including environmental enforcement agencies.

So I hope that Interpol in the future will play an important role in the fight against international environmental crime and I am looking forward to cooperating with you in this respect. Just promise me, that you will go through your local national Interpol bureau.

If you have any questions you are welcome to contact me at any time during this conference.

CITIZENS' ROLE IN THE ENFORCEMENT OF ENVIRONMENTAL LAW IN EUROPE

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SUMMARY

Given the interrelationships of social forces equally manifest in both East and West, environmental protection goals can only then be realized if not only the authorities and industry are involved in their implementation, but also citizen action groups and environmental associations. The paper describes the preconditions requisite to successful citizen participation, and compares these with existing practices in EC Member States. From the thus identified deficits, concrete demands for an extension of participation and litigation rights are derived.

1 INTRODUCTION

Contrary to the widely held conviction, public approval procedures are not an invention of modern environmental law but an achievement of the French Revolution dating back almost two hundred years[1]. Napoleon introduced this procedure in the occupied european territories[2]. In the national industrial codes the procedure survived as legislation to the present time. In the last thirty years, however, various laws have developed from the industrial code[3], all of which include a (slightly modified) version of the public ('formal') approval procedure.

Public participation with its inherent democratic elements can therefore be described as a relic of the French Revolution and can be regarded as an intruder in a state and administrative structure dominated by authoritarian principles. The practice of secrecy within government authorities has changed very little to the present day[4].

In order to illustrate the importance of public participation, I would like to preface my comments with two quotations. The first was made by the Prussian king Frederick William III in a cabinet order of 4 February 1804[5]:

> "If one were to completely deny (access by) a specific and respectable type of public, one would have no means of exposing the negligence or disloyalty of civil servants; on the contrary, the public is the surest counter both for the government itself and for the community to carelessness or dishonest intentions on the part of authorities, and for this reason deserves to be heard."

The second quotation is from a leading article in the business section of the conservative Frankfurter Allgemeine Zeitung on legal status under the German *Bundes-Immissionsschutz-gesetz* (Federal Emission Control Act)[6]:

> "The law also makes provision for local residents to file objections, basically because the past has shown that authorities concerned with the 'economic power' of their district tend where possible to connive with profit-seeking companies."

Here we have the main reason for public participation in a nutshell, namely as a check on the work of the authorities. Their legally defined task is to protect the environment and the health of the population. Experience has shown, however, that whenever authorities deal with industry in private, these interests are put aside[7].

The participation of the public in the implementation environmental law not only serves improved environmental protection; it also realizes elementary principles of the Rule of Law, i.e.:

- access to justice for affected third parties;
- the separation and balancing of powers (Executive, Legislative, Judiciary);
- the principle of democracy.

2 POINT OF DEPARTURE

2.1 In the foreseeable future, economic reasons will make it impossible to place a cost on the utilization of natural resources that corresponds to the real social costs. Regulatory powers exercising the sovereign powers of the State are therefore indispensable.

2.2 To statutorily enshrine environmental protection obligations will not by itself lead to any effective progress if this is not also accompanied by the creation of the **framework conditions** for their implementation. This means not only the establishment of administrations, but the administration must also receive instruments that empower them to really enforce these obligations.

2.3 This implies that government authorities must not be burdened with tasks that are impossible for them to fulfil for **structural** reasons. Thus it cannot be the task of government authorities to detect "clean technologies" in order to bring industry to an "integrated pollution control"[8]. These are tasks for development laboratories and not for administrative officials.

2.4 The absence of public participation leads to a disequilibrium in the triangular relationship polluter - state - affected party. This disequilibrium is ultimately always at the cost of the environmental and affected third parties. If it is left alone, no administrative body has the clout to hold sway over industry and the associated.

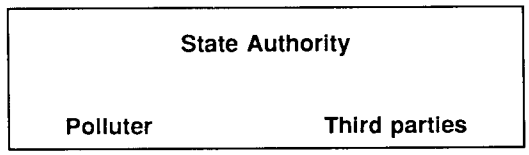

Figure 1. Enforcement Triangle

2.5 Therefore those who are affected by environmentally harmful activities must also be allowed an **active role** in the implementation of environmental law. These include both individual **citizens** in their role as consumers, employees and as users of natural goods, and the corresponding representative bodies (consumer and environmental associations, trade unions, local and regional "grassroot'-groups, but also municipalities).

2.6 Timely and comprehensive public participation is ultimately also in the interests of industry and administration. Uncomfortable facts are sooner or later usually uncovered, regardless of attempts to conceal them. This then creates a particular "finding-out" effect, which can cause sustained damage to public confidence. And industrial firms are often particularly dependent on a good public reputation.

3 ELEMENTS OF EFFECTIVE PUBLIC PARTICIPATION

Effective public participation in the implementation of environmental law requires three preconditions:

1. Transparency of all environmentally relevant information;
2. Participation in decision-making procedures;
3. Effective legal remedies against environmentally harmful activities.

3.1 Transparency: Disclosure of all environmentally relevant information

Comprehensive knowledge and information is essential for the individual's ability to play his or her full potential role in practice. This requires the disclosure of positive information, but also a clear statement of informational deficits, so-called "negative information"[9].

The EC-Council has adopted on 7 June 1990 a Directive on the freedom of access to information on the environment[10]. This Directive awards an individual right of access to information held by the authorities[11]. This right exists in a number of EC and non-EC countries[12].

The freedom of access to information is an important step, but there are still a number of deficits:

- It is limited to the information held by the authority; there is no obligation for the authority to collect the relevant information.
- There is no right of access to information kept by the industry itself comparable to the US "Right-to-know Act"; as a result it is only an indirect right of information - the direct line between citizens and the polluter/producer is not opened.
- It remains unclear what information can be held back as industrial and commercial secrets[13]; here a negative definition of data that may in no event enjoy the status of secrets would be necessary[14].
- The practical conditions of access to information are unclear, e.g. whether there is a right to obtain copies of documents.
- A further point is that it would be worth considering whether, in the age of data processing, other forms of data transfer, e.g. results of ambient air quality measurements on diskette, should be made a part of the legal claim to information.

3.2 Participation: Comprehensive participation of citizens, associations and municipalities

Besides the informational basis, a further precondition is that of equal opportunities in the decision-making procedure. From the legal point of view, this demand follows from the principles of non-discrimination and fair trial.

Here the participation of the public must fulfil the following criteria:

1. Timeliness
2. Comprehensiveness and equal weight
3. Participation must also extend to the post-licence control of environmentally harmful activities.

These points must be enshrined in corresponding procedural codes.

3.2.1 Timeliness

Participation must set in a procedural stage in which no central preliminary decisions have already been taken, because otherwise the participation is degraded to a mere "alibi event".

The EIA Directive does contain the principle of timeliness. However, it is unclear what consequences arise from a violation of this principle.

3.2.2 Comprehensiveness and equal weight

The participation procedure must allow all ecological and social effects to be a subject of discussion between the involved parties. The procedure is degraded if certain questions are excluded for formal reasons, such as the question of alternative solutions or the societal need for a project.

Affected parties must be allowed to present their position in a well-founded manner by means of bringing in experts. This necessitates a suitable regulation of how the associated costs are to be covered.

In most European countries, neither of these points have been realized.

3.2.3 Participation in the control phase

Under the law as it currently stands, public participation ends as soon as the project has been licensed. This leads to mistrust on the part of the third parties, who - often quite rightly - fear that environmental regulations will be violated during the later operations.

Public participation must therefore include the "post-licence" control phase, thereby also closing the circle to a timely participation in new decisions. This requires the establishment of a sustained communication procedure between the involved actors[15].

3.2.4 Participation in product control

In the EC countries citizen participation is limited to licensing and planning procedures for industrial and infrastructure projects (e.g. industrial plants, highways, urban planning). The environmental impacts caused by **products and substances** are not subject to a participation procedure. Even in the cases where products are subject to governmental authorization and control procedures (e.g. new chemicals, pesticides), there are no participation or litigation rights for third parties (e.g. environmental or consumer organisations) such as contained in the US-American "Federal Insecticides, Fungicide and Rodenticide Act" (FIFRA).

3.2.5 Participation in sub-statutory legislation

Important prior decisions for the implementation of environmental regulations are taken through the issuance of decrees, ordinances, orders, bye-laws or other sub-statutory norms.

The public is only involved in the drawing up of these regulations in a few very limited cases. None of the EC countries provide for the possibility of judicial review.

3.3 Access to justice

Without the possibility of judicial review of breaches of environmental law, participation rights remain a paper tiger. The interrelationship of forces in the enforcement triangle will only be significantly shifted if third parties can also enforce their claims in the courts.

In the EC Member States exist a variety of mixtures of administrative and judicial review in relation to environmentally relevant decisions of administrative authorities. All Member States nowadays - at least since the statutory changes in the Netherlands following the "Benthem" case - have some system of administrative and judicial review of decisions. However, the form and the importance of each may be quite different; e.g. concerning the access of common interest groups and members of the general public to these institutions for purposes of environmental protection, and in some States also concerning the effectiveness of existing procedures and remedies and the rules of apportioning the costs.

To provide for a right of action against administrative authorities alone would, however, be insufficient in view of the fact that the environment is often adversely affected not so much by the positive decisions of an authority but rather by its failure to act against infringements of the law. Therefore citizens should be enabled to also bring an action directly against polluters and other persons who cause harm to the environment. In order to avoid the confusing effect of parallel proceedings against administration and polluter, and respect national priority rules as far as possible, this direct way of action should be limited to cases where the authority has refused or failed to act.

Effective interim relief is often crucial to the successful defence of environmental interests in court. Therefore, Member States' legislation should ensure that a plaintiff in these cases can attain quickly and without great difficulty a court ruling which suspends the effect of environmentally relevant administrative decisions or an injunction which effectively stops environmentally harmful activities. Deficits can be observed in a number of EC Member States, especially in France and Belgium.

For actions in the interest of the environment, the problem of costs is a decisive factor. In principle, costs, including lawyers' and experts' fees, should not provide a barrier for the

commencement or continuation, of such proceedings. Therefore it should be ensured that the plaintiff, if he succeeds, will recover all costs reasonably incurred, hereby removing any discretion that the complaints authority or the court may have under national law, and providing for the case that the losing party is unable to pay. At present, this has not been realized in any Member State.

Furthermore the reduction of the plaintiff's cost risk is warranted by the consideration that there is an overriding public interest in the correct implementation of environmental law. Therefore, any initiative which aims in this direction should be encouraged and public funds should not be spared in limiting the financial risk for private persons, which may be excessive e.g. in cases where a company as party to the proceedings makes full use of the available legal and technical expertise. Thus it is necessary to exempt the plaintiff from court fees and other parties' costs as long as the action was brought in good faith and on the basis of an arguable case.

4 PRACTICAL CONDITIONS: NETWORKING BETWEEN NGO'S

This short overview had shown that the public already has - if only to a limited extent - possibilities of influencing environmentally relevant decisions. These possibilities should be made use of, and at the same time claim should made to further improvements.

For the practical work, a well-functioning infrastructure on the side of the affected third parties is of high importance. Experience shows that the intervention of the public influences the results of the administrative procedures, especially in those cases where well organized local groups or associations use their participation rights. In quite a number of cases it was possible to achieve stricter air pollution limit values, improved safety measures or even the reduction of hazardous waste streams.

A prerequirement to such success is the existence of a structure of communication and flow of information. In order to exert influence successfully it is decisive for the environmental organizations to elaborate well-founded proposals aiming at implementation and present them to the protagonists mentioned above. This requires a multidisciplinary argumentation referring to the problem in question and showing practical possibilities of action, both being presented in a conveyable form.

In the field of licensing procedures for industrial plants the German "National Coordination Bureau for Licensing Procedures" could serve as a model[16]. Moreover, a Europe-wide information exchange in the field of waste policy was agreed at the conference "Environmentally sound waste management? - Current legal situation and practical experience in Europe"[17]. C.E.P.A., a non-governmental research institute from Barcelona, has taken the responsibility for this further cooperation[18].

Founded in 1990, the "Environmental Law Network International" (ELNI) has the task of organizing the exchange between environmental lawyers siding with environmental associations[19]. The network further also aims to facilitate concerted juristic action regarding specific problems.

Beside the "European Environmental Bureau" (EEB) further networks have been set up in Brussels as well; the "Climate Action Network" and the "Biotechnology Clearinghouse" of "Friends of the Earth" have been established. And the ecologically minded transport associations have delegated a common representative to Brussels who will be in charge of coordinating the activities from there.

To secure that participation rights can be used effectively in the struggle for environmental concerns further development or those networks is crucial both on the national and international levels.

5 EFFECTIVE INSTRUMENTS: MAKING ENVIRONMENTAL PROTECTION DYNAMIC

The broad participation of the public in a fair procedure is the *conditio sine qua non* in environmental law. But that is not the end of the matter by a long way: public participation is - to use mathematical terminology - a "necessary' but not "sufficient" condition for this field of law. A

high level of protection is also indispensable as a prior aim which must be defined in directly enforceable basis obligations on the part of the operator.

It cannot be the function of public participation merely to "fill in the loopholes". In fact in many procedures it has taken over this role, but this is not a satisfactory long-term solution, not only because it is asking too much but also because it blurs the real responsibilities. It is for the operator to identify the problems and hazards involved; if he does not do so to a sufficient extent, the authorities must coerce him.

In addition, the conditions must be provided for effective implementation of the law. This means in particular that the legal structures of the relevant provisions must be designed such that they necessitate a minimum of enforcement effort for the authorities.
Self-executing statutes (e.g. in the form of decrees) are preferable rather than complicated individual decisions (i.e. in the form of supplementary orders).

It is of central importance that licences permitting environmental pollution are only issued for a limited period. The temporal limitation opens the possibility of taking a new decision on the basis of up-to-date technological and toxicological developments. The main advantage as compared to the instrument of the supplementary order is that the burden of justification lies with the polluter. He must - if he wants to receive a new licence - determine the relevant current data (including the state of the art). The work of the authority is limited to checking these documents and taking a decision in the course of a new public procedure.

Finally the sub-legal definitions in decrees and administrative regulations are of great importance. If, as is the case with the German TA-Luft (Technical Instruction - Air), risks and hazards are simply "defined out of existence", there is a danger that the protective aim of the law will only be applicable in theory.

REFERENCES

1. Cf. here and later Führ, Sanierung von Industrieanlagen, Düsseldorf 1989, P. 14 et seq.

2. In the later German Reich, where it was incorporated in the Preussische Allgemeine Gewerbeordnung (Prussian General Industrial Code) of 1845 and the Reichsgewerbeordnung (Imperial Industrial Code) of 1869.

3. E.g. the Atomgesetz (Nuclear Act), Abfallgesetz (Waste Act) and Bundes-Immissionsschutzgesetz (Federal Emission Control Act).

4. Cf. Gurlit, Verwaltungsöffentlichkeit im Umweltrecht, Düsseldorf 1989, and Führ, op cit., p. 76 et seq.

5. Cabinet orders had the character of laws, quoted from Schwan, Aktenöffentlichkeit, p. 1.

6. Frankfurter Allgemeine Zeitung, 6 December 1989, op. 283, p. 17, Fernando Wassner: Wenn die Furcht zur Gefahr wird.

7. For the way in which authorities circumvent the legally prescribed right of public participation cf. Führ, op.cit., p. 82 et seq.

8. In Germany the obligation in the Bundes-Immissionsschutzgesetz (Federal Emission Control Act) to minimize industrial waste is in fact implemented - or better: not implemented - in that way.

9. This is, for instance, stipulated in Annex III No. 7 of the EC EIA Directive, according to which "technical gaps and missing knowledge" must also be declared.

10. OJ No L 158/56, 23.6.1990 (90/313/EEC).

11. And entitles every person who considers that his request for information has been unreasonably refused, ignored, or inadequately answered by a public authority, to seed judicial or administrative review of the decision in accordance with the relevant national legal system.

12. Cf. the country reports in: Winter, Öffentlichkeit von Umweltinformation, Baden-Baden 1990.

13. Art. 3 para 2 of the Access to Information Directive (90/313/EEC).

14. Such provisions are part of the Directives on the use of genetically modified organisms, cf. Art. 19 para 4 of the Directives 90/219EEC and 90/220/EEC.

15. The public participation model "ÖKOM-Park" developed by the ÖKO-Institute for the District Council of Birkenfeld (Rhineland-Palatinate/Germany) contains such a procedure (Sailer, M./Führ, M., Modell der Bürgerbeteiligung bei Ansiedlung von Gewerbebetrieben im Rahmen des ÖKOM-Park-Konzeptes, Darmstadt 1992).

16. Cf. Wollny, ELNI-Newsletter 1/91, p. 21 et seq.; part of the coordination work is a Newsletter (in German) obtainable from the above mentioned address of the ÖKO-Institute.

17. 31 May - 1 June 1991 in Frankfurt/Main; the proceedings of the conference are available from the ELNI Coordination Bureau.

18. CEPA, carrer Jacint Verdaguer, 48, SP 48.08750 Molins de Rei, Spain, Fax +34-3-6800773.

19. Cf. ELNI-Newsletter 1/91, p. 4 and ELNI-Newsletter 2/92, p. 36; the Newsletter is available from the ELNI Coordination Bureau, c/o Öko-Institute, Bunsenstr. 14, D-6100 Darmstadt, Germany.

PUBLIC DISCLOSURE AND ITS IMPACT ON COMPLIANCE

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As a representative of world-wide organization at an international Conference, I will first try to set the Question of public information on environment in a world-level perspective.

At Government level, world-wide action can be said to have begun with the 1972 Stockholm Conference. This gave rise to the creation of UNEP and numerous international programmes on a plethora of subjects. The Stockholm declaration only contained some fairly general Phraseology on information, none of which was specifically addressed to the business community.

The next milestone is usually said to be the 1987 report of the World Commission on Environment and Development ("Brundtland Commission"). This led to a series of regional follow-up conferences. the one generally regarded as the most valuable took place in Bergen, Norway, in May 1990 - curiously enough, at exactly the same time as the first conference in this enforcement series. The Bergen Conference, which covered the UNECE area (Western and Eastern Europe, plus the USA and Canada) concluded with two notable elements of "soft law". One was the traditional ministerial declaration to which only 35 the governments involved were party. The other was the historically unique "Joint Agenda for Action" approved both by governments and the five non-governmental interests which had negotiating rights for the first part of the conference, i.e. business, environmental groups, labour, science and youth. Both documents contain extensive references to public disclosure of environmental information.

Shortly after Bergen, the European Community adopted a Directive on freedom of access to information on the environment, which will come into force in the 12 Member States at the end of 1992.

Bergen led directly to the United Nations Conference on Environment and Development (UNCED) in Rio in June 1992. For the purposes of this Conference, note simply that UNCED has produced much more soft law on disclosure of environmental information - and this soft law is subscribed to by virtually every country and at the level of the head of state or government. Principle 10 of the keynote Rio declaration for example reads as follows:

> "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

Many references to information appear in the 500-page "Agenda 21". They cannot be detailed today but they all help to set the scene - for business and other non-governmental interests - in approaching the specifics of the Budapest Conference. The ICC has taken a positive view of the Brundtland Report, Bergen, and UNCED. Accordingly we aim to be circulating a positive view on provision of information around our network - 7,500 corporations and associations in over 100 countries - and to the business world at large. It has in fact been doing so since 1974, when it first issued its "Environmental Guidelines for World Industry". Three current initiatives should specifically be noted by this audience:

1. **The Business Charter for Sustainable Development** Although launched only 18 months ago, the business charter has become the benchmark code for corporate environmental management. Over 1,000 corporations and business organizations in

some 50 countries have already expressed their support for it in writing, including for example around 60 out of the top 100 in the fortune 500 list of leading industrial companies. The charter is endorsed by over 40 international organizations and numerous government leaders, including Prime Minister Lubbers of the Netherlands, William Reilly of the U.S. EPA, and Laurens-Jan Brinkhorst of the EC's DG XI. The Charter comprises 16 principles, of which the final one covering compliance and reporting reads as follows:

> **"Compliance and reporting**
> To measure environmental performance; to conduct regular environmental audits and assessments of compliance with company requirements, legal requirements and these principles; and periodically to provide appropriate information to the Board of Directors, shareholders, employees, the authorities and the public."

The Charter is incidently published in 24 languages, including German, Hungarian, Polish and Russian;

2. **Position Paper on Environmental Auditing** The expression "Environmental Auditing" has been widely but loosely used for a decade or more. In 1988 the ICC decided to define the term, and to encourage use of this definition and a concise supporting elaboration and model methodology. One firm principle is that audits are an internal management tool, and audit reports should be used accordingly and not regarded as a vehicle of public information. The position paper, which drew extensively on experience, has also become an international benchmark and was a key reference in the EC's recent eco-audit initiative.

3. **Position Paper on Environmental Labelling Schemes/Code on Environmental Advertising** The power of the consumer in leading or encouraging the business community to apply high environmental standards is very considerable, but is also dependent on satisfactory information. As guidance in this area, in 1990 we issued the first (and apparently the only) international position paper on how environmental labelling schemes could be organized and operated, assuming that the government and public opinion want such a scheme. We followed this up with a code on environmental advertising (i.e. advertising using environmental claims) at end 1991.

Our positive attitude on information is also seen, albeit less directly, in the series of nine position papers or "business briefs" prepared for UNCED, covering economics and the environment, toxic chemicals, hazardous wastes, energy and the atmosphere, biodiversity, forests, technology transfer, biotechnology, and education.

Right now we are assessing our priorities in the light of UNCED's outcome. One priority will however be preparation of a position paper on what we tentatively call "Environmental Performance Reports" which are precisely corporate information to be put in the public domain. The phraseology is still being worked out, and will benefit from input from this valuable conference. In will certainly encourage corporations to report regularly - for example in annual reports - and in an objective and quantified manner on exactly what they are doing to minimize the adverse environmental consequences on their activities processes and products. It will very likely take a view on the value of external consultants in this regard. Note that parties within the business community - for example banks, investment or holding companies, the insurance community, maybe a company's clients and sub-contractors - can have a keen interest in such information. Moreover, there is now much discussion, and some consensus, on placing more reliance on economic instruments for improved environmental management rather than undue reliance on traditional "command and control". Tradeable pollution permits are one example which can presumably only work with sound disclosure procedures. A subject for your third conference.

Perhaps it is necessary to state that the Business Charter, the environmental auditing paper and our other existing and planned initiatives in this area all take compliance with regulations for granted. A key point is to engage the competitive forces within business, including "peer group pressure", to show by how much the company is managing to exceed the legal requirements.

Reasonable use of disclosure - drawing for example on the experience of the U.S. and Sweden - is clearly going to be a necessary aspect of compliance with environmental regulations throughout the world. This perhaps applies to:

- The mass of medium and smaller enterprises without extensive in-house expertise and usually without a prestigious external image to maintain;
- Countries in Eastern Europe and elsewhere with socialist planned economy systems, which meant of course that the government functioned as both regulator and operator/vested interest with results that are well known.

The ICC would incidentally stress that the same conditions of disclosure should apply to state-owned facilities as to private corporations. To conclude, we believe that the effective protection of the environment is best achieved by an appropriate combination of legislation/regulations and of policies established voluntarily by business. The self-regulatory instruments mentioned earlier are partly intended to help regulators prioritize their efforts. UNCED has spelt out the necessity of co-operation, dialogue, and trust on the basis of sound information disclosure. The business community represented by the ICC is willing to carry forward its responsibilities in this spirit.

PUBLIC DISCLOSURE AND CITIZENS' ROLE IN ENFORCEMENT: RESULTS AND MISTAKES IN BULGARIA

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SUMMARY

The creation and strengthening of democratic traditions in Central and Eastern Europe countries is a complicated and continuous process, considering all the spheres of public life, as well as the field of environmental protection.

One of the most manifested forms of social discontent against the former regime was the environmental protest. Both the direct danger for mental health in a number of cases and the fact it was one of the little possible legal and organized forms of protest account for this protest.

To understand the present behaviour of people and their rights according to the existing legislation including the ones in the field of environment, it is necessary to know the history of environmental movement in Bulgaria.

1 SITUATION IN BULGARIA

Establishment of the first Society for protection of nature in 189 an its activity resulted in the formation of the first preserve - "Parangalitsa" in 1933, as well as the first National park "Vitosha" in 1934. These facts just confirm the existence of certain traditions and once again point out that the processes in Central and Eastern Europe to a great extent are brought to a reestablishment of these traditions.

The primary non-governmental organization in Bulgaria during communist rule was Ecoglasnost. This organization was started in 1989 mainly by intellectuals. The group gives attention to a broad range of issues including environmental issues and human rights. It also contributed to the overthrow of the communist regime. Ecoglasnost was one of the key forces which founded the present ruling organization, the Union of Democratic Forces (UDF).

The role and significance of ECOGLASNOST in the society in 1989 and 1990 created such a phenomena that people wanted to join this organization instead of establishing new ones. This is one of the most characteristic features of the environmental movement in Bulgaria - an existence of a strong environmental NGO. It might be said, that the development of environmental NGO's in Central and Eastern Europe is in broad scope: the one pole is held by Bulgaria and the other one - by Hungary with approximately 500 NGO's. The presence of a strong environmental NGO enables an easier formation of public opinion towards a number of problems. This, of course, presumes a continuous period of internal discussion within the NGO for working out a final decision. When there are a great number of environmental NGO's, the coordination in forming a common public opinion becomes considerably difficult. Anyway the coordination among the NGO's in Central and East European countries is a tangible problem. this often hampers the citizens' participation in the enforcement process.

Most of Central and East European environmental NGO's passed the romantic period of their development, when all the activities were based on the enthusiasm of the organization's members. this was connected with the beginning of the first crisis in the organization. Its overcoming required transition from destructive approach (protests, human chains, polluters' shut-down actions, etc.) to a constructive one (a participation in expert groups, working out of own statements and analyses, etc.). This is certainly not an easy process because it requires professional skills in the management of the organization's affairs. This is the only possible way to survive.

A growing number of Bulgarian NGO's are demonstrating interest in expanding the existing system of protected areas and lending their support to the enhanced management of the system.

The public in Bulgaria is very sensitive towards the problem of the former damages caused to the environment and man as a result of pollution. It is considered as one of the greatest crimes of the former regime. Some suites are brought at the moment against former party leaders on different charges. An interesting fact is that the first case which was finished was against the culprits for the damages caused by Chernobyl accident in Bulgaria. The Government delayed deliberately the information for the accident from the population. The motivation was to prevent confusion and chaos. Because nobody took action against the damages, the Bulgarian population was exposed to one of the biggest portions of radiation in Europe. Grigor Stoichkov - former member of the Political Bureau of the Communist Party and chairman of the Commission natural calamity and big industrial accidents at that time and prof. Shindarov - chief toxicologist of the state were condemned on this case. This is a good example for public disclosure in Bulgaria.

2 ENVIRONMENTAL LEGISLATION

Before the analysis of environmental legislation and the citizens' rights and obligations, public participation and citizens' role in enforcement process according to this legislation, it is important to emphasize on one specific characteristic of Bulgarian legal reform compared to other Central and East European countries. This reform started in Bulgaria with the enforcement of a new Constitution. After that Environmental Law, Local Administration and Local Self-government Law and Law on Statistics and Public Information were adopted. What is important for the public disclosure and citizens' role in enforcement is the fact that these laws were passed before the enforcement of the basic economic laws.

In October 1991, the Bulgarian Parliament passed a new, comprehensive environmental law, the Law of Environmental Protection. This act supplanted the Law of Nature Protection in 1967 and replaced the Law of Protection of Air, Waters and Soils from Pollution in 1963. The 1991 law introduced pollution charges within permissible limits and made Environmental Impact Assessments an obligatory procedure. The new law incorporates International Union of Conservation of Nature (IUCN) criteria for designation of protected areas and specifies minimum staffing requirements for protected areas based on their size.

Finally, the legislative reform for the environment in Bulgaria also includes changes in the new Constitution, as well as in the Land-Use Law, the Law on Statistics and Public Information, and in the Accounting Law. There are proposed amendments to the Environmental Law that were proposed in January 1992 on behalf of the Council of the Ministers presently awaiting action in the Parliament.

There in no doubt that 1991 Environmental Law necessitates amendments and addenda, specifically as regards the chapters on information, assessment of the impact on the environment, responsibility. Our contemporary reality requires at least to allot greater attention also to the role and place in environmental protection activity of non-governmental organization and movements, including that of every citizen whose rights in this field are guaranteed by the Constitution of Republic of Bulgaria proper (1).

Active involvement of the citizens in working out of the new laws is not yet a regular process. This is absolutely valid also for the environmental legislation. Work on the amendments of the Environmental law when public participation was symbolic illustrates that fact. Citizens' involvement in development of regulations to implement the law do not exist yet as practice.

Procedure of public participation in the discussion of Environmental Impact Assessment (EIA) is treated by the law very generally. In section 20 is just mentioned that "all concerned physical and juridical persons shall have the right to participate in the consideration of the results of EIA,...". Neither the law nor the expected amendments do not provide for the existing three ways of public participation in EIA procedure (3):

- when the company that is proposing the project first determines that it must conduct an EIA, it must conduct public hearings to determine what types of environmental impacts of the project are of public concern and should be reviewed;

- when the company has prepared a draft of its EIA, the company must allow the public to submit written comments on the report and must also conduct public hearings to receive oral comments on the draft report;
- after the final EIA has been written and before the government agency must take action based on the assessment, the public has an opportunity to have one final input into the decision-making process.

3 INTERNATIONAL COOPERATION

Another important point for public participation in enforcement process is that for the people from Western countries is important to see how democratic structures similar to the Western ones are built to continue their support (financial and moral) for the changes in Central and Eastern Europe. One of these Western democratic mechanisms is interrelation between governmental agencies and private consulting companies, NGO, etc. Unfortunately this is not the situation in Bulgaria and in my view in other central and East European countries. Our ministries are trying to do as much as possible of the professional work on their own, instead mainly to coordinate and control the activities. This is fully valid also for the field of environment. This tendency is reflected mainly in the international projects while the bureaucrats are trying to keep their positions and staff and finally the old structures. This type of officers are very far from the understanding that their basic functions are planning, allotting, coordination and control, i.e. to manage the budget money provided for the given activity. They think that they must complete the whole work on their own. This leads the particular ministry to isolation and minimizing the participation of independent experts, private consulting companies, NGO's and citizens. Contracting of private consulting companies is a very important element of development of the private sector. Very often the governmental declarations for support of the democratic process and private sector contradict with the real practice.

Unfortunately official agencies of the western countries support sometimes these tendencies unintentionally, because it is rather easier to collaborate with the existing governmental institutions in Central and Eastern Europe. Creation of new private independent institutions is an extremely important element for the enforcement process in our countries. This is rather difficult but number of international projects require that.

Another problem dealing with public participation is the fact that in Central an East European countries do not exist tradition of private citizen's initiative official support. Usually the state officials are asking what organization stands behind the initiative. They feel much more comfortable when they have relations with organizations. But mechanism for citizen's initiative support do not exist yet.

4 ENVIRONMENTAL MANAGEMENT

A system of environmental management demands not only technical and administrative competence, but an acceptance by the people of the legitimacy of the process by which decisions are reached. The Ministry of Environment appears to be restricted in its outreach by the current organizational structure (there are only two people working in the public relations department), limited funding and, perhaps most important, by the lack of real traditions of public involvement in environmental decisionmaking through regular dissemination of information. In spite of its explicit inclusion in the draft environmental legislation, the issue of increased public participation in environmental policymaking is still a new and, understandably, somewhat foreign concept.

Of course some good experience exists also. For example, Environment Strategy Study for Bulgaria, a joint report of the Government of Bulgaria, the United States Government and the World Bank was completed on November 26, 1991. The Strategy was discussed in January 1992 with big participation of the public. Similar but not so successful was the discussion of the Bulgarian National Report for UN Conference in Rio de Janeiro.

Another example of public involvement in enforcement process is an 18-month long community-based demonstration project in Troyan, Bulgaria beginning in January 1992 and funded by U.S. Environmental Protection Agency. Guided by the Institute for Sustainable Communities (ISC), citizen committees are identifying, analyzing and ranking the environmental problems facing their community and developing appropriate clean-up strategies (2).

Shift from national to local control offers an opportunity to institutionalize a national program to assist communities in addressing their environmental. Citizens can identify the most serious problems facing the community, select clean-up strategies which are the most appropriate to meet their local needs, and financed these projects tailored to their specific financial capabilities. These solutions should be based upon meeting national environmental standards while implementing unique community or regional level solutions.

The following six principles should be considered in designing an effective nationwide program to assist Abshtinas address their environmental problems:

PRINCIPLE # 1: A municipal-based environmental assistance program should be founded upon broad public participation in environmental decision-making. Citizen participation is a fundamental tenant of a democratic society and is critical to build consensus and obtain support for environmental solutions. In addition, public participation encourages public commitment to environmental enforcement and the economic implications of responsible environmental decision-making. While effective environmental management demands technical and administrative competence, it can only be accomplished through a fundamental acceptance by people of the legitimacy of the process by with (environmental) decisions are reached.

Public involvement should be solicited during the following phases of a community program: problem identification, problem prioritization, proposed environmental solutions, prior to seeking public approval for financing and monitoring performance of clean-up strategies. A community-based environmental action program should also provide opportunities for NGO's and industries to constructively participate in the development of environmental policy formulation and implementation. Citizen advisory committees offer a viable model for soliciting and incorporating active public participation.

Effective public participation means effective public education on the present threats to health, ecology and well-being. Further, citizens need to be educated that effective solutions are contingent upon both individual responsibility and collective action.

PRINCIPLE # 2: Communities and citizens should have access to information about their environmental problems.

PRINCIPLE # 3: Environmental priority setting should be a fundamental first step in developing long-term environmental solutions.

PRINCIPLE # 4: NGO's should play a critical role in educating and involving the public to help to raise the public's environmental awareness. NGO's can also provide independent information on problems and solutions and serve as watchdog for compliance with environmental laws.

PRINCIPLE # 5: Environmental clean-up strategies should emphasize the implementation of low-cost and cost-effective solutions for improved environmental protection.

PRINCIPLE # 6: Municipalities need adequate funding to implement cost-effective environmental solutions.

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ENFORCEMENT OF EC ENVIRONMENTAL LEGISLATION: THE ROLE OF CITIZENS AND CITIZENS' GROUPS

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SUMMARY

EC environmental policy dates back to the early '70s. Despite the lack of an explicit legal basis for environment policy in the Treaty of Rome (1957), about 200 legal instruments (Directives, Regulations and Decisions) in the field of the environment have since been adopted by the Council of Ministers. A clear success story one would say. However, this formal record contrasts sharply with the marked lack of implementation and enforcement of EC environmental legislation by the Twelve Member States.

This paper will examine the importance of the role of citizens and citizens' groups in the enforcement of EC environmental legislation. In this context, particular attention will be paid to the right of complaint to the Commission, the right to petition the European Parliament, as well as to Directive 90/313/EEC on the freedom of access to information on the environment. Finally, it will look at the possibility for NGO's to participate in EC decision-making on environmental protection, as well as at the (im)possibility to have standing in the European Court of Justice.

1 ENFORCEMENT OF EC ENVIRONMENTAL LEGISLATION

1.1 Scope of the problem

The Ninth Annual Report on Commission monitoring of the application of Community law (1991) (1) states, that:

"The conclusions to be drawn from monitoring the application of Community environmental law in 1991 do not differ substantially from those set forth in the Eight Report.(2)

Whereas the body of Community law is growing larger and more elaborate, (...), the Member States' application of the existing law is still unsatisfactory on the whole.

Admittedly, several Member States are making a great effort, despite real difficulties, to make up the ground lost over a number of years. There is also a clear tendency away from legally questionable methods of transposal such as circulars.

Even so, a number of Member States continue to see the deadlines for transposal as optional or indicative. It is not unusual for implementing measures to provide for derogations which have no basis in the Directive transposed or for derogations strictly defined by the Community rules to be written into national law in the most flexible terms. Certain provisions of Directives adopted more than ten years ago are still a dead letter. Measures to implement Court rulings are by no means taken in every case, even after a second judgment based on Article 171 of the EEC Treaty.

It is the exception rather than the rule for the Commission to receive the reports provided for in many Directives, although this requirement has been met in the case of the Directive on bathing water.(3)

In this context, the Commission hopes that the new Directive on reports adopted towards the end of 1991 (4) will bring about a significant quantitative and qualitative increase in the environmental information available at Community level in the medium term.

Since most of the new-style reports will not be available until 1996-97 at the earliest, however, Member States will have to continue for the time being to supply the Commission with information under the arrangements currently in force, as stipulated in Article 7(2) of the Directive on reports.

In the medium term the Commission also expects a positive contribution from the measures which it is likely to adopt as a result of its research into the question of liability for environmental damage (5) and its discussions on the availability of legal remedies (6).

To improve efficiency in the application of Community law, possibilities for strengthening cooperation between the Commission and the Member States and for streamlining the Commission's monitoring activities will be explored.

Lastly, the Commission would stress that developments relating to environmental law, unlike other branches of Community law, are of considerable and ever-increasing interest to the public at large."

1.2 Enforcement of EC environmental Directives

1.2.1 Introduction

Most EC environmental legislation consists of "Directives".(7) Compared with the "Regulation", which has only been used a few times in EC environmental legislation (8), the Directive has inherent weaknesses. A Directive has to be transposed into national law in order to become effective; a Regulation is directly applicable in all Member States. Moreover, a Regulation has "direct effect", i.e. directly confers rights to citizens which the national courts have a duty to protect, while a Directive - generally speaking - has no "direct effect" (9).

Why then, has the Community not made more use of Regulations in the environmental field? The answer is simple, in principle: before the entry into force of the Single European Act (SEA) in 1987 (10), EC environmental legislation was mostly based on Article 100 EEC, Article 235 EEC, or a combination of the two. Article 100 EEC only speaks about "Directives" and does not offer the Commission the possibility to use a Regulation as a legal instrument under the circumstances.

Although the Regulation has marked advantages compared with the Directive, in particular as far as uniformity of application and enforcement are concerned, there are also "drawbacks". A Regulation is binding in its entirety and directly applicable, a Directive is binding as to the result to be achieved, but leaves to the national authorities the choice of form and methods. Member States tend to prefer Directives to Regulations in the environmental field, because the former leave them more "flexibility" than the latter. Moreover, as the Regulation is directly applicable, Member States tend to have an even closer look at the text of a Commission-proposal for a Regulation than they do in the case of a proposal for a Directive. Negotiations in the Council of Ministers about Regulations therefore risk to be even longer than about proposals for Directives. Although, since the entry into force of the Single European Act in 1987, neither Article 100a EEC nor Article 130s EEC restrains the Commission to the use of Directives in the environmental field, the Commission continues to show a preference for the use of these instruments rather than of Regulations (11).

1.2.2 Implementation and enforcement of EC environmental Directives: the role of Member States

Article 189 EEC provides, that: "A Directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed but shall leave to the national authorities the choice of form and methods". Moreover, Article 5 EEC stipulates, that: "Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty".

This implies, that: a) Member States have a duty to transpose a Directive into their national laws, after which the Directive becomes part of the national legislation of that Member State (formal implementation), and also that: b) Member States have to ensure that the objectives of the Directive are met in practice (practical implementation). It can therefore be concluded, that

not only the formal implementation of Directives is incumbent on Member States, but also the (primary) enforcement of EC environmental Directives.

1.2.3 Enforcement of EC environmental Directives: the role of the Commission

According to Article 155 EEC, it is part of the tasks of the Commission "to ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied".

The control of the implementation, in due time and correctly, of EC environmental Directives by the Member States forms part of this activity. The attribution of this competence to the Commission is an exclusive one: the Treaty gave a comparable mandate neither to the Council of Ministers nor to the European Parliament.(12) Moreover, this task is indivisible: the Commission is not allowed to delegate this power partially or totally, be it to another EC institution, or be it to any new authority which might be created.(13)

The Commission takes its task of monitoring the implementation of Directives very seriously. It controls whether the deadline for implementation (which is mentioned at the end of the text of each Directive, and which - normally - is 18 months after the date of notification of the Directive to the Member States) is respected, and whether the measures adopted comply with the terms of the Directive. Moreover, it verifies whether the national provisions are a correct and complete implementation of each Directive (formal compliance).

As the Commission lacks an environment inspectorate, it has to rely on information from citizens and citizens' groups (14) as well as on assistance from third parties (15), in order to be able to assess, if in practice, Member States have taken all the necessary measures "as to the result to be achieved" (16) (practical compliance).

Increasingly, the Commission receives relevant information pertaining to not correct/a lack of implementation of EC environmental Directives through complaints of citizens' or citizens' groups, or via Parliamentary questions (17). This information is extremely valuable to the Commission, as it often provides the Commission, and specifically its Directorate-General for Environment, Nuclear Safety and Civil Protection, with new information not previously gathered through the Community monitoring system which relies mainly on information from governments. It also forces the Commission to take action. Submitting a complaint to the Commission, may lead the Commission to open "infringement proceedings", which implies, that the Commission may eventually decide to take the offending Member State to the EC's Court of Justice in Luxembourg.

Infringement proceedings may be instituted in any of the following cases:

(a) If a Member State has not notified the Commission of the measures it has taken at national level to put EC environmental legislation into effect;
(b) If the national legislation of a Member State has been improperly harmonised with the provisions of EC environmental legislation;
(c) If the national legislation of a Member State has been properly harmonised with the provisions of EC environmental legislation but is not being properly applied.(18)

According to Article 169 EEC, infringement proceedings are instituted in three steps:

First, the Commission sends a "letter of formal notice", requesting the Member State in question to submit its comments on the presumed infringement of EC legislation, within a specified time limit (normally two months).

If the Member State fails to respond and persists in the infringement, the Commission sends a second letter, called a "reasoned opinion", setting a time limit for compliance with the Directive in question.

Finally, if the second step also fails to produce the desired results, the Commission may decide to take the case to the Court of Justice.

1.2.4 Enforcement of EC environmental Directives: the role of the Court of Justice

According to Article 173, paragraph 1 EEC, the role of the Court of Justice is "to review the legality of acts of the Council and the Commission other than recommendations or opinions. It shall for this purpose have jurisdiction in actions brought by a Member State (19), the Council or

the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers".

Member States are obliged to take measures to comply with the judgments of the Court of Justice (Article 171 EEC). Until recently, there were no sanctions. The Treaty on European Union (Maastricht, 1992), however, provides in Article 171 (new) the possibility for the Court to impose a lump sum or penalty payment on a Member State which fails to take the necessary measures to comply with the Court's judgment within the time-limit laid down by the Commission, after the latter has brought the case before the Court again. It is hoped, that this possibility will impress Member States more than the negative publicity due to a Court verdict in an infringement case (the only "sanction" in the past), and thereby improve Member States' record of implementation and enforcement of EC environmental legislation.

2 ENFORCEMENT OF EC ENVIRONMENTAL LEGISLATION: THE ROLE OF CITIZENS AND CITIZENS' GROUPS

2.1 Introduction

EC legislation does not recognise an individual right to the environment.(20) However, only recently, the EC's Heads of State or Government declared: "The development of higher levels of knowledge and understanding of environmental issues will facilitate more effective action by the Community and its Member States to protect the environment. The objective of such action must be to guarantee citizens the right to a clean and healthy environment, (...)".(21)

Although the EC is not yet able to guarantee its citizens the right to a clean environment, there are, on the other hand, two rights accorded to every citizen of the Community, enabling her/him to contribute to the implementation and enforcement of EC legislation in general, and of EC environmental legislation in particular. These rights are:

(1) the right of complaint to the Commission;(22)

(2) the right to petition the European Parliament.(23)

These two rights will be presented in more detail below. Apart from these two rights, this chapter will deal with:

the right to have access to environmental information, the right to participate in decision-making regarding environmental protection, as well as the right to be a party to actions before the Court of Justice.

2.2 The right of complaint to the Commission

2.2.1 The concept of the right and its legal basis

Any EC citizen has the right to lay a written complaint before the Commission concerning the adoption by any Member State of measures or practices contrary to the environmental legislation of the Community. The complaint is addressed to the Commission, because according to Article 155 EEC, the Commission is the "Guardian of the Treaty", i.e. the Commission is responsible for ensuring that the measures adopted by Community institutions are applied. As most EC environmental legislation consists of Directives, the exceptions being Regulations and Decisions (24), citizens' complaints refer to the non-implementation of existing Directives or - exceptionally - Regulations. It should be noted, that complaints may only be laid before the Commission, and not before national authorities (25); moreover, the right of complaint applies only to the implementation of existing legislation, not to the participation of citizens in the process of enacting legislation.(26)

2.2.2 Method of exercising the right of complaint

The right of complaint is exercised by sending a simple letter to the Commission. For the convenience of EC citizens who wish to exercise their right, the Commission has had complaint forms printed in all nine official languages of the Community (27), which are distributed free. The complaint form lists all the particulars that must be filled in and the documents that must be submitted (such as the complainant's personal particulars and evidence supporting the complaint of non-implementation of Community legislation), as well as the citizen's right to be kept informed after the complaint has been laid. The forms are distributed by the Commission's Directorate-General Environment, Nuclear Safety and Civil Protection in Brussels, and through the Commission's Information Offices in the Member States. A specimen of the form is attached as Annex 1. A particularly important characteristic of this right is, that its exercise involves no expense to the complainant (except from buying a stamp), so that it is accessible to everybody.

A special characteristic of the right of complaint is its "Community" nature. That is to say, that any EC citizen may make a complaint to the Commission about non-compliance with EC environmental legislation not only by her/his own country, but also by any other Member State (28). For instance, Greece's failure to comply with the Directive on the conservation of wild birds (29) by permitting the hunting of turtle-doves in spring (30) has been repeatedly denounced to the Commission by environmental organisations and citizens of other Member States.(31)

2.2.3 Results of exercising the right of complaint

The laying of a complaint before the Commission concerning the adoption by Member States of measures or practices contrary to the provisions of EC environmental legislation, may provide the Commission with data that had not previously been gathered through the Commission monitoring system, which relies mainly on information given by the governments of Member States. Thus the laying of a complaint may lead to the institution of infringement proceedings under Article 169 EEC. (32) If the Commission refers the case to the European Court and the Court finds that a Member State has failed to fulfil an obligation under the Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court.(33)

According to the Ninth Annual Report on Commission monitoring of the application of Community law (1991)(34), the number of complaints on environment laid per year per country, which led to the initiation by the Commission of infringement proceedings under Article 169 EEC, was as follows:

Table 1. Number of complaints on non-compliance with EC environmental legislation per Member State/per year, having led to the opening of infringement procedures by the Commission

Member State	1985	1986	1987	1988	1989	1990	1991
Belgium	-	7	4	6	18	17	7
Denmark	1	1	4	5	-	3	15
France	3	44	16	36	43	47	44
Germany	3	6	14	35	36	56	61
Greece	14	53	17	13	24	40	38
Ireland	-	-	0	12	24	19	29
Italy	2	13	16	15	22	33	20
Luxembourg	-	-	-	1	-	3	-
Netherlands	3	2	4	2	5	7	6
Portugal		2	7	9	10	19	13
Spain		5	29	51	91	111	65
United Kingdom	11	32	30	31	192	125	55
Total:	37	165	150	216	465	480	353

The Commission is also detecting more and more infringements of EC environmental legislation through its own services. The following table shows the number of infringements detected by the Commission's own inquiries (35):

Table 2. Number of infringements of EC environmental legislation per Member State/per year, detected by the Commission

Member State	1985	1986	1987	1988	1989	1990	1991
Belgium	1	3	3	3	3	5	5
Denmark	1	2	3	1	1	-	2
France	2	5	1	2	6	2	7
Germany	1	6	6	3	8	2	5
Greece	-	3	3	2	11	4	21
Ireland	1	5	1	2	6	-	3
Italy	-	3	6	3	7	9	19
Luxembourg	-	2	5	1	3	-	2
Netherlands	1	3	1	5	2	-	2
Portugal		-	2	-	2	2	12
Spain		-	4	4	10	16	18
United Kingdom	3	-	3	7	9	2	17

2.2.4 Conclusions

The number of complaints brought before the Commission is high and steadily increasing. Spectacular increases in the number of complaints on environmental issues took place in the years 1986: 165 complaints (compared with 37 during 1985) and 1989: 465 (compared with 216 during 1988). There is no clear explanation for this. At least not for the increase in 1986. A possible explanation for the increase in complaints during 1989 might be, that the European Environmental Bureau (EEB) launched quite a campaign on implementation and enforcement of EC environmental legislation during the European Year of the Environment (1987-88), involving its member-organisations in all EC Member States.(36)

There is considerable variation from one Member State to another in the number of complaints. In view of the "Community" nature of the right of complaint, this right offers a challenge to citizens and citizens' groups in the Community to co-operate with each other, to exchange information and experiences, especially in view of the vast number and experience of non-governmental organisations (NGO's) in some Member States, compared to others.

As far as the Commission is concerned, it considers complaints a resource rather than a nuisance.(37)

2.3 The right to petition the European Parliament (38)

2.3.1 The concept of the right and its legal basis

The second right, by which any EC citizen can play an active part in monitoring the implementation of EC environmental legislation, is the right to petition the European Parliament. This right is conferred upon all EC citizens by Rule 128 of the Rules of Procedure of the European Parliament. Rule 128, paragraph 1 (39) reads:

"Every citizen of the European Community shall have the right, individually or jointly with others, to address written requests or complaints (petitions) to the European Parliament".

2.3.2 Method of exercising the right to petition

The right to petition is exercised by simply sending a letter to the European Parliament.

Petitions should include personal particulars of each of the signatories, i.e. name, occupation, nationality and permanent address. Like complaints, petitions are registered (40). Like the exercise of the right to petition, the exercise of the right of complaint entails no cost to the petitioner(s). There are more similarities: the right to petition has also a "Community" nature.

The Parliament has not made petition forms available so far, but some Member States have introduced measures to assist citizens in exercising their right. In Britain, for instance, posters have been printed giving the address of a centre of access to the European Parliament, where any British citizen with a problem may write a letter to any (British) Member of the European Parliament (MEP).(41)

2.3.3 Results of exercising the right to petition

Petitions are first examined by the Parliamentary Committee on Petitions ("the Committee"), to see whether they are admissible, i.e. "whether the petitions registered fall within the sphere of activities of the Communities".(42)

In the case of admissible petitions, the Committee may decide to draw up a report or otherwise express its opinion on petitions it has declared admissible.(43) When considering petitions, the Committee may organize hearings or dispatch members to ascertain the facts of the situation in situ.(44)

With a view to preparing its opinions, the Committee may request the Commission to submit documents, to supply information and to grant it access to its facilities.(45) The Committee may submit motions for resolutions to Parliament on petitions which it has considered. The Committee may also request that its opinions be forwarded by the President of the Parliament to the European Commission or the Council of Ministers.(46)

Every six months, the Committee informs Parliament of the outcome of its deliberations, as well as of the measures taken by the Council or the Commission on petitions referred to them by Parliament.(47) The President of the European Parliament informs petitioners of the decisions taken and the underlying reasons.(48)

The number of petitions submitted by EC citizens to the European Parliament is rising steadily (49):

1983-84: 100 petitions

1984-85: 346 petitions.

The following environmental issues were - inter alia - covered by petitions submitted to Parliament during its 1984-85 session: inclusion of environmental provisions in the EC Treaties; sabotage of the Greenpeace ship in New Zealand; European legislation on the management of marine resources; trapping of songbirds; protection of the countryside; hunting of birds; sound levels of aircraft.(50)

2.3.4 Prospects for improvement

In view of the fact, that the citizen's right to petition the European Parliament used to be based on the Rules of Procedure of the Parliament only, Parliament felt handicapped in its efforts to investigate citizens' petitions properly and to offer solutions. Therefore, Parliament has tried, on several occasions, to strengthen its position in this area. (51)

Recently, the Treaty on European Union (Maastricht, 1992) provided a legal basis in the Treaty for EC citizens wishing to petition the European Parliament (Article 138d). Although there is now a legal basis for the right to petition the European Parliament in the Treaty, Article 138d restricts this right to matters which affect the petitioner(s) directly.(52)

The Treaty on European Union also added Articles on a temporary Committee of Inquiry (Article 138c), and on an Ombudsman (Article 138e) to the Treaty.

Article 138c provides, that the European Parliament may, at the request of a quarter of its members, set up a temporary Committee of Inquiry to investigate alleged contraventions or

maladministrations in the implementation of Community law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings. The temporary Committee of Inquiry ceases to exist on the submission of its report.

Article 138e stipulates, that the Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union, or any natural or legal person residing or having his registered office in a member State, concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

The Ombudsman will have as his task to conduct inquiries, either on his own initiative or on the basis of complaints submitted to him direct or through a member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where he establishes an instance of maladministration, he will have to refer the matter to the institution concerned, which shall have a period of three months to inform him of its views. The Ombudsman will then forward a report to the European Parliament and the institution concerned. The person lodging the complaint will be informed of the outcome of such inquiries.
The Ombudsman has to submit an annual report to the European Parliament on the outcome of his inquiries. He will be appointed after each election of the Parliament, for the duration of its term of office. He is eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament, if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

The Ombudsman shall be completely independent in the performance of his duties. He may not seek nor take instructions from anybody. Also, he may not, during his term of office, engage in any other occupation, whether gainful or not.

2.3.5 Conclusions

Both the right of complaint to the Commission and the right to petition the European Parliament give EC citizens the possibility to play an active role in the effective protection of the European environment. The provision of assistance to citizens wishing to exercise these rights - be it by printing and distributing complaint forms or by showing them the way how to petition the Parliament - is vital.(53) Not only for the citizens in order to be able to exercise their rights to the full extent, but also for the Community, as it will help the EC institutions to strengthen their monitoring capacity of the implementation and enforcement of EC legislation in general and EC environmental legislation in particular.

As far as the Parliament is concerned, it is hoped, that the new Treaty provisions regarding the temporary Committee of Inquiry, the right of complaint and the Ombudsman will reinforce its position vis-à-vis the other Community institutions and through a more effective parliamentary control will lead to a more democratic Community.

2.4 The right to have access to environmental information

2.4.1 Introduction and historical background

As of December 31, 1992 any natural or legal person is entitled to have free access to environmental information held by public authorities in EC Member States. The legal basis for this right is Council Directive 90/313/EEC, of 7 June 1990, on the freedom of access to information on the environment.(54)

The basis for Directive 90/313/EEC was laid in 1985, by a draft-resolution of the European Parliament, tabled by MEPs Ken Collins (UK) and Beate Weber (FRG).(55) In this draft, the Commission was invited to prepare a proposal for legislation concerning the right of the public to have freedom of access to environmental information.(56)

Parliament also asked its Committee on Environment, Public Health and Consumer Protection to prepare a report and a draft-resolution on the matter. Bram van der Lek (NL) was appointed rapporteur. Although the Committee on Environment, Public Health and Consumer

Protection accepted the Van der Lek-report, many proposals in it were rejected by the plenary as being "too radical". Finally, the rapporteur advised the plenary to vote against what was left of his proposals, as so many essential parts of his report had already been rejected.(57) This was accepted.

The European Parliament also decided, in 1985, to prepare an own initiative report on information concerning the activities of the EC. Pol Marck (B) was appointed rapporteur on this issue. He submitted his report to Parliament in 1987 (58). Parliament adopted his report by a Resolution, in which it asked that the public be given access to information held by the EC institutions (59).

As far as the Commission is concerned, it presented a draft for a Fourth Environment Action Programme of the European Communities (1987-1992) to the Council and Parliament on 15 October 1986. In the draft-Programme, it proposed, that "The Commission will study the need for, and desirability of, a Community "Freedom of Environmental Information Act" and will make appropriate proposals".(60)

Parliament stressed, in its Opinion on the Commission proposal for a Fourth Action Programme, that "access to information for all must be made possible by a specific Community programme".(61) The Council, when adopting the Fourth Environment Action Programme, assigned priority - inter alia - to "improved access to information on the environment".(62)

2.4.2 The legal situation in the Member States

One of the important reasons for the Commission to present a proposal for a Community legal instrument on freedom of access to information on the environment to the Council and Parliament was, that only a minority of EC Member States (Denmark, France, Italy, Luxembourg and The Netherlands) had specific legislation on this subject. Further, three Member States (Greece, Portugal and Spain) had general provisions in their Constitutions governing citizens' right to have access to information. Finally, Belgium, Germany, Ireland and the United Kingdom had no specific legislation governing public access to information.(63)

2.4.3 The form of the Community legal instrument

As on the one hand, the situation in the various Member States was so diverse, and on the other hand political pressure was building up calling for action on this issue (64), the Commission decided to present a proposal for a Community legal instrument on freedom of access to information on the environment to the Council and Parliament.(65)

As Article 130s EEC was chosen as a legal basis (66), there were two possibilities for the Commission: a Regulation or a Directive. The Commission chose the latter.(67)(68)

2.4.4 A general legal instrument or a specific one?

Before answering the question which type of Community legal instrument the Commission was going to propose, it also had to decide whether its proposal would be of a general nature, as Parliament had asked for in its Resolution of 22 January 1988 (69), or whether it would be limited to environmental information alone.

The Commission chose to restrict its proposal to environmental information, for the following reasons: first, there was no clear Community competence to propose an instrument of a general nature; secondly, Article 235 EEC as a legal basis for such an instrument was less justified than Article 130s; thirdly, a Community legal instrument on freedom of access to information in general has more to do with human rights, a field in which the Community operates with great caution; fourthly, there was a clear political demand for a Community legal instrument regarding freedom of access to information on the environment, the need for a Community legal instrument of a general nature was less obvious. Moreover, there was fear, that a Commission proposal of a general nature was likely to meet more criticism in the Council, than a proposal of a more restricted nature.

As neither the European Parliament, nor the Economic and Social Committee, nor the Council objected to the more limited scope of the Commission proposal, the Commission felt reassured in having opted for a Community legal instrument on freedom of access to environmental information alone.(70)

2.4.5 Addressed only to the Member States or also to the EC institutions?

Although the text of Article 1 of Directive 90/313/EEC on the freedom of access to information on the environment leaves open the possibility for a wide interpretation, Article 2 and following of the Directive make clear that it is addressed to the Member States only.
During the preparation of the Commission-proposal, the prevailing view within the Commission was, that an obligation laid down in an EC Directive could not address the EC institutions, as a Directive was addressed to the Member States.(71) That's why the Commission announced in the explanatory memorandum to the proposal for a Directive, that it would undertake other initiatives in order to apply the same principle to the EC institutions.(72)

Article 214 EEC stipulates, that Community officials are required not to disclose information of the kind covered by professional secrecy. It follows from Article 3, paragraph 2 of Directive 90/313/EEC, which enumerates in an exhaustive way the reasons for refusal of a request for environmental information, that professional secrecy as such is not a valid reason for refusal (73); the right to have access to environmental information held by public authorities applies, notwithstanding the fact that the principle of professional secrecy exists in all Member States. Thus, the conclusion is, that environmental information held by national administrations does not fall under the general principle of professional secrecy, provided it does not fall under one of the categories listed in Article 3, paragraph 2 of Directive 90/313/EEC. The same reasoning is applicable to the interpretation of Article 214 EEC, which, thus, does not oppose the application of the provisions of the Directive to the EC institutions.(74)

2.4.6 The text of Directive 90/313/EEC

According to Article 1, the object of Directive 90/313/EEC is to ensure freedom of access to, and dissemination of, information on the environment held by public authorities and to set out the basic terms and conditions on which such information should be made available. Not only does Directive 90/313/EEC create a citizens' right to have access to environmental information held by public authorities, but the authorities also have to ensure the "freedom" to have access to this information. Thereby the Directive puts this right in the context of a human right.(75)

"Information relating to the environment" (76) means "any available information in written, visual, aural or data-base form on the state of water, air, soil, fauna, flora, land and natural sites, and on activities (including those which give rise to nuisances such as noise) or measures adversely affecting, or likely so to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes".(77)
It is interesting to note, that the definition of "information relating to the environment", the notion that is used throughout Directive 90/313/EEC, is not limited to the state of the environment of the Community. Information about exports of dangerous products or installations fall within the scope of this definition, as well as, for instance, data concerning the state of the ozone layer, world climate or tropical forests.(78)

"Public authorities" are defined as any public administration at national, regional or local level with responsibilities, and possessing information, relating to the environment with the exception of bodies acting in a judicial or legislative capacity.(79)

The text of Article 3 of the Directive makes it even more clear, that the right to have freedom of access to information on the environment held by public authorities is a fundamental right, and not just a possibility.(80) It reads as follows:

"Save as provided in this Article, Member States shall ensure that public authorities are required to make available information relating to the environment to any natural or legal person at his request and without his having to prove an interest".

The reference to "any natural or legal person" does not contain any geographical limitation. This implies, that also people living in another Member State, or even outside the Community can invoke this right.(81) Moreover, it is not necessary to prove an interest. The character of a fundamental right is enhanced by the limited, exhaustive list of reasons for refusal in Article 3, paragraph 2 (82), and the possibility for appeal laid down in Article 4 of the Directive.

A public authority has to respond to a person requesting information as soon as possible and at the latest within two months. The reasons for a refusal to provide the information requested must be given.(83) A person who considers that his request for information has been unreasonably refused/ignored/inadequately answered by a public authority, can seek judicial or administrative review of the decision in accordance with the relevant national legal system.(84)

Member States may charge the person who has made a request for environmental information for supplying her/him with this information, but such a charge may not exceed a reasonable cost.(85)

Bodies with public responsibilities for the environment and under the control of public authorities have to make available information relating to the environment on the same terms and conditions as public authorities.(86)

Member States will have to provide general information to the public on the state of the environment through - inter alia - the periodic publication of state of the environment reports. (87)

Finally, Member States have to report to the Commission by the end of 1996 at the latest, on the experience gained with the application of Directive 90/313/EEC. In this light, the Commission will make a report to the European Parliament and the Council of Ministers together with any proposal for revision, which it deems appropriate.(88)

2.4.7 Conclusion

Directive 90/313/EEC has created a third citizens' right relating to the environment: the right to have freedom of access to information relating to the environment held by public authorities in the Community. In fact, this is not just another right for EC citizens alone: it is an universal human right in the sense that any natural or legal person, irrespective of the place where he/she lives, and without having to prove an interest, can invoke this right in order to obtain information relating to the environment from public authorities within the Community. This information is not confined to information relating to the environment within the Community. It might very well be information relating to the state of the environment in Eastern Europe or concerning the state of the ozone layer.(89)

2.5 The right of citizens to participate in EC decision-making relating to environmental protection

2.5.1 Introduction

There is no right for EC citizens or citizens' groups to participate in EC decision-making relating to the protection of the environment.

The Commission has the exclusive right to make proposals to the Council of Ministers and the European Parliament, and decisions at EC level are generally taken by the Council. The Council of Ministers, which consists of one representative per Member State, and whose composition changes depending on the subjects being discussed, always meets behind closed doors and its minutes are confidential.

Although the Commission has set up an important number of committees to assist it in its tasks and/or to take decisions which need the involvement of Member States, there does not seem to be any representative of any national, European or international environmental organisation in any advisory committee existing with the Commission.(90)

Plenary sessions of the European Parliament, which are normally held each month in Strasbourg, are open to the public, and so are the sessions of its Committee on the Environment, Public Health and Consumer Protection, which are held in Brussels. The Environment Committee

of the European Parliament sometimes organises public hearings on environmental matters, to which environmental organisations are regularly invited.

Despite a reinforcement by the Single European Act (1987) and the Treaty on European Union (Maastricht, 1992) of its role in the EC's legislative process, the European Parliament, contrary to national parliaments in the Member States, still has largely only an advisory role regarding draft-EC legislation, except where the co-decision procedure of Article 189b of the Treaty on European Union applies.

2.5.2 Recent developments and future prospects

Although the present situation as far as citizens' participation in EC decision-making on the environment leaves much to be desired, an improvement of the situation is imminent.

Recently, the Commission presented to the Council and Parliament a proposal for a Fifth Environment Action Programme of the European Communities (1993-2000), entitled "Towards Sustainability".(91) The approach adopted in drawing up this new policy programme differs from that which applied in previous EC environmental action programmes:

- It focuses on the agents and activities which deplete natural resources and otherwise damage the environment, rather than wait for problems to emerge;
- It endeavours to initiate changes in current trends and practices which are detrimental to the environment, so as to provide optimal conditions for socio-economic wellbeing and growth for the present and future generations;
- It aims to achieve such changes in society's patterns of behaviour through the optimum involvement of all sectors of society in a spirit of shared responsibility, including public administration, public and private enterprise, and the general public (as both individual citizens and consumers);
- Responsibility will be shared through a significant broadening of the range of instruments to be applied contemporaneously to the resolution of particular issues or problems.

Keywords of the Fifth Action Programme are "subsidiarity" (92) and "shared responsibility". In Chapter 9 (Implementation and Enforcement) of its proposal for a Fifth Environment Action Programme, the Commission notes, that:

"Satisfactory implementation and enforcement of the policy, strategy and measures set out in this Programme at all levels of society will be imperative if the objectives of environmental protection, sustainability of socio-economic activity and development and the integrity of the Internal Market are to be achieved. Ultimately, measures designed to facilitate sustainable development and involving all economic actors through the application of a broad range of instruments should be self-enforcing. For the foreseeable future, however, the likelihood is that the effectiveness of implementation will be closely related to the quality of the measures themselves and of the arrangements for their enforcement.

In the past, a number of factors has contributed to problems of implementation, including

- a lack of overall policy coherence, partly due to an evolving, sometimes shifting, agenda as the scope of environmental policy grew, and partly because much of the environmental legislation was developed in an ad hoc manner;
- the narrow choice of instruments, whereby perhaps too great a reliance was placed on legislation of the "command and control" type;
- the need for unanimous agreement within the Council of Ministers, frequently necessitating political compromise, has resulted in some cases in measures which are difficult to put into practical operation;
- the preponderant recourse to Directives as the form of legal instrument has often given rise to difficulties in their incorporation into quite widely differing national statutory codes and administrative procedures with consequential problems of interpretation and practical implementation;

- management inadequacies at all administrative levels, from Community down to local authorities."(93)

According to the Commission, it is important to learn from these past experiences and to take appropriate steps to improve this particular aspect of policy. Among the reforms which are required are better preparation of measures, including improved consultation arrangements, more effective integration with complementary measures, better practical follow-up to legislative measures, both administrative and operative, and stricter compliance checking and enforcement.

In order to institute these reforms, the Commission intends to set up the following ad hoc dialogue groups: (a) a Consultative Forum, (b) an Implementation Network (94), and (c) an Environment Policy Review Group (95).

The Consultative Forum will be established to provide for consultation and information exchange between the industrial/ production sectors, the business world, regional and local authorities, professional associations, trade unions, environmental and consumer organisations and relevant Directorates-General of the Commission. It is envisaged, that this Forum will act as an umbrella organisation, with specialist subgroups set up as necessary to deal with specific topics or issues. The common interest in moving towards sustainability and the need to increase levels of awareness and consensus in the application of shared responsibility underline the importance of this Forum.

Citizens' groups representing environmental interests at EC level, e.g. the European Environmental Bureau (EEB), World Wide Fund for Nature-EC office, Friends of the Earth-EC coordination office and Greenpeace's EC-Unit will be invited to sit on the Consultative Forum and participate actively in it.

The Consultative Forum, the Implementation Network and the Environment Policy Review Group are meant to serve, in a special way, the promotion of a greater sense of responsibility among the principal actors in the partenariat (public authorities, public and private enterprise, the general public), and to ensure effective and transparent application of measures.

2.5.3 Conclusion

There is no citizens' right to participate in EC decision-making relating to environmental protection. However, it is hoped that citizens' groups representing environmental interests at EC level, will participate actively in the Consultative Forum on the environment, which is about to be set up and whose task it will be to advise the Commission on the future course of EC environmental policy.

2.6 The right of citizens or citizens' groups to initiate proceedings on environmental matters before the European Court of Justice

2.6.1 Introduction

According to Article 173, paragraph 2 of the Treaty, any natural or legal person may institute proceedings against an act of the Commission or the Council which is of direct and individual concern to him. However, according to the jurisprudence of the European Court of Justice (ECJ), and except in those cases in which a decision addressed to an individual has been wrongly adopted in the form of a Regulation, Directives and Regulations are Community legal instruments which do not affect persons directly or individually, but only indirectly and collectively. In principle therefore, private persons cannot institute proceedings against Directives or Regulations. Moreover, Article 173, paragraph 1, second sentence, limits the right for natural or legal persons to initiate proceedings to the lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or secondary Community law, or misuse of power. These limitations, together with the narrow interpretation by the Court of "direct and individual" concern has resulted in the past in the dismissal of all actions brought by citizens on the basis of Article 173 EEC. Citizens' groups are in no better position, since they are also not "directly" affected by Directives or Regulations.(96)

According to Article 175 EEC, any natural or legal person may complain to the European Court of Justice that an institution of the Community has failed to address to that person any act other than a Recommendation or an Opinion. However, EC Directives or Regulations are addressed to the Member States or the general public collectively, and never to citizens' groups or citizens individually. Therefore they cannot - in practice - initiate proceedings for failure to act either.(97)

It can be concluded, therefore, that neither Article 173 EEC nor Article 175 EEC provide practicable grounds for citizens or citizens' groups to institute proceedings on environmental matters before the European Court of Justice.(98)

2.6.2 Third party intervention on environmental issues

According to Article 37, paragraph 2 of the Statutes of the European Court of Justice, persons establishing "an interest" in the result of any case submitted to the Court can intervene in the case to support the submissions of one of the parties. Further details are regulated by Article 93 of the Rules of Procedure of the ECJ.

Until now, no third party intervention has taken place in an environmental case, neither by an individual citizen nor by an environmental organisation, though a number of cases might have been appropriate for such intervention. Therefore it is hard to say whether such a request would stand a chance.(99)

There are, however, precedents in the field of consumer protection. On June 1, 1984, BEUC (100) applied to the Registrar of the ECJ for leave to intervene in two cases brought by Ford Motor Company against the Commission concerning the application of Articles 85,86 EEC (rules on competition), in order to support the submissions of the defendant. The Court, in its decision of July 4, 1984 gave leave to BEUC to intervene in the proceedings, on the following grounds:

- BEUC is a member of the EC's Consumers' Consultative Committee established by Commission Decision 73/306 of September 25, 1973. In view of its objectives, BEUC is deemed to have a legitimate interest in intervening in these proceedings;
- The Commission, as defendant, takes the view that BEUC should be allowed to intervene.

Moreover, in answer to earlier applications by BEUC for leave to intervene in Joined Cases 228 and 229/82 involving the same litigants (i.e. Ford v. the Commission), the Court had granted leave to intervene by its Decisions of September 21, 1982 (164446) and of December 1, 1982 (168845), on the grounds that BEUC had sufficient interest for it to be allowed to intervene.(101)

The European Environmental Bureau (EEB)(102), engages in similar activities as BEUC, but in the field of nature conservation and environmental protection. In view of the similarities between the EEB and BEUC in their aims, their mode of operation and their links with the EEC, it seems reasonable that in cases relating to nature conservation or environmental protection, the EEB should be allowed to appear before the European Court of Justice on similar grounds as BEUC.(102)

The European Parliament, too, has declared to be in favour of the right of non-governmental organisations (NGO's) to bring cases before the European Court of Justice. According to Parliament, consumers' associations and environmental organisations should be granted the right to freely pursue the achievement of their aims; therefore, they should be able to apply to the Court or to initiate administrative proceedings whenever the collective interest of consumers or the environment is affected or in danger of being affected. Parliament has asked the Commission to submit proposals to this effect to the Council of Ministers.(103)

2.6.3 Legal aid to citizens' groups for actions in the ECJ

According to Article 76 of the Rules of Procedure of the European Court of Justice, any party who is wholly or in part unable to meet the costs of proceedings, may at any time apply for legal aid. The application for legal aid need not be made through a lawyer. The application must be accompanied by evidence of the applicant's need of assistance, in particular by a document from the competent authority certifying the lack of financial means of the applicant.

The Chamber of the Court to which the Rapporteur belongs has to decide, after considering the written observations of the opposite party and after hearing the Advocate-General, whether legal aid should be granted in full or in part, or whether it should be refused. Next, the Chamber will make an order, against which no appeal is possible.

The Chamber may, at any time, either on its own initiative or on application, withdraw legal aid if the circumstances which led to its being granted alter during the proceedings.
Where legal aid is granted, the cashier of the Court shall advance the funds necessary to meet the expenses.

The fore-mentioned Rules of Procedure of the European Court of Justice may prove of invaluable help to environmental organisations that wish to intervene as a party in a case before the Court relating to nature conservation or environmental protection, but lack the necessary financial resources to do so. Legal aid may be granted by the Court to European NGO's, such as the EEB, as well as to national NGO's.(104)

2.6.4 Conclusion

Although Article 173 EEC and Article 175 EEC provide in principle a right for citizens or citizens' groups to initiate proceedings against an act of the Commission or the Council which is of direct and individual concern to them, in practice all actions brought by individuals on the grounds of either Article 173 EEC or Article 175 EEC have been dismissed by the European Court of Justice.

Although environmental NGO's have never in the past intervened as a third party in a case before the European Court of Justice, precedents involving BEUC, make it more likely that such a request, made on the basis of Article 37, paragraph 2 of the Statutes of the Court of Justice, will be accepted by the Court. Such action can be facilitated by applying for legal aid.

3 FINAL CONCLUSIONS

Within the Community, there is a right for citizens and citizens' groups to send a written complaint to the Commission, if a Member State adopts measures or practices contrary to Community legislation in general, and Community environmental legislation in particular. This may lead to "infringement proceedings" by the Commission against the offending Member State, which could eventually result in the situation that the offending Member State is taken to the European Court of Justice.

There is also an EC citizens' right to petition the European Parliament.

As from December 31, 1992, there will be a right for every natural or legal person at his request and without his having to prove an interest, to have freedom of access to environmental information held by public authorities in the Community. This right is neither limited to EC citizens, nor geographically limited.

Although, there is currently no citizens' right to participate in EC decision-making relating to nature conservation or environmental protection, the Commission is about to set up a Consultative Forum on the environment, involving representatives from industry, trade-unions, regional- and local authorities, as well as from consumer- and environmental organisations. The Consultative Forum will advise the Commission about the future course of EC environmental policy.(105)

There is no citizens' right to have standing in the European Court of Justice, despite the theoretical possibilities mentioned in Articles 173 EEC and 175 EEC. However, there is a fair

chance that environmental NGO's might be granted the right to intervene as a third-party in a case in the result of which they have an interest, considering the precedents involving BEUC.

The overall conclusion is, that citizens and citizens' groups can play, and are in effect playing, an important role in the enforcement of EC environmental legislation, particularly in a situation where there is no EC inspectorate on the environment.

REFERENCES

(1) Ninth Annual Report on Commission monitoring of the application of Community law (1991), COM (92) 136 final of 12 May 1992, pp.245-246.
The Commission has published reports on the monitoring of the application of Community law ever since 1984:
- First Annual Report COM (84) 181 final, 20.4.1984;
- Second Annual Report COM (85) 149 final, 23.4.1985;
- Third Annual Report COM (86) 204 final, 3.6.1986, published in OJ No C 220, 1.9.1986;
- Fourth Annual Report COM (87) 250 final, 24.8.1987, published in OJ No C 338, 16.12.1987;
- Fifth Annual Report COM (88) 425 final, 13.9.1988, published in OJ No C 310, 5.12.1988;
- Sixth Annual Report COM (89) 411 final, 22.12.1989, published in OJ No C 330, 30.12.1989;
- Seventh Annual Report COM (90) 288 final, 22.5.1990, published in OJ No C 232, 17.9.1990;
- Eight Annual Report COM (91) 231 final, 31.7.1991, published in OJ No C 338, 31.12.1991.

(2) The Eight Annual Report on Commission monitoring of the application of Community law (1990), COM (91) 231 final of 31.7.1991, concludes - inter alia - on page 305:
"It must be noted that Community directives are seldom transposed in the national law of the Member States within the period they describe. The situation is made worse by the fact that in most Member States management of the environment law is considered to be an adminstrative question and that numerous circulars, administrative rules and other instruments obscure the transparency of this area of the law.(...)
Cases of non-conformity of national provisions with Community environment measures are relatively numerous. (...)
The most pressing problem concerns the practical application of environmental provisions by the Member States and the Commission's obligation to ensure that it happens".

(3) Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ L31 of 05.02.76, p.1).

(4) Council Directive 91/692/EEC of 23 December 1991 concerning standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (OJ L377 of 31.12.91, p.48).

(5) On 15 September 1989, the Commission sent a proposal to the Council of Ministers and the European Parliament, for a Council Directive on civil liability for damage caused by waste, COM (89) 282 final - SYN 217 (OJ C251 of 4.10.89).
The Commission intends to present a Communication to the Council and Parliament on environmental liability, in the near future.

(6) The Commission proposal for a Fifth Environment Action Programme, "Towards Sustainability", COM (92) 23 final - VOL.II, of 27 March 1992, states on this issue:

"Individuals and public interest groups should have practicable access to the courts in order to ensure that their legitimate interests are protected and that prescribed environmental measures are effectively enforced and illegal practices stopped" ("Towards Sustainability", pp.76-77).
The Commission is currently preparing a proposal for a Directive harmonizing the conditions for standing of citizens and citizens' groups in the national courts on environmental issues. The Commission proposal will be sent to the Council and Parliament before the end of this year.

(7) EC legislation knows three legally binding instruments: the regulation, the directive and the decision.
According to Article 189 EEC:
A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.
A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.
A decision shall be binding in its entirety upon those to whom it is addressed.
Recommendations and opinions shall have no binding force.

(8) EC environmental regulations are the exception, rather than the rule. They have mostly been used to implement international conventions within the Community (see for instance: Regulation 88/3322 on CFC's, OJ 1988, n° L297, p.1; Regulation 88/1734 concerning export from and import into the Community of certain dangerous chemicals, OJ 1988, n° L155, p.2 and Regulation 82/3626 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora, OJ 1982, n° L384, p.1), or in the case of the proposal for a Regulation on existing chemicals (OJ 1990, n° C276, p.1) or in the case of the proposal for a Regulation on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1990, n° C189, p.9).

(9) "Direct effect" of a provision of Community law means that the provision is directly applicable in Member States without the adoption of any other national legislation thus directly conferring to citizens rights which the national courts have a duty to protect.
Regulations have "direct effect" according to Article 189 EEC, which states that Regulations are directly applicable in all Member States. Directives have "direct effect" only in some cases arising from the case law of the EC's Court of Justice. They have "direct effect" only if:
a) The Member State's obligation is unconditional and sufficiently clear and precise;
b) The provisions do not leave any substantial latitude or discretion to the national authorities;
c) The provisions are capable of being enforced as a rule of law by the courts.

(10) The Single European Act (1987) provided EC environmental policy for the first time in its history since 1973 with a solid legal basis in its Title VII (Environment), the Articles 130r-130t. The environment provisions in the Treaty have been reinforced by the Treaty on European Union (Maastricht, 1992), notably by its Articles B, 2, 3k and 130r-130t (new).

(11) Since the entry into force of the Single European Act in 1987, the Commission made only use three times of a Regulation, i.e. in the case of the proposal for a Regulation on the establishment of the European Environment Agency and the European Environment Monitoring and Information Network (OJ 1989, n° C217, p.7), in the case of the proposal for a Regulation on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1990, n° C189, p.9), and regarding the proposal for a Regulation on existing chemicals (OJ 1990, n° C276, p.1). See also: note (8) supra.

(12) See also: Rolf Wägenbauer, "European Community's prospects for enforcement of Directives", in: Proceedings (Volumes I and II) of the International Enforcement Workshop (May 8-10, 1990; Utrecht, The Netherlands), p.180.

(13) In its Report on the Proposal from the Commission for a Council Regulation on the establishment of the European Environment Agency and the European Environment Monitoring and Information Network (Document A 3-0027/90 of 5 February 1990; rapporteur: Mrs.Beate Weber) the Committee on the Environment, Public Health and Consumer Protection of the European Parliament tabled an amendment (No.18) to Article 2 of the draft-Regulation, suggesting the addi-tion of a monitoring and inspection task to the proposed data-collection task of the Agency. The Commission and the Council rejected this amendment, with the argument that the enforcement task of the Commission is indivisible. It cannot be delegated to any other institution, be it within- or outside the Community framework. A compromise was finally found in Article 20 of Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European environment information and observation network (OJ 1990, L120, p.1), which specifies - inter alia:
"No later than two years after the entry into force of this Regulation, and after having consulted the European Parliament, the Council shall, on the same basis as this Regulation and on the basis of a report from the Commission with appropriate proposals, decide on further tasks for the Agency in particular in the following areas:
- associating in the monitoring of the implementation of Community environmental legislation, in cooperation with the Commission and existing competent bodies in the Member States; (...)".
It has to be noted, that the terminology has been very carefully chosen: "associating in the monitoring of ... (etc.)", and not "monitoring of ...".

(14) See for details about the rôle of citizens and citizens' groups in the enforcement of EC environmental legislation: Chapter II below.

(15) E.g.: N.Haigh with G.Bennett, P.Kromarek and Th.Lavoux: "European Community Environmental Policy in Practice". Vol I Comparative Report: Water and Waste in Four Countries (A Study of the Implementation of the EEC Directives in France, Germany, Netherlands and United Kingdom), 1986, Graham and Trotman.

(16) Article 189 EEC.

(17) Statistics on complaints about infringements (C) and infringements of EC environmental legislation detected by the Commission's own inquiries (I):

	Total	
	C	I
1985:	37	10
1986:	165	32
1987:	150	38
1988:	216	33
1989:	465	60
1990:	480	42
1991:	353	113

(Source: Ninth Annual Report on Commission monitoring of the application of Community law (1991), COM(92) 136 final of 12 May 1992, p.120).

(18) See: A. Kallia Antoniou: "Your Rights under European Community Environment Legislation", (1987), booklet prepared for the European Environmental Bureau (EEB), p.11.

(19) According to Article 170 EEC, a Member State which considers that another Member State has failed to fulfil an obligation under the Treaty, may bring the matter before the Court of Justice. However, it cannot directly go to the Court. First, it has to bring the matter before the Commission. Then, the Commission has to deliver a "reasoned opinion" after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case, both orally and in writing. If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

(20) Ludwig Krämer, "Le droit à l'environnement et le droit communautaire", in: Proceedings of the International Conference Guaranteeing the Right to the Environment (Lisbon, 4-6 February 1988), Fundaçao Calouste Gulben kian, p.125.

(21) "The Environmental Imperative", Declaration on the Environment by the European Council (Dublin, 25-26 June 1990), p.9.

(22) The right of complaint to the Commission of the European Communities has been derived from the founding treaty of the European Economic Community, the Treaty of Rome (1957), and the practice adopted in its application.

(23) The right to petition the European Parliament is derived from Chapter XIV (Petitions), Rule 128 of the Rules of Procedure of the European Parliament.

(24) See: note (8) supra.

(25) However, the Commission proposal for a Fifth Environment Action Programme, "Towards Sustainability", COM(92) 23 final - VOL.II of 27 March 1992, proposes on page 76 that:
"An accessible and efficient complaints facility should be developed at local, regional and national level to improve confidence between public, competent authorities and industrial or business establishments. In this context, complaints should be considered less a nuisance than a resource. They are an indication to enforcement agencies of something amiss and can keep the competent authorities in touch with the realities of situations from which they may be geographically remote or which they are not in a position to monitor on a continuing basis".

(26) A. Kallia-Antoniou: "The Rights of Citizens and Non-Governmental Organizations arising from Community Environmental Legislation", overview prepared for the European Environmental Bureau (EEB), June 1987, p.15.

(27) Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish.

(28) See: A.Kallia-Antoniou, note (26) supra, p.16.

(29) Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended.

(30) Minister of Agriculture, ministerial order 161377/1247/1985, Govt.Gazette No.214 Part II, and earlier orders on the same subject. See also: A.Kallia-Antoniou, note (26) supra, p.16.

(31) E.g. the Royal Society for the Protection of Birds (RSPB) in the United Kingdom.

(32) See: section I.2.3 supra.

(33) Article 171 EEC; see also section I.2.4 supra.

(34) See: note (1) supra, p.120.

(35) See: note (1) supra, p.120.

(36) During the European Year of the Environment (1987-88), the EEB launched quite an extensive campaign among its member-organisations to make them aware of the problems of implementation an enforcement of EC environmental legislation. This campaign consisted - inter alia - of:
the publication and distribution of a booklet on the right of complaint, called "Your rights under EC environmental legislation" (in French and English); the publication of a more extensive paper entitled: "The rights of citizens and non-governmental organizations arising from Community environmental legislation" (in French and English); the preparation of a paper on "Enforcement and compliance with EC environmental law" and the organisation - with help from the Commission - of a conference on this theme in London; and, last but not least, the organisation of an enforcement campaign in the Twelve Member States concerning three environmental Directives: the Bathing Water Directive, the Birds Directive and the Seveso Directive.
For each Directive, a manual was prepared in all nine official languages of the Community, and selected non-governmental organisations (NGO's) worked with this manual for about nine months in order to get an idea and an overview of the problems of implementation and enforcement of these three Directives in all Member States. All in all 36 different NGO's were involved in this campaign in the twelve EC Member States.
The results of the campaign were mixed, which is no surprise as it was the first time for most NGO's that they got involved in such a campaign. However, the campaign created a clear awareness on the side of the NGO's about the serious problems of implementation and enforcement of EC environmental legislation and about the role citizens and citizens' groups can play to improve the situation.

(37) See: note (25) supra.

(38) Petitions to the European Parliament are governed by Chapter XIV (Petitions), Rules 128-130, of the Rules of Procedure of the European Parliament. Rule 128 deals with "submission and referral of petitions"; Rule 129 concerns "examination of petitions", and Rule 130 regards "notice of petitions".

(39) European Parliament, Rules of Procedure (5th edition), July 1989, p.91.

(40) "Petitions shall be entered in a register in the order in which they are received if they comply with the conditions laid down in paragraph 2 (name, occupation,...,etc.); those that do not shall be filed without further action, and the petitioner shall be informed of the reasons therefor" (Rule 128, paragraph 3).

(41) See: A.Kallia-Antoniou, note (26) supra, p.19.

(42) Rule 128, paragraph 4.

(43) Rule 129, paragraph 1.

(44) Rule 129, paragraph 2.

(45) Rule 129, paragraph 3.

(46) Rule 129, paragraph 4.

(47) Rule 129, paragraph 5.

(48) Rule 129, paragraph 6.

(49) According to the summary minutes of the sitting of the European Parliament on 3.1.1986, PE 102.901, PE 50, Appendix I; see: A.Kallia-Antoniou, note (26) supra, p.20.

(50) See: A.Kallia-Antoniou, note (26) supra, p.21.

(51) See: A.Kallia-Antoniou, note (26) supra, pp.21-22 for examples of this.

(52) Rule 128, paragraph 4 of the Rules of Procedure of the European Parliament, on the other hand, does not make this restriction. It only stipulates, that petitions have to "fall within the sphere of activities of the Communities" in order to be admissible.

(53) Starting from the premise, that "everybody should know the law", the European Commission's Directorate-General Environment, Nuclear Safety and Civil Protection has just published a collection of texts of all EC environmental legislation up to 1 September 1991, in seven volumes, in English. It is the intention to publish this collection of texts in all other official Community languages by the end of 1992 in order to facilitate access of EC citizens to the texts of EC environmental legislation.

(54) OJ L158/56 of 23.6.90.

(55) European Parliament, document B2-736/85 of 16.07.1985.

(56) See: L.Krämer, "La Directive 90/313/CEE sur l'accès à l'information en matière d'environnement: genèse et perspectives d'application" dans: "L'économie et le social dans le marché commun", p.866.

(57) See: Bram van der Lek, "Democracy and the right to know", in: Proceedings of the International Conference Guaranteeing the Right to the Environment, (Lisbon, 4-6 February, 1988), Fundaçao Calouste Gulbenkian, p.173.

(58) European Parliament, document A2-208/87 of 10.11.1987; see also: L.Krämer, note (56) supra, p.867.

(59) European Parliament, Resolution of 22.01.1988, OJ 1988, n° C49, p.175; see also: L.Krämer, note (56) supra, p.867.

(60) OJ 1987, n° C70/1, paragraph 2.6.2; see also: L.Krämer, note (56) supra, p.867.

(61) OJ No C156 of 15.6.1987, p.138.

(62) OJ C328/1 of 7.12.1987, p.4, item (u).

(63) See: L.Krämer: note (56) supra, p.867.

(64) It was the aftermath of the accident with the nuclear reactor in Tchernobyl, and the public at large throughout Europe was calling for more openness regarding data on environmental pollution held by public authorities; see also: L.Krämer, note (56) supra, p.867.

(65) Originally, there was some discussion within the Commission about a "White Paper" on the issue, but this idea was almost immediately discarded, as the Commission felt very strongly that the time for lengthy studies and debate was over, and the time to act was there. Equally, the possibility of a Resolution was dismissed, as it is not a legally binding instrument. The Commission feared, that a Resolution would not change anything in the actual situation in the Member States. (See: L.Krämer: note (56) supra, p.868.)

(66) According to L.Krämer (see: note (56) supra, p.868), the Commission proposal should have been based on Article 100, Article 100a or Article 235 EEC, when looking at the objective and the contents of the proposal.

(67) See for the preference of the Commission for Directives in the environmental field: paragraph I.2.1 and notes (7) and (11) supra.

(68) A Regulation would have been preferable to a Directive, as it would have had the advantage of being able to guarantee the same right of freedom of access to environmental information to all EC citizens, in a uniform way, and (contrary to a Directive) directly applicable in all EC Member States. See in the same sense: L.Krämer, note (56) supra, p.868.

(69) See: note (59) supra.

(70) See: L.Krämer, note (56) supra, p.869.

(71) L.Krämer, (note (56) supra, p.869), however, points out quite rightly, that very often EC environmental Directives put obligations on EC institutions as well. The obligation on EC institutions that occurs most often, is the one requiring the Commission to prepare and publish a report on the implementation of the Directive.(See, for instance: Article 8 of Directive 90/313/EEC.)

(72) Commission, COM (88) final of 28 November 1988, n° 1b; see also: L.Krämer, note (56) supra, p.869, note (20).

(73) Article 3, paragraph 2 of Directive 90/313/EEC lists in an exhaustive way the reasons for refusal of a request for environmental information held by public authorities. These reasons are, when the request affects:
- the confidentiality of the proceedings of public autho- rities, international relations and national defence,
- public security,
- matters which are, or have been, sub judice, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation procee- dings,
- commercial and industrial confidentiality, including intellectual property,
- the confidentiality of personal data and/or files,
- material supplied by a third party without that party being under a legal obligation to do so,
- material, the disclosure of which would make it more likely that the environment to which such material related would be damaged.

Information held by public authorities shall be supplied in part where it is possible to separate out information on items concerning the interests referred to above.

(74) See: L.Krämer, note (56) supra, p.869.

(75) See: L.Krämer, note (56) supra, p.871..

(76) Article 1 refers to "information on the environment", while throughout Directive 90/313/EEC the notion "information relating to the environment" is used.

(77) Article 2(a) of Directive 90/313/EEC.

(78) See: L.Krämer, note (56) supra, p.872.

(79) Article 2(b) of Directive 90/313/EEC.

(80) See: note (75) supra.

(81) See: L.Krämer, note (56) supra, p.872.

(82) See: note (73) supra. Article 3, paragraph 3 adds two more formal reasons to the exhaustive list of reasons for refusal in Article 3, paragraph 2, i.e. where a request for information would involve the supply of unfinished documents or data or internal communications, or where the request is manifestly unreasonable or formulated in too general a manner.

(83) Article 3, paragraph 4 of Directive 90/313/EEC.

(84) Article 4 of Directive 90/313/EEC.

(85) Article 5 of Directive 90/313/EEC.

(86) Article 6 of Directive 90/313/EEC.

(87) Article 7 of Directive 90/313/EEC.

(88) Article 8 of Directive 90/313/EEC.
As far as the Commission is concerned, it has committed itself to publish a "State of the Environment in the European Community"-report once every three years. The latest report in this series (COM (92) 23 final - VOL.III of 27 March 1992) was presented by the Commission to the Council and Parliament earlier this year. Moreover, EUROSTAT, the Community's office of statistics, is regularly publishing statistics on the environment.
The Community has also taken other initiatives to improve the gathering and dessimination of information relating to the environment. To this end, the Council adopted on 7 May 1990 Regulation (EEC) No 1210/90 on the establishment of the European Environment Agency and the European environment information and observation network (OJ 1990, L120/1 of 11.5.1990). The object of the European Environment Agency (EEA) and the monitoring and information network associated with it, is to provide both the Community and the Member States with objective, reliable and comparable information at European level on the basis of research and comparative studies to enable them to take the necessary measures to protect the environment, as well as to assess the results of such measures, and to ensure that the public is properly informed about the state of the environment. The monitoring and information network will involve as participants:
- a national focal point nominated by each Member State;
- elements from various national information networks; and
- institutions which will be charged with cooperating with the Agency in specific topics of particular inte rest - these will be centres of excellence and are often referred to as the "thematic centres".

The European Environment Agency will be open also to countries outside the Community, which share the objectives of the Community and its Member States in relation to the environment. Already, there has been a very encouraging display of interest in participation on the part of a number of EFTA and Eastern and Central European countries.

(89) As a matter of fact, the Task Force European Environment Agency is currently preparing a state of the environment report regarding the "greater Europe", i.e. including the environment of Central and Eastern European countries, as part of the follow-up of the Dobris process.

(90) L.Krämer: "Participation of environmental organisations in the activities of the EC", in: "Participation Rights in European Perspective", Führ/Roller (Ed.), 1991, p.74.

(91) "Towards Sustainability", A European Community Programme of Policy and Action in relation to the Environment and Sustainable Development, COM (92) 23 final - VOL.II of 27 March 1992.

(92) "Subsidiarity" derives from Article 3b of the Treaty on European Union (Maastricht, 1992), which states:
"The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.
In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.
Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty".

(93) See: note (91) supra, p.75.

(94) The Implementation Network comprises representatives of relevant national authorities and of the Commission in the field of practical implementation of Community measures; it will be aimed primarily at exchange of information and experience and at the development of common approaches at practical level, under the supervision of the Commission.

(95) The Environment Policy Review Group comprises representatives of the Commission and the Member States at Director-General level, and will be established to develop mutual understanding and exchange of views on environmental policies and measures.

(96) See: L.Krämer, note (90) supra, p.77.

(97) See also: L.Krämer, note (90) supra, p.77.

(98) See also: L.Krämer, note (90) supra, p.77.

(99) See: L.Krämer, note (90) supra, p.77.

(100) BEUC: "Bureau Européen des Unions des Consommateurs", was established in 1962. It is a European non-profit organisation representing some twenty consumers' associations in the EC Member States. Membership of BEUC is restricted to associations whose sole aim is to protect the interests of consumers and which are independent of governments, trade and industry. BEUC represents the interests of about 320 million consumers. Its objectives are to contribute to the proper observance of consumer legislation and to "hear and be heard" by the EC institutions.

(101) See: A.Kallia-Antoniou, note (26) supra, p.26.

(102) The European Environmental Bureau (EEB) was established in 1974. The EEB is a European non-profit organisation, regrouping at the EC level more than 120 non-

governmental organisations working in the field of nature conservation and environmental protection from the twelve Member States of the Community, as well as from most EFTA countries. It thus represents about 30 million European citizens.

(103) Committee on Legal Affairs and Citizens' Rights, draft report on the award of damages to consumers, introduced by Mrs.Boot, Part II, Statement of Grounds, Appendix II, draft resolution tabled by Mrs.Dury, PE 104 304/B, 20.3.86. See also: A.Kallia-Antoniou, note (26) supra, p.27, note 44.

(104) See: A.Kallia-Antoniou, note (26) supra, pp.28-29.

(105) The creation by the Commission of the Consultative Forum, in order to implement the Fifth Environment Action Programme "Towards Sustainability", is completely in line with Chapter 27 (Strengthening the role of non-governmental organisations: partners for development) of Agenda 21, adopted last June in Rio de Janeiro, by about 160 countries in the world, as well as the European Community. Paragraph 27.5 of Agenda 21 reads as follows:
"Society, Governments and international bodies should develop mechanisms to allow non-governmental organisations to play their partnership role responsibly and effectively in the process of environmentally sound and sustainable development".

Annex 1

COMPLAINT TO THE COMMISSION OF THE EUROPEAN COMMUNITIES

against failure to comply with Community law

Name of complainant: *

Nationality:

Address or registered office:

Field of activity:

Member State, organization or firm which has not complied with Community law:

Alleged infringement and loss incurred (if any):

Approaches or representations made to national or Community authorities:

- Administrative action:

- Legal action (if any):

Documents and evidence substantiating the complaint:

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* The complainant may, if he wishes, remain anonymous. But the author of an anonymous complaint will not enjoy the procedural advantages or follow-up described overleaf.

(Note to appear on back of form)

Under the Treaties the Commission of the European Communities is responsible for ensuring that the provisions of the Treaties themselves and the other measures taken by the Community institutions are correctly applied.

Any person may file a complaint with the Commission in respect of a practice or measure which he or she considers to be in breach of a provision of Community law.

The complaint may be filed by means of this form. It may be addressed direct to Brussels (Commission of the European Communities, rue de la Loi 200, B-1049 Bruxelles), or be lodged with one of the Commission's Information Offices.

The complainant enjoys the following procedural advantages:

- an acknowledgement of receipt will be sent immediately upon receipt of the complaint;

- the complainant will be kept informed of action taken, and particularly of representations made to the national autho- rities and business firms concerned;

- the complainant will be informed of any infringement proceedings commenced by the Commission against a Member State and of any proceedings against a business firm. The complainant will also be informed of any proceedings that may already have been commenced if they have a bearing on the subject of the complaint.

ROLE OF THE RUSSIAN PUBLIC IN ENVIRONMENTAL ENFORCEMENT

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The role and potentialities of the public in the enforcement of the environmental legislation in Russia depend on different factors. Interests of citizens and public organizations in providing environmental protection, completeness of legal regulation of ecological rights of citizens, real possibilities for their realization are the main such factors.

The choice of interests and directions of public activity is predetermined by the influence of social and political conditions of life in the country. Thus, on the second half of the 80th, in the conditioned of openness and perestroika of public relations there was a remarkable increase of peoples' activity in Russia in solution of environmental protection problems. At this period many new ecological nongovernmental organizations have appeared along with the existing public nature protection structures. Then, and at present, in the course of worthening conditions of life, rising of costs, activity of the people was more directed towards the solution of other problems (food, housing, making their livelihood, etc.). The change of priorities has occurred in Russia in spite of the wide realizing the seriousness of ecological situation in the country.

Then, it is significant for Russia that for a long time the law demonstrated indifferent relation towards a man, his rights and interests. A person, in spite of the wide political declarations during decades, remained rightsless. In the conditions of the administrative-command system a man couldn't have an influence on public processes in any sphere of life, including environmental protection. More than 70 years priority of public relations over personal and factually state of a person of possessing no civil reigned in the country.

The environmental legislation itself was and still remains insufficiently developed and didn't meet public ecological requirements. Before enforcing the legislation it should be created. But in Russia till and now there is no a number of fundamental environmental laws - such as on ecological expertise, on nuclear safety, on toxic substances control, on waste disposal, on agrochemicals, etc.

A number of draft laws is being prepared in Russia now, prepared taking into account the experience of foreign environmental legislation, but still not adopted by the Parliament.

As for today a new Law on protection of the natural environment (december 1991), Land Code (april 1991), Law on mineral resources (march 1992) are approved in Russia. Positions of these laws, especially positions of the comprehensive Law on protection of the natural environment enable us to speak about changing the state policy concerning ecological rights and interests of the people.

Priority of protection of life and health of a man, creation of favourable ecological conditions for life, labour and recreation for the population are declared by the Law as one of the main principle of the environmental protection (art.3). The law establishes a number of rights and authorities of citizens and public organizations in the field of environmental protection and enforcement of environmental legislation, as well as guarantees for their realization. In particular, it establishes the right of citizens to protection of health from unfavourable impact of the natural environment (art.11).

For increasing the role and potentialities of the public in enforcement of the environmental legislation the following authorities of citizens and public ecological organizations are the most significant:

- to organize and take part in meetings, pickets, demonstrations, referendums on environmental protection issues, to address letters, petitions, make complaints and statements and demand their consideration;
- to demand rendering in proper time, complete and reliable information on state of the natural environment and measures for its protection from the appropriate bodies:

- to recommend their representatives for participation in the state environmental expertise on the issues of location and drafting of objects and to make public environmental expertise;
- to demand a disaffirmation of decisions on location, construction and exploitation ecologically not sound objects, limitation and stoppage of their activities;
- to demand to make the state environmental expertise, appear in mass media with their ecological platform;
- to bring up a question for making guilty officials answerable, bring a suit in the court for compensation of damage to health and property of a citizen caused by ecological offence (art. 12,13).

One cannot say that public activities in enforcement of the environmental legislation in the previous decade was efficient. But some results are very significant. In particular, public succeeded in preventing realization of a number of ecologically harmful projects, for example projects concerning northern rivers' flow change, construction of channels Volga - Chogray, Volga - Don. Due to the public actions it became possible to prevent location and construction of some industrial enterprises in highly polluted areas as well.

We can hope that one the base of the modern environmental legislation public activities towards its enforcement will be more sufficient. That in particular will be promoted due to guarantees for realization of ecological rights of citizens and public organizations proclaimed by the state. Sovjets of peoples' deputies, their executive bodies, state bodies in the field of environmental protection, their officials are obliged to render every kind of assistance to public organizations and citizens in realization of their ecological rights and obligations, take necessary measures for implementation of their proposals and demands concerning the organization of nature protection activities.

According to the Law nobody can prevent the people to realise his lawful rights. When officials and citizens prevent realization of ecological rights and obligations by public organizations and citizens, they are to be answerable.

To increase efficiency of public activities for enforcement of the environmental protection legislation it is very important to provide wide ecological education of the population. It is also essential that the people should know the legislation itself. For today not only the Russian public has a very low level of knowledge of the legislation but officials of state bodies and enterprises as well.

Thus, some legal conditions have been created lately in Russia to increase the public role in the environmental legislation enforcement. But still the public is far from using all its potential possibilities in this field. On the other hand the state bodies are not ready to perform all their functions to fulfil all the demands of public.

NEW ECOLOGICAL LEGISLATION OF RUSSIA - IMPORTANT STAGE OF NATIONAL ENVIRONMENTAL SAFETY ENFORCEMENT AND IN DEVELOPMENT OF THE RIGHT OF AN INDIVIDUAL FOR FAVORABLE NATURAL ENVIRONMENT.

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According to the new Russian ecological legislation the right of an individual for favorable natural environment, which is closely connected with the national ecological safety situation, is materialized in specific legal norms being the right of an individual for health protection against negative environmental effects. This right should be considered as one of the most important indications of the quality of human life, as a measure of the democracy of the contemporary society.

It is well known that in the former USSR the importance of environmental enforcement was often underestimated. Unfortunately the government and public opinion had not payed proper attention to ecological problems, and as a result of that shortsighted policy the national environmental situation was constantly deteriorating and sometimes we had to face serious ecological disasters in some regions (Chernobyl, the Aral and Caspian Seas, the Volga river, etc.). The right of an individual for favorable natural environment was not reliably ensured by the State and the Law.

After the victory of democratic forces and the restoration of the Russian State last year we can say that the situation is rapidly improving.

Last November the Russian Parliament approved the Declaration of Rights and Freedom of an individual and a Citizen, Article 25 of which foresees the governmental support of 'every activities having as its objective environmental enforcement and care for human health'. Ecological rights and duties of the Russian citizens are also regulated by Art. 67/6 and Art. 67/7 of the Constitution of the Russian Federation.

We hope that the national ecological safety will be considerably strengthened due to the 'Act on Environmental Enforcement', which was adopted by the Parliament last December This important document is unprecedented historical innovation and practical significance.

The Act directly mentions that every citizen has the right on health protection against negative environmental influences due to economic or other activities, accidents and various disasters.

For the first time the legislation determines specific ways and procedures to ensure this right. We can pick out three main spheres where the citizens would be able to implement this legal possibility:

- right to use the natural environment favorable for normal life;
- right to demand from the government, business circles and other citizens strict fulfilment of their ecological responsibilities;
- right to use all legal means of state and public protection whenever this right is violated.

It seems very important that the proper text of the Act gives state guarantees of ecological rights of the citizens and their public organizations.

With the progress of market economy principals in Russia the problems of ecological safety of an individual and the society in general should be directly connected with the tasks of creating an effective economic mechanism of environmental enforcement. The above mentioned Act also regulates such important matters as ecological examinations, ecological monitoring, ecological emergency situations, etc.

Of course it will take some more time to make these legal standards to come into full force, i.e. to become an every day legal practice. This process can be accelerated thanks to the consistency of the legislative, executive and judicial representatives in their fight for the priority of ecological values above any economic, political benefits, due to active social positioning of all groups of the population.

The future Federal Ecological Code, which is under elaboration now, will contribute greatly to further national environmental enforcement. Being approved by the Parliament, the Code will give a set of important legal institutions necessary to ensure national ecological safety.

Nowadays the solution of serious environmental problems goes beyond the national borders and needs an active international cooperation. In this regard I would like to wish the conference every success and express my confidence that the Russian lawyers and ecologists are ready to cooperate fruitfully with their foreign colleagues.

SUMMARY OF THEME DISCUSSIONS

THEME 1: CONTEXT FOR ENVIRONMENT

Reporter: Frank Uijting

1 Goals

Introduction of a general framework for designing effective environmental compliance and enforcement approaches and alternative approaches within that framework. It also provided a context for enforcement within the European Community and within Central and Eastern Europe.

2 Presentations

Ms. Wasserman, Chief, Compliance Policy and Planning of Enforcement, U.S. E.P.A., presented a general framework for compliance and enforcement, "Principles of Environmental Enforcement" as a basis for international exchange. There is an increasing recognition that enforcement is a crucial element in achieving the goals that are stated in environmental policies and requirements. With the "Principles of Environmental Enforcement" a general framework is given which gives a bases for individual states to built up their own enforcement program. It provides definitions, a general framework, a set of principles and a range of options to facilitate the development and implementation of environmental enforcement programs and compliance strategies in different international settings. The "Principles" should not be seen as a model, but are a point of departure from which an individual state can build and improve their own unique enforcement program. A course, based on the "Principles" has been developed to assist states by improving their environmental programs. The course has now been delivered in Poland and Hungary and is planned for delivery in Turkey, the Ukraine and Mexico. The response of the participants has been very positive.

Mr. R. Macrory, Denton Hall Professor of Environmental Law, Imperial College, London, discussed the issue of "Membership of the EEC: What it Means for Environmental Requirements and Enforcement." Developing EEC law is a very complex process, it is not a top-down system. Community legislation is supreme over national law. Yet it is clear that the implementation in member states is far from being perfect. He stated that one of the difficulties associated with the implementation and enforcement of Community environmental law is the differing structural character of much of the legislation that has been agreed. The CEC is responsible for enforcement. They should not only look at the formal stage (the implementation of EEC law), but also to the practical implementation (enforcement of environmental legislation). There should be Community environmental inspectors to enforce the member states. Another interesting

development would be the setup of a complaint system for citizens, so they can bypass their own government.

Furthermore he concluded that it requires a political will by all Member States to ensure that Community policies are implemented within their countries.

Mr. L. Krämer, Commission of the European Communities, DG Environment, Nuclear Safety and Civil Protection, discussed "The Implementation of Environmental Laws by the European Economic Communities". He stated that the EEC should not be compared with a state or a international institution. Enforcement should be issued in the context of the national states. The EEC has some very progressive Member States, but also less progressive ones. That makes implementation difficult. EEC law is a bases for enforcement. The sovereign states do decide by themselves. He stated that there should be more priority for non-compliance and non-enforcement. Therefore more information is needed. To provide more information, new Community laws will be developed on publishing, auditing and information. Another point is that if there is no compliance in existence, this should be discussed. Furthermore, if projects are carried out (e.g. economic), they must comply with the environmental legislation. Finally it should be clear that the environment is not a property of the administration. Citizens must be brought into the process of developing environmental policy and enforcement.

Ms. P. Kromarek (ELF Aquitaine) attributes "The Upgrading of Environmental Laws in France as Part of the Requirements by the EEC". EEC-legislation has an important effect on national regulations. Ms. Kromarek highlights some problems that occur with the implementation of EEC-directives. When an EEC directive regulates an issue which is not regulated internally by a Member State, the relevant regulations must be created. A problem arises when Member States already have relevant legislation. It is more difficult to change existing legislation. In France there are several examples of such problems. One main problem is the interpretation of some elements in the EEC directives. The French meaning of some words is not always the same as defined by the EEC. Sometimes words are mentioned in directives but are left undefined, e.g. "best available technologies". All these problems of interpretation are difficult to solve, especially with 12 states having different legal, technical and economic practices. This problem should be tackled during the drafting of legislation.
It must be stressed that enforcement of EEC environmental law is not just a matter of formalities and procedures. It goes beyond strict standards, it is a way to protect the environment as a common interest, and has come to be integrated with protecting individual rights.

Mr. W. Beblo, Director Ecological Department, presented "Environmental Enforcement in Central and Eastern Europe in Transition", especially in Hungary, Poland and CSFR. In the communistic period some very strict laws were developed. The purpose of these laws was to show the Western Countries that they protected the environment, but there was no enforcement. After the democracy revival in all Central and Eastern European countries environmental issues became one of the most important political issues. The policy-makers where forced to make new environmental legislation. The way of rebuilding the legislation is different in each country. It is done by a creating a general framework (CSFR) or by synthesizing a general system from detailed laws (Hungary, Poland). Environmental policy in the Central and Eastern Europe countries require modern laws derived from their national constitutions.

Mr. G. Bándi, Scientific Director, Copernicus Environmental Law Program of the Danube Region, presented "Environmental Enforcement in Hungary - Today and Tomorrow" and what is needed to improve the current situation. He stated that enforcement is far from being satisfactory. He discussed some items to which attention should be paid. First of all there is a lack of environmental policy in Hungary. A great burden for enforcement is that new laws are developed, without knowing how to use them. Secondly, at the moment privatization happens a lot. One should know how to deal with responsibilities, the price for pollution and what kind of standards should be used. Thirdly, a new philosophy is needed. A key element is cooperation instead of as one sided approach. In the fourth place, more public pressure is needed. An important condition to public participation is access to information. This is still missing in general legal rules. Fifthly, all participants involved in environmental issues should have environmental ethics. Finally, where do we have to begin?

We should be aware that there is not much difference between states, so cooperation is very important. He made a link with the presentation of ms. Kromarek, it is easier to create new legislation instead of reviewing old laws. This gives Hungary a good opportunity.

Ms. E. Kruzíková, Executive Director, Institute of Environmental Policy, Prague, presented some factors which are influencing "The Current Status of Environmental Enforcement in the CSFR". One factor is the environmental legislation and its quality. All acts in the CSFR are brand new. The fact that the regulations where prepared in a big hurry, they where constructed because of the future membership of the EEC and that there was a lack of environmental policy some disadvantages appeared. Environmental enforcement is not so easy because professional skills are not sufficient and it is hard to express what environmental damage is. Furthermore it is too ambitious and non-realistic. On the other hand the advantages are that we could take into account new trends in economic, social and political life. It also allowed us to make an effort to incorporate as much as possible EEC environmental requirements. One success is that the CSFR is the first country in Central and Eastern Europe that approved this year an amendment on environmental audits for privatization.

Another aspect is public participation. This aspect is also important like law making. It is not easy to involve the public into environmental decision-making. Environmental protection is not a priority for citizens today. NGO's are not well organized and not always willing to cooperate with each other. However, new NGO's are being created and will hopefully play a role in environmental policy.

3 Open discussion

Mr. Philippi, Brazil, has a question about the behaviour of large industries regarding environmental concerns towards the EEC. Are industries anticipating environmental measures in order to be the "first" companies to achieve environmental requirements of the EEC ? Furthermore, are these industries using this for marketing?

Mr. Krämer, EEC, thinks that big companies see a competitive advantage in applying measures, but it differs from company to company. They use this for their marketing. Mr. Macrory adds to this that companies realize that the major changes are taking place at EEC level. That's where they have to got to look to.

According to Ms. Wasserman, USA-EPA, in the USA companies are using their environmental record for promotion.

Furthermore Mr. Philippi, Brazil, is interested in the role of NGO's in the evaluation step of the Environmental Management Cycle.

Ms. Wasserman, EPA, points out that the citizens are involved by having access to information and through the legislation passed by Congress citizens are involved in implementation and enforcement of environmental law. Besides this, EPA supports citizens by helping them dealing with the problems they are facing, e.g. giving information, giving support for taking legal steps by citizens.
Citizens do also have an "ear and eye function" that is important for enforcement. So citizens have an important role in the evaluation step.

Mr. J. Plaut, USA, thinks that the issue of enforcement is just one part of a larger general plan. This comes at the end of the plan, not at the beginning. We need to understand this as a group.

Ms. Wasserman, USA-EPA, states that the definition of enforcement includes both those things necessary to encourage and compel compliance. We do recognize that to get compliance you need both. One could think that enforcement might wait while compliance is encouraged. This might be true only for the period between when requirements are established and compliance is required. While balance is always needed, you need to start enforcement actions as soon as possible when compliance is required or you will send the wrong message.

Ms. Maslarova from Bulgaria wants to know if there is a possibility that her country can get support in the process of developing environmental regulation and policy.

Mr. L. Krämer, EEC, points out that the EEC is not able to protect the environment of member states if there is not a will to protect the environment. If there is no request from a association state, and they have not ranked environmental aspects high in priorities, it will not come into that.

Environmental issues play a growing role but not a priority role. It is one of the aspects of the EEC. So if the country itself does not protect the environment, do not expect that the EEC will do this.

According to Mr. R. Macrory, UK, there is a difficulty with developing environmental policy and regulations. One has to deal with agreements that are made in EFTA context.
Ms. Wasserman, US EPA, is impressed by the contrast that was described between trade and environment in Europe. In the USA there is an integration of trade and environment.

Mr. R. Macrory, UK, brings up a question about privatization in relation to enforcement. State enterprises in Eastern Europe raise peculiar problems for enforcement, because the laws may apply to them, but there are other tensions like economic goals. He is wondering how the Central and Eastern European countries feel about the possibility that privatization offers improved opportunities for enforcement?

Ms. Kruzíková states that there are large enterprises in the state property. There is no substantial change in approach to environmental enforcement. They still feel that the government is responsible for them and they suppose they even will be excluded from new legislation. This situation might slightly change after privatization. Some measures are taken to stimulate them.

Mr. Bándi, Hungary, points out that privatization solves nothing for this moment. Privatization is a massive process, but not so massive to change the situation as has been mentioned before. There is also the situation of introducing a market economy and on the other hand dealing with enforcement. Developing a market economy has priority.

Mr. Nagy, Hungary, notes that when you are starting with enforcement, one thing is not included, namely how to enforce authorities to enforce the law.

Mr. Bándi, Hungary, explains the situation in Hungary. There are 6 political parties in Hungary. None of them has developed environmental policy. So there is a long way to go. One should have first of all a policy and then there is a basis for enforcement. We should get rid of the current standards that were set up in the 80's by the communist government. They cannot be applied and enforcement is not realistic.

Ms. Kruzíková, CSFR, points out that in the CSFR there are also a lot of political parties. They do have an environmental program, but these programs are all the same. It look like a duty to have it in their program. In the CSFR politicians are not interested in enforcement. That's because of the splitting between Czecho and Slovakia. It might become an item again next year.

According to Mr. Beblo, Poland, there are ways to enforce governments. First of all there is parliament that controls the government. Secondly, the media do have power to enforce the authorities to a certain extend.

Mr. Syryczinski from Poland is asking what the influence is of advisors, the Worldbank, the EEC and consultants on the implementation of environmental policy.

Ms. Kruzíková, CSFR, thinks this depends on what kind of ministry is involved. Ms. Kruzíková worked with two consultants from the USA on environmental matters concerning privatization. It worked excellent.

Mr. Beblo, Poland, also has good experience with support from the EEC or the Worldbank. Our problem is that we don't have the knowledge or the experience and the skills how the handle implementation/enforcement.

Mr. Bándi, Hungary, thinks there is a positive influence of the Worldbank support. They want an environmental assessment for the project that are carried out. The World Bank also gives loans for industry. There are only a few requests. The reason for this is that they should meet some standards.

Ms. Duncan, Canada, is wondering how the Central and Eastern Europe countries are dealing with costs for cleaning up during privatization projects.

Mr. Bándi, Hungary, points out that it depends on the legislation. The costs for cleaning up are for the privatizers. There are no requirements taken up in the law. There is also no fund. This problem has to be solved somehow.

Ms. Kruzíková, CSFR, explains that her country has no regulation about cleaning up, but there is a resolution about how to deal with cleaning up sites. There are two relevant points in this resolution. The first one is, who is liable: new purchasers are liable for old enterprises. The second point is, who will pay: the purchaser will clean up the site, and afterwards he receives 50% of the costs back.

Ms. Bowman, USA, notes that public participation is mentioned as a very important part of environmental enforcement and that privatization is a fundamental place where changes in environmental issues are going to happen. But, what is the practical role of the public ?
Ms. Kruzíková, CSFR, thinks that the public can play a role. She explains that information about risk assessment and environmental audits should be published, so that citizens know what the situation is. Besides that they also should be informed about what measures a company should take to comply.

Mr. S. Madonna, USA, is wondering if there has been any thought about how to deal with environmental audits in such way that they will not turn against the company.
According to Mr. Beblo, Poland, audits are primary for getting the permits needed. Environmental auditing in Eastern Europe is just in a beginning stage.

Ms. Popescu, Romania, is curious about how to deal with standardization and harmonization with the EEC law during the process of development of environmental legislation, policy and enforcement. Mr. Syryczynski, Poland, states that it would be very useful to make in future one European directive on environmental policy. Everybody speaks another language and everybody speaks about environmental rules.
Mr. Bándi, Hungary, states that all the actions taken are in line with the EEC legislation. It is difficult to meet the requirements of the EEC at this moment. There should also be harmonization between Central and East European states, but that would take a long time.

4 Conclusions

There is a long way to go for the Central and East European countries. One should have first of all an environmental policy and then there is a basis for enforcement. Because CEE countries lack knowledge, experience and the skills how to handle implementation and enforcement, support (from f.e. the World Bank, the EEC and environmental agencies or ministries of western countries) can have a positive influence.

Privatization doesn't offer improved opportunities for enforcement at this moment, because enforcement hasn't got priority. On the one hand one has to deal with the introduction of a market economy and on the other hand one has to deal with enforcement.
The public can play a role. However they should be informed about risk assessment, environmental audits and what measures a company should take.

Ways to enforce against the government are first of all the parliament that controls the government. Secondly, the media do have the power to enforce the authorities to a certain extent.

In the future it would be very useful to make one European directive on environmental policy. Also harmonization between CEE countries will be useful.

Mr. Kesselaar closes the discussion session with the conclusion that we do speak the same language, regarding to enforcement. Now it is a question of how to bring this in practise.

THEME 2: DESIGNING ENFORCEABLE ENVIRONMENTAL REQUIREMENTS

Reporter: Marcia E. Mulkey

1 Goals

Enforceable requirements form the building block for all enforcement. Without success in making laws, regulations and permits enforceable, we cannot have compliance and enforcement success regardless of what structures, personnel, skills, legal tools, or resources we bring to the task.

2 Presentations

The lead paper for this theme, presented by Mr. Fulton, Deputy Assistant Administrator in the Office of Enforcement of the United States and authored jointly by Mr. Fulton and Mr. Gilberg, identifies and discusses seven criteria for developing enforceable environmental regulations and permits. These seven criteria represent the first set of lessons learned from this theme and are summarized here as numbered lessons.

> Lesson #1. Enforceable requirements must be understandable. Understandability is developed through use of clear definitions, simplicity, and avoidance of ambiguity.
>
> Lesson #2. Enforceable requirements must precisely define the coverage of the requirement. This includes precise delineation of the regulated industry, the regulated activities, and the regulated substances; The specific pollution sources and process as well as the specific actors, such as owners or operators, should be described. Put simply, the requirement should answer the question "to whom and to what activities do requirements apply?".
>
> Lesson #3. Enforceable requirements must establish a clear standard of conduct. Clear standards include both measurable, non-subjective standards and precise, narrowly drawn exemptions or exceptions (with the burden of proving qualification for exemption placed on those who claim it).
>
> Lesson #4. Compliance must be easily measured or determined. The standards should include precise statements of how compliance is to be measured (including appropriate test methods). Compliance measurement/demonstrations by both the regulated industry and by the enforcing government should be addressed.
>
> Lesson #5. Requirements should include clear deadlines for compliance. The requirements should include a date certain for compliance, not contingent on any

event or, if contingent, with a clearly specified, unambiguous contingency. Enforceable interim deadlines are also recommended.

Lesson #6. Enforcement is enhanced by self-monitoring, mandatory recordkeeping and reporting. Frequent monitoring intervals, specified periods for record retention and defined content for records and reports are important as are separate and significant sanctions for false or nonreporting.

Lesson #7. Proper adoption procedures assure that the requirements become and remain effective.

Following this lead paper, and the lessons it presented, additional major papers were presented by panelists and from other key participants in the conference. Each of these papers and their principal lessons are identified below.

Ms. Victor, Head of the Environmental Law and Economics Section of the Swedish Environmental Protection Agency presented a paper authored by Mr. Sverndal entitled "Swedish System of Integrated Permitting - Whether it Enhances Compliance and Enforceability". This paper described the Swedish system of multimedia, integrated permits, where both permitting authorities and enforcement/permit supervision authorities focus on permits in an integrated, cross-media manner. Permits are designed to detail the covered activities and the conditions applied to those activities. The Swedish experience provided lesson #8 for this theme.

Lesson #8. When a single permit governs all the activities at a facility, the enforcement authorities can much more easily conduct multimedia, integrated enforcement.

Mr. Angst, State Secretary of the Saxon Ministry for Environment and Physical Planning, Germany presented his paper on "Environmental Protection and Environmental Policy in East Germany - Example: Saxony." This paper explains that environmental problems in Saxony are unusually severe, involving near-dead rivers, extremely hazardous air quality and major waste problems, including nuclear waste. In Saxony, recent dramatic governmental change (the reversal of German division) presented the opportunity to choose a new environmental structure. The result in the state of Saxony is an interdisciplinary, multimedia ministry with enforcement authority assigned to counties and towns, with specialized state-wide agencies for technical support and oversight. The Saxony experience offered a further lesson for this theme.

Lesson #9. When a new structure chooses an integrated, multimedia approach, such structure also enhances enforcement.

Mr. de Vries, Regional Inspector for the Environment in the province of North-Brabant, the Netherlands presented his paper "A Clear Approach Gives Full Compliance" which details the Dutch experience with efforts to improve both licensing and enforcement. This two-pronged effort has included a major attempt to conclude the licensing process for a large backlog of unpermitted facilities. This effort has focused on developing adequate requirements and moving toward stricter provisions. Funding and personnel were targeted toward this effort. On a parallel track, the

Netherlands enforcement authorities have targeted specific industries, revealing a number of permit terms "of low quality", such as failure to define types of waste covered by the permit. Based on this combination of permitting and enforcement, this theme derives its lesson #10.

> Lesson #10. Completion of permitting and quality of permitting are key elements for a successful enforcement program. Major enforcement efforts can reveal problems with permits and with the clarity of requirements.

As part of this theme, Ms. van der Meer, project leader Environmental Crime of the National Criminal of National Criminal Intelligence Service of the Netherlands offered an oral presentation on the nature and role of the police in the Netherlands enforcement system. This very interesting presentation illustrated that the police presence throughout the society and around the clock brings valuable assets to environmental enforcement, and that difficulties in use of the police can be addressed through training and coordination with "expert" environmental agencies. In the context of the enforceability theme, the conference learned that the police have found it difficult to work with complex legislation and with the ambiguities often found in environmental requirements. As a result, this presentation provided a further lesson for this theme.

> Lesson #11. Police involvement in environmental enforcement can be made much more effective where requirements are more easily understandable and easily identified.

Mr. Smith, a private attorney based in Belgium working closely with the EEC on both US and EEC laws presented his paper on "Designing Enforceable Environmental Requirements for the European Economic Community (EEC)." This paper addressed both the design of EEC directives for purposes of subsequent implementation by member states and the design of EEC directives and member-state laws as they relate to regulated activities and industries. The problem areas identified in this paper included the following:

> (1) The use of general and conceptual language has created implementation problems;
>
> (2) The dominance of policy and technical considerations and the limited involvement of lawyers has resulted in less attention to precision of language, inclusion of recordkeeping and reporting, and the like; and
>
> (3) The absence of strong public and non-governmental organization involvement in requirement development and accountability for implementation has affected the nature of the EEC requirements.
>
> Based on this analysis of EEC experience, a specific lesson emerged.
>
> Lesson #12. Design problems of EEC directives have slowed and even prevented effective implementation in member states and application to regulated

communities. Attention to specificity, language, and enforceability could be enhanced through more use of lawyers' skills and improved public involvement.

3 Open Discussion

Following the presentations by panelists, this theme provoked a broad dialogue among participants, including representatives from Denmark, the United Kingdom, the EEC, France, Spain, the Netherlands and the United States. Specific points amplified and refined the lessons developed by the panelists, adding a richness of texture to the theme. Several examples of these additions to the lessons are described here.

Lesson #1. Understandability of Requirements. Simplification of requirements may result in harsher, less equitable standards than more complex provisions may permit. There are also trade-offs between greater precision (lesson #2) and simplicity: sometimes precision adds complexity.

Lesson #3. Clear, measurable Standards of Conduct. Although numerical standards are preferred for enforceability, there was recognition that work practice - type standards may be the only approach available or the best approach in the circumstances.

Lesson #6. Value of self-monitoring, mandatory recordkeeping, and reporting.
There was recognition that requirements for self-monitoring, recordkeeping, and reporting may impose significant burdens on regulated parties, particulary small businesses. On the other hand, participants with experience implementing such requirements reported less than expected burdens and the possibility of imposing less burden on small businesses. In addition, the additional value to the public of monitoring and reporting was emphasized.

Lesson #10. Completion of Permitting Activities. Participants were interested in the use of "interim status" for facilities awaiting permitting.

The key advantage to this kind of process is its ability to identify and define membership in the regulated community. The primary disadvantage may be the relief of pressure to complete permitting, and the resulting loss of the enforcement advantage that comes from well-written, enforceable permits.

4 Conclusions

In sum, the full development of the theme of enforceability of environmental requirements early in the conference served to establish a foundation for the discussion of other enforcement issues. Inspection capacity (theme #3) and legal authorities (theme #4) depend for their effectiveness on the existence of clear, enforceable requirements. Similarly, economic development (theme #5) proceeds best in the context of clear requirements and public

participation in enforcement (theme #7) and is particularly sensitive to the clarity and enforceability of the requirements. Therefore, the contributors to the enforceability theme helped assure the value of all aspects of the conference.

Introduction to Theme #3 and Theme #4

Mr. W. Eichbaum, Vice President, International Environmental Quality of the World Wildlife Fund talked "About Alternative Organizational Structures for a Compliance and Enforcement Program." He discussed the problem of organizing government institutions to carry out effective enforcement and compliance programs. The ideas are meant to suggest broad answers to several organizational questions as the problem of organizing for enforcement is considered within the context of particular governance systems. Environmental management agencies need to have the responsibility to integrate the various media in their jurisdiction.

THEME #3: DEVELOPING AN EFFECTIVE COMPLIANCE MONITORING CAPABILITY (E.G. INSPECTION CAPABILITY)

Reporter: Marlies ten Hove

1 Goals

An exploration of different organizational approaches and strategies for enforcement generally and in particular for monitoring compliance, focusing on inspection capabilities, including whether and how to develop an Inspectorate and whether to inspect on a single or multimedia approach.

2 Presentations

Ms. M.E. Bierman, Regional Inspector of South Holland spoke about "Developing an Effective Compliance Monitoring Capability in the Netherlands".

She discussed the advantages and disadvantages of multi media enforcement. There is a need for an integrated approach. Never the less the multi media approach can be difficult when you have to deal with a lot of acts and, regional and provincial rules based on those acts like in the Netherlands. The complexity of large industries touching on a multitude of environmental issues is another stumbling bloc.

She emphasized the merits of having an overall policy plan such as the National Environmental Policy Plan, so that the priorities for enforcement are clear for the industries. Further it is important that the national objectives are broken down to activities on the local level. The building of networks forms a broader base for enforcement. In the Netherlands network building benefits from the magazine about enforcement called "Handhaving".

Ms. J. Aloisi de Larderel, Director Industry and Environment Programme Activity Centre from the UNEP presented her paper: "Integrated Licensing, Implementing and Compliance Monitoring."

She stressed the need for an integrated approach because it encourages for example at-source, cleaner production measures and it avoids bureaucracy and confusion for a company because of different officials inspecting the same plant.

Secondly a permitting scheme should be based on environmental impact and risk assessment studies. Clear priorities should be set. Lack of resources often forces authorities to set priorities based on clear criteria. For example on the base of the site of an industry (environmentally sensitive) or the chemicals that are used.

As Ms. Aloisi de Larderel argued: the focus should be on the industrial process itself and the - not so experienced - officers should be trained to monitor specific industries and "specialise" at that whole industry. The task of an inspector goes far beyond inspection. An inspector should not only monitor compliance but also inform and advise industries. Subsequently he should secure compliance and inform the public. The inspector should be independent (also from political

influence). In the end she discussed the monitoring of compliance. It is better to have lower standards which can be complied with than tough standards that can't be complied with.

Ms. G. Rödland, Head of Department, State Pollution Control Authority spoke about "Compliance Monitoring in Norway". Because it is not necessary to inspect industries with the same frequency in Norway a classification is used. The classification is based on the potential emissions from the enterprise, their toxicity and also the environmental sensitivity (air and water quality) of the surroundings are taken into account. Industries with a high priority (control class 1 enterprises) are inspected with a higher frequency than the industries with a low priority (class 4). Norway uses a system in which the polluter pays for monitoring visits and environmental audits. The inspectorate in Norway uses a price-list with standard fees for this purpose.

Mr. C.G. Wills, Deputy Director of the National Enforcement Investigations Center presented his paper: "USA Experience and Differences between Civil and Criminal Investigations and Use of Central Elite Force to Supplement Local inspectors.".

The multi-media approach has been strongly emphasized by training. In the USA special training institutes have been set up. A centralized investigative team has been founded which can provide the personnel and resources for quick responses and detailed case preparation activities. Such a team would be useful not only to Regional inspectors but to all levels of environmental enforcement.

Mr. I. Handyside, Head of East Division in Her Majesty's Inspectorate of Pollution discussed the "UK Experience in Establishing an Inspectorate for Integrated Pollution Regulation". The inspectorate uses teams which are made up of "professionals" each with their own specialist background and experience. The team is responsible for a geographical region. Each member will have the same basic training but will continue to develop his specialism.

Training in the UK consists of classroom training in combination with training on the job. The public should be taken along and as much information as possible should be made available.

Mr. J. Jendroska spoke about "Compliance Monitoring in Poland : Current status and development. At this moment the Polish Inspectorate is badly equipped, badly trained and does not have enough staff. To further improve monitoring compliance this situation should be changed significantly. Lack of funding for inspections need not to be a problem in monitoring compliance. In Poland a company pays for inspections when it results in finding non-compliance.

Because one of the Panelists' presentations had been cancelled, there was an opportunity for the following people to speak for a few minutes:

Mr. R. Glaser gave a real example how to help a country start up an Inspectorate.

Mr. M. Kotaska presented a summary of the paper which has been printed in the Proceedings volume I as an additional paper: "The Enforcement of the Environmental Policy in the Field of the Montreal Protocol in the CSFR".

Ms. M. van der Voet discussed the benefit from information campaigns to enforcement of environmental laws. The paper has been printed in the Proceedings volume I as an additional paper.

3 Open Discussion

Mr. Krämer, EEC wondered why the Norwegian Inspection only used inspectors since 1984/1985, while the inspection system was already started up in the beginning of the eighties.
Ms. Rödland explained that they have gone through a process from using others to do the inspections to doing the inspections themselves. The Norwegian Inspection had inspectors before too. Apart from the inspection these people did the licensing and gave permits. Later consultants did the work, and after that they had their own inspectors.

Mr. Adegoroye, Nigeria wondered how it is possible that industrialists accept the fact that the Norwegian government charges industries for doing inspections and audits (the polluter pays).
Ms. Rödland: Industry pays for the job the government does, otherwise they would pay for it by the taxes. The big companies (class 1-3) do not complain, only the small ones do (class 4). Because the industries pay for the inspections and audits the government is forced to give quality. The government had success with their audits.

Ms. Aloisi de Larderel added that yearly fees, based on the number of employees is another possibility, and audits they have to pay for themselves.

Mr. Wills points out that the EPA doesn't charge industries for doing inspections. Sometimes through negotiated settlements or court orders the government is reimbursed for the costs of major investigations. The funds go to the General Treasury and not to the EPA.

Mr. Adegoroye notes that in Nigeria the agency is set up like the US EPA. One regional EPA charged industrialists. The national EPA didn't agree because the paying can be seen as a sort of license to pollute.

Mr. Popescu, Romania had a question concerning the characteristics of an enforcement program to act rapidly.

Mr. Eichbaum noted that the reason why the need to act rapidly was mentioned was because governments tend to be not very swift. Swiftness of action is enhanced by careful planning, training and enough resources.

Mr. Popescu, Romania wondered how many industries are only allowed - by law - to work on the base of a permit, while only 50 % of the industries work on the base of a permit.

Ms. Bierman answered that some of the facilities may work on the basis of a notification. Holland is dealing with a historical backlog. Non-compliance is not as a rule solved by penal actions or administrative fines etc. Holland tends to have a more soft approach and convinces industries to comply with the laws by a system of "push and pull" up to a certain point.

Mr. Popescu, Romania likes to know what would be a proper guide to countries with less experience to train their inspectors. Inspectors should have credibility. In some countries inspectors are maybe even not allowed to enter enterprises. Also the inspectors are not very well trained.

Mr. Handyside points out that Inspectors should have credibility in connection with:
- Industry: inspectors should be technically competent and understand the problems of industry;
- public: the public has to know that inspectors do their job fairly and firmly. Inspectors have to be sensitive to public needs and concerns.

4 Conclusions

The integrated multi media approach is the best option to use. Practical difficulties should be solved by using either/or:
- team approach: combination of single-media specialists;
- support by central "elite"-team of regional officers;
- officers specialised in specific industries;
- extensive training or coaching.

Informing the public is a factor of importance. Greater involvement of citizens results in necessary monitoring by democratic means of authorities responsible for permitting and enforcement.

The public needs tools to enable it to play a "watchdog" role. We must raise public awareness by reporting systematically about the results of monitoring and enforcement activities.

Inspectors must be accountable and act with integrity.

There is a long way to go: it is impossible to "leap from the floor to the ceiling in one jump". However, much progress has been made. This is true as much for the performing standards of industry as for the development of high quality inspection capabilities. The most important thing is to get started and to learn with experience.

THEME #4: DEVELOPING AUTHORITIES AND LEGAL ENFORCEMENT CAPABILITIES TO RESPOND TO VIOLATIONS

Reporter: Ann E. DeLong

1 Goals

An exploration of different authorities and approaches to legal enforcement within different legal settings and what is necessary to employ and develop those authorities effectively.

2 Presentations

Ms. V. O'Meara, Assistant Attorney General Designate, Department of Justice, Environment and Natural Resources Division (USA) spoke about "Developing Authorities and Legal Enforcement Capabilities". She emphasized the importance of having both strong laws and an effective enforcement system in order to achieve compliance, deter violators and address environmental damage. The authorities of the different U.S. environmental statutes and a range of enforcement tools, including administrative, civil judicial and criminal sanctions, are used to achieve compliance. Civil judicial authorities are used to sue for damages and to provide injunctive relief. Penalties are calculated based on the seriousness of the violation, the length of the violation, the economic benefit received by the company and other factors. In the last ten years, criminal sanctions have begun to be used for environmental crimes in the US. Both individuals and corporations can be prosecuted for environmental crimes when actual knowledge, inferred knowledge or wilful ignorance can be established. The Responsible Corporate Doctrine has allowed Chief Executive Officers to be prosecuted for crimes committed by others within their company, however, this is an area of heavy debate within the US.

Mr. S. Fülöp, Environmental Public Prosecutor, Chief Public Prosecutor's Office (Hungary) presented his paper: "The Public Prosecutor's Office of Hungary and its Development".
He described the current legal authorities for the environment available in Hungary. Civil judicial and criminal authorities did not exist and the current administrative authorities are contradictory. Penalties calculated under the current schedule are too low to have a deterrent effect. An environmental public prosecutor was appointed and civil and criminal law policies were authorized against polluters. An initial water pollution survey was performed to assess the appropriateness of violations for civil or criminal prosecution.

Mr. L. Paddock, Minnesota Assistant Attorney General (USA) discussed the "Developing of Effective Enforcement Programs at the State Level". He offered suggestions for addressing environmental violations within the constraints of limited resources. Expanding the range of enforcement responses available to governments, emphasizing deterrence, focusing on coordination among federal, regional and local levels of government, using enforcement revenue to fund enforcement programs, promoting voluntary compliance and increasing the number of regulators responsible for enforcement are six suggestions he offered as low-cost ways to enhance an existing enforcement program for greater environmental results.

Dr. M. Pütz, Ministerium fur Umwelt, Raumordnung und Landwirtschaft des Landes Nordrhein-Westfalen (Germany) described a "System to Supervise Environmental Duties and to Pursue Infringements Taking Clean Air Management as Example". He discussed the Federal Emission Control Act which is designed to protect humans, plants, animals and waters from environmental harm. The Act contains requirements for industries, allows authorities to enter, inspect, sample and review records, permits the government to close down or dismantle an operation and provides for punishment of wilful or negligent acts, including administrative penalties of up to 100,000 DM.

Mr. P. Dordregter, Director, Vereniging Nederlandse Gemeenten (Netherlands) spoke about Environmental Enforcement by Municipalities in the Netherlands. He emphasized the important role municipalities play in the enforcement of state and local environmental ordinances in the Netherlands. He cited several important reasons to involve the municipalities in environmental enforcement efforts including that environmental violations have a greater impact of the municipalities in which they occur, it is more practical to enforce at a local level, and that the municipality can play an important role in coordinating the enforcement efforts of other levels of government. Mr. Dordregter also pointed out the need to integrate environmental concerns with town planning and zoning plans. Municipalities may have more leeway to be flexible and innovative in their enforcement responses.

3 Open Discussion

Several participants raised questions about the expense, both in terms of time and resources, that environmental lawsuits require. Ms. O'Meara responded that most environmental lawsuits in the United States are settled outside of the courts, through mediation, negotiation and arbitration. This discussion continued with particular reference to the United States' hazardous waste law, also known as Superfund. In addition it was noted that greatest use is made of administrative authorities which are less costly and can in many cases be as effective if coordinated with a civil judicial program.

Further detail was requested of Mr. Dordregter and Mr. Paddock concerning the role of municipalities and States in enforcement actions. Several ideas for cooperative efforts, including addressing enforcement issues on a regional level and using particularly good municipal programs as examples for other municipalities were suggested.

A discussion ensued about the most effective type of enforcement authorities for environmental violations and all of the panelists agreed that an integrated approach utilizing civil, criminal and administrative actions is the most effective, with an emphasis on administrative actions due to their increased speed and lower costs.

NGO's requested that they be included more in the process.

4 Conclusions

Both strong environmental laws and a strong enforcement program are necessary to achieve compliance and environmental benefits.

Having a range of authorities (administrative, civil judicial and criminal) available is necessary to address the range of environmental violations.

Penalties and sanctions must be commensurate with the violation but also must be strong enough to have a deterrent effect. The importance of administrative sanctions was emphasized.

Promoting voluntary compliance helps industry comply with the law and reduces the amount of resources the government must spend on enforcement.

All levels of government, federal, regional and local must cooperate to effectively enforce against the regulated community and to avoid duplication of effort.

THEME #5: ECONOMIC DEVELOPMENT AND OWNERSHIP ISSUES

Reporter: Dr. Gyula Bándi

1 Goals

This topic covers among others the approaches of enforcing requirements at government owned and operated installations, the approaches to enforcement when facing economic hardships and also the questions of how to address compliance issues in a privatization situation. Some especially important and difficult environmental enforcement problems of the Central and Eastern European countries were selected for presentation and discussion. Among these problems probably the most comprehensive is the question of how to harmonize environmental protection with economic development in a sustainable way in a situation where the economic structure itself is constantly changing and the ownership situation also has not yet been clarified. The same problems also arise in market economies and developing countries, but in both cases in a bit different way: everywhere, the basic support for a better enforcement situation is the harmonization of environmental and economic interests into one coherent and unified structure.

2 Presentations

M. Vassilopoulos, working as the Permanent Representation of Greece to the European Communities spoke about "Ënvironmental Enforcement in Greece". He began his presentation with a reference to one ancient legislative piece of Greece in the year 845 B.C. underlying the importance of the polluter pay principle: The main reason for environmental problems is the contradiction of environmental policy on the one side and socio-economic policy on the other side. The two should be balanced with a set of institutions that anticipate and facilitate compliance. Among others, designing environmental requirements which take into account socio-economic factors to facilitate enforcement, use of economic incentives and market measures can be used effectively to give priority to environmental requirements.

Mr. P. Cuillerier, The Director of the Office of Enforcement, Environment Canada, discussed the "Enforcement of Canadian Laws of Environmental Protection as Applied to Federal Facilities". He focused on the necessity to apply environmental enforcement programs to federal and government facilities in Canada. The compliance with environmental regulations is always and everywhere mandatory with an emphasis on prevention. According to the speaker sound environmental management involves the prevention of violations before they occur, the reporting of violations and last but not least the reducing of the harm and correcting any damage caused by violations. In the last years, he underlined, the Government of Canada is serious in going green.

Dr. A. Homonnay, Director of ENVIMARK Ltd. Hungary presented his paper: "Enforcing the Law at Government Owned or Operated Facilities". He expressed his view that the environmental legislation in Hungary is more or less acceptable, but enforcement is not satisfactory. One of the present problems is the necessity of an appropriate economic environment, which imposes a number of questions, among others the quantity of state property, the privatization movement, the conflicting interests of different economic sectors, the conflicting interests of economic development or unemployment and environmental protection, the very vague specifications of state - community - and individual responsibilities in environmental protection.

Mr. B.M. Diamond, the Director of the Office of Waste Programs Enforcement, U.S. EPA, discussed the "U.S. Environmental Protection Agency's Integrated Management Compliance by the Federal Government". He spoke about the enforcement problems concerning the activities of federal agencies and their relationship with the EPA. Among others the EPA may comment on the budget submissions of other agencies if the budget is for environmental purposes, comment on major actions taken by agencies in environmental issues. When these agencies fail to meet the environmental requirements or affect the environmental interests, states and citizens may bring enforcement action against them.

Mr. C. J. Goetz, Enforcement Division Administrator of the Allegheny County Bureau of Air Pollution Control spoke about "Enforcing Air Pollution Control Laws in Economically Depressed Areas/ Circumstances. He presented a case study of enforcement in an economically depressed area, concerning a heavy polluting industry of the steel industry. The most effective solution in that field proved to be to use the method of making enforcement agreements with industry on issues like research studies, designing and testing new technologies and ways of improving the pollution control techniques, setting up inexpensive interim control measures, stressing environmental reports etc. All these measures led to a phased approach in solving environmental pollution problems, where the local NGO's did play an important role as a partner.

Mr. Braams, a lawyer representing the Ministry of Housing, Physical Planning and Environment, The Netherlands talked about "Civil Enforcement: Paying for the Past". He presented the issues of civil enforcement, as an answer how to make polluters pay for the past damages and the need to clean up soil contamination. Here the soil pollution focus has a large impact on groundwater quality. The essence of government policy reflects the polluter pays principle, meaning a cost-recovery policy in cases where government action is necessary for clean up. The first case is dated back to 1983 and since then more and more cases are filed against the polluters on the basis of an Interim Act on Soil Clean-Up. The possible next stage of legal development would end up in strict liability.

Dr. P. Syryczynski, State Inspectorate of Environmental Protection, Poland discussed "The Ecological Semaphores" for Fourteen Paths of Ownership Changes in Poland. He analyzed in detail the different types of ownership change. The major difficulty of this kind of change is that not all the traditional enforcement tools can be applied in the process of economic transition. The ownership changes may occur in fourteen different ways and therefore the obstacles begin with the point of how to identify the present economic entity. There are a number of possible enforcement tools in the case of privatization, like charges and taxation, administrative interaction,

environmental auditing, compliance schedules and some indirect methods, which may have the form of economic measures.

Mr. J. Plaut, the Director of the Worldwide Environmental Programs, Allied Signal Inc., pointed out "The Importance of Ownership or Control and Local Decision Making in the Identification and Solution of Environmental Concerns". As an answer to the previous presentation he emphasized the importance of ownership or control, identifying environmental concerns when addressing changes in the case of privatization, some companies of the Central and East European (CEE) countries can be improved in terms of compliance but some are not improvable from environmental point of view. In making business decisions on an ownership change it is in the interest of the buyer to assess environmental and health problems. This kind of auditing can also serve as an incentive for existing companies to improve environmental management. Another type of incentive is to set aside a fund from the purchase prices of companies for environmental purposes. When formulating a view of further compliance, the EEC standards represent the most reliable model.

Dr. S. Wajda, an expert from Poland spoke about "Privatization and Environmental Compliance in Poland". He presented his views upon the importance of environmental auditing in a situation where no one has a clear picture on the environmental situation. Although compliance with the environmental requirements, like auditing, would be essential, less has been done in respect to ensuring environmental priorities are met. Beyond auditing, the presentation did mention the problems of cleaning up contaminated areas, where the setting up of a fund from a part of the purchase price may serve as a source of financing.

Dr. I. Mándoki, representing the State Property Agency as an officer in charge, discussed the "Environmental Problems in the Hungarian Privatization". He underlined the importance of connecting the privatization process with compliance with environmental requirements. In Hungary, where 40 % of state property is under privatization process, this issue represents a special sphere of interests from environmental point of view. Environmental auditing is not a requirement today, but sometimes the foreign investor requires it. Under the privatization process there is a good chance to give preferences to environmentally friendly technologies. In the present legislative process at least auditing and the liability issues should be regulated, the sooner the better.

3 Open discussion

The great number of presentations and the long discussion in theme #5 do not allow a full recounting of all the remarks and discussion points in detail. Summarized below are those ideas and views which also represent a kind of majority opinion. The main topics covered by the Conference discussion were:

- enforcement in the case of state facilities;
- ownership changes in general and the opportunities they present for enhanced compliance;
- privatization as a major means of ownership changes;
- enforcement in economically depressed areas;

- civil enforcement of past contamination;
- methodology of treating with businesses.

The basic idea of enforcement in the case of state owned facilities is that environmental laws are obligatory for everybody, so for government and agencies also. In that respect it may help to authorize the environmental ministry or a national council to harmonize the efforts of environment with those of other government agencies. State agencies and facilities may receive support from environmental organs in training, technical assistance and in many other ways. In most cases the environmental government body may not directly interfere in other agencies activities, but there are certain possibilities, like a control over budgetary movements. Also, assigning enforcement to a different level of government can ensure independence. The role of public participation here is very important, but effective information is a pre-condition for this to work.

In the sphere of ownership changes there are a number of conflicting interests, where some harmonization should be done. One possible method is to use a kind of ability to pay principle in order to avoid major handicaps. There is a possibility to use two approaches for timing - a strict liability standard for new businesses and a gradual compliance schedule for existing businesses to meet the same standards in a relatively longer period. In standardization a general acceptable goal is to reach EEC standards. From among ownership changes bankruptcy is particularly important in determining who pays for environmental obligations and what is the ranking of environmental interests. In systems where state ownership still represents a majority, the situation is much more difficult.

Privatization as characterized above is a massive process, which will change the playground for environmental requirements. Here a mandatory environmental auditing and sometimes an overall assessment should be established. This is the interest of the investor also in order to avoid further disputes and to learn whether the company is improvable or not. These investors need a level of certainty. As the liability for past environmental damages is particularly important, among the solutions one possible way is to create funds from purchase prices. However, privatization presents a unique opportunity to leverage foreign capital and know-how towards ensuring future operations in compliance with environmental concerns.

The past contamination is not only a problem of privatization, but here it is even more important to regulate who is liable for past damages. Polluter pays principle should serve as a basis of liability but it has a different meaning in the case of old state owned businesses. Therefore the situation in former socialist countries is even more difficult. One version is to judge the past contamination on the basis of strict liability. A different version is to provide statutory protection for the new owner from liability, but a financial contribution for cleaning-up is also acceptable.

In economic or pollution point of view depressed areas special arrangements are needed to achieve compliance. This covers the gradual compliance, so to provide sufficient time, meaning a phased-in approach. Industry should provide reports on compliance. Special care must be taken for employment issues, which among other means retraining. The best is to reach an agreement with industry and with the other interested parties.

The harmonization of economic and environmental requirements need to find the ways of managing conflict situations, which begins with a dialogue between government and polluters. The public should be involved in these dialogues. There must also be a better coordination among government agencies. In the following the original philosophy of enforcement and administration must be changed, first of all in CEE countries with a special care on cooperation between the different parties. For negotiations the best is to have negotiations within a legal framework with legal authorization, but without this there is also a chance for negotiations.

4 Conclusions

In respect to the basic idea of enforcement that environmental laws are obligatory for everybody, so for government and agencies also, it may help to authorize the environmental ministry or a national council to harmonize the efforts of environment with those of other government agencies.

In the sphere of ownership changes there are a number of conflicting interests (e.g. opportunities they present for enhanced compliance), where some harmonization should be done. Different methods for harmonization are possible.

A major way of ownership changes is privatization, which will change the playground for environmental requirements. Here a mandatory environmental auditing and sometimes an overall assessment should be established. The past contamination is not only a problem of privatization, but here it is even more important to regulate who is liable for past damages. Polluter pays principle should serve as a basis of liability but it has a different meaning in the case of old state owned businesses. Therefore the situation in former socialist countries is even more difficult.

To achieve compliance in economically depressed areas, special arrangements are needed. The best is to reach an agreement with industry and with the other interested parties.

The harmonization of economic and environmental requirements needs to find the ways of managing conflict situations, which begins with a dialogue between government and polluters. The public should be involved in these dialogues. There must also be a better coordination among government agencies.

THEME #6: APPLICATIONS TO A PARTICULAR ENVIRONMENTAL PROBLEM: SOLID AND HAZARDOUS WASTE

Reporter: Frank Uijting

1 Goals

The theme has tried to depict concrete enforcement experiences and prospects from several perspectives, UNEP, one western country and in several former communist countries, the particular problem of international transhipment of waste being addressed in the light of the Basel Convention.

2 Presentations

Dr. Rummel-Bulska, Chief of UNEP's Environmental Law Unit gave an overall presentation about "The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal", highlighting key provisions requiring enforcement measures. Dr. Rummel-Bulska stressed the necessity to accelerate the ratification process in most OECD countries.

Mr. W. Radecki, Professor of Law at the institute of Law of the Polish Academy of Sciences, Warsaw, spoke about "The Polish Prohibition of Waste Import. He indicated that the absolute prohibition of any waste imports into Poland decided in 1989 turned out to have unexpected detrimental effects for the protection of Poland's environment. As a consequence, the Polish authorities are considering new legislation which will depart somewhat from the total import ban approach.

Mr. S. Wassersug, programme Manager at the Regional Environmental Center, Budapest, gave a presentation concerning "Transition and Implementation of Waste Management Policies in Central and Eastern Europe (CEE)". Mr. Wassersug set out a clear methodology for designing waste management strategies in CEE countries, stressing the necessity to build on realistic goals and enforceable legislation in order to achieve voluntary compliance.

Mr. F. Relea, Director of the Junta de Residus of the Regional Government of Catalonia, gave a general presentation of "The Enforcement Experience in Cataluny Towards Industrial Wastes". The waste management system of Cataluny is a flourishing highly industrialized region enjoying extensive autonomy in a rather less developed EEC Member State. Mr. Relea underlined especially the need for skilled environmental inspectors with a good technical background.

Mr. K. Velek, of the Ministry of the Environment of the Czech Republic, described in detail the "Enforcement Concerning Solid and Hazardous Waste Disposal in Czechoslovakia". Mr. Velek highlighted the persistent gap between the texts and reality, given in particular the limited financial

resources and the lack of qualified staff. He illustrated notably how an excessively dogmatic implementation of the principle of proximity can prevent efficient large-scale solutions.

Mrs. L. Mâra, Director of the Strategy and Policy Department of the Romanian Ministry of the Environment, presented an overall picture of "Hazardous Waste Transport and Disposal" in Romania. Mrs. Mâra emphasized that her country is increasingly having to contend with illegal toxic waste imports.

3 Open discussion

Mr. S. Klem, Interpol, gave a short presentation about the role Interpol might play in enforcement of transboundary shipments of hazardous waste. Because of the fact that they have a large international network and a lot of experience with international crime, Interpol can play an important role as the central point and platform for information exchange and case coordination.

Mr. H. Kesselaar, Environmental Inspectorate of the Netherlands, presented some remarks on behalf of a fast ratification of the Basel Convention. The experience in the Netherlands with transboundary shipments of hazardous waste so far is that besides controlling notification documents it is necessary to have active physical inspections. Furthermore one should look to the total waste chain. Another important point is that there should be consistency between monitoring systems. Among others this means that cooperation is a must. As far as the Basel Convention is concerned he concluded that the problems with the definition of waste have to be solved, there should be a quick ratification of the Basel Convention within the EEC and a worldwide fast notification.

Mr. J. Plaut, USA, stated that the USA did not ratify the Basel Convention yet. The industry testified twice on behalf of ratification. Yet, there does not seem to be political pressure. So ratification is not seen as an important thing to do. Therefore it is necessary to put more pressure on politicians. He asks if anyone can give advice as to how to built a strong consensus outside the environmental community.

Mr. N. Blackburn of the International Chambers of Commerce (ICC) adds to this that the ICC supports the Basel Convention, but they do have some concerns.

Mr. Wassersug, REC Budapest, said that the media plays an important role in increasing pressure. The media is interested in public reaction. Besides that reports like those of Greenpeace give concern. In this way publicity can be elevated up to a public policy standpoint.

Mr. L. Krämer, EEC, raises the question that lawyers should not perhaps consider whether the separation of the notion of waste from the notion of products is an error by lawyers. From an environmental point of view it is completely irrelevant if the environment is affected by substances, products or waste. So is not all of the difficulties due to the fact that we opened this huge loop-hole of allowing secondary raw materials not to consider as waste. Is not under these auspices perhaps the approach of making the convention on waste just a legal error.

Mr. H. Kesselaar agrees with Mr. Krämer. We should call everything waste. Afterwards we always can see how to deal with it.

Mr. Relea, Spain, explains that secondary raw materials are also seen as waste. He stresses that one should not only look to waste as a result from a production process, but look at the whole chain. There should be international agreements on this subject.

Mr. Diamond, USA-EPA, stated that attention should paid to regulations on recycling. On one hand recycling is an important solution for the waste problem. On the other hand it appears that of the most contaminated sites about 10% is caused by recycling facilities. It is therefore that there must be good regulations for recycling facilities.

Mr. M. Führ, Öko-institut Germany, points out that the appearance of waste is now a criterium for special control, because the owner has no interest in waste. If new agreements are made, there should be new criteria for control. One should be aware that if control focuses on all hazardous materials, there will be the problem that some products can be seen as hazardous waste, but because one can sell them, they are not classified as waste.

There should be a new approach in the regulations of materials. More or less a cradle to grave approach in the whole life cycle of materials. A new regulatory screen should be developed within the EEC that brings together all the different parts in the life of materials and combine the different legal systems that are now splitted up.

Mr. H. de Vries, the Netherlands, stated that in some cases the appearance of hazardous waste is the price of a product. For instance the zinc-industry in the Netherlands is dealing with a waste stream. There is a technical solution for the treatment/recycling of this waste, but it is too expensive. There is too much competition with other European industries.

A representative of the Hungarian industry points out that one should not regard the industry as criminals. The problem is that it is always easier to be on the other side.

According to Mr. Madonna, USA, industry is not criminal, but there is always a party that's making profit of something, also with waste. We should encourage the idea that recycling is an important way of continuing the existence of resources.

Ms. M. Mulkey, USA-EPA, explains that economic instruments, like taxes and fees, are important for reducing the waste streams.

Mr. Relea, Spain, explains that in the Spanish waste program some economic instruments are taken up. Besides that the taxation scheme on water will be expanded to waste. But Mr. Relea is concerned about finding the right ways where to address for perfect control. If we don't find the right way we add more difficulties for people who want to do things properly. One should be careful not to get the opposite results.

Mr. Velek explains that in the CSFR a difference is made in fees for disposal between hazardous and normal waste. If recycling takes place, no fee has to be paid by the waste owner. By this way recycling becomes attractive.

Ms. J. Aloisi de Larderel, UNEP, notes that during the Rio conference issues like minimization, cleaner technologies, reuse and the use of less energy were on the agenda. The UNEP has launched a program about these items. In October there will be a ministerial meeting in which these issues will be discussed.

Mr. S. Fulton, EPA, gives a summary of the experience with transboundary shipments of waste between Canada, USA and Mexico. It appears that these activities look like criminal activities. It is important to attend to reconcile waste tracking procedures between countries so the disappearance of waste can be checked. Furthermore we need procedures for informing each other when shipments are taking place and also procedures for sharing information for law enforcement purposes associated with these kind of shipments. An area of consideration and cooperation is making sure that we have procedures in place that allows us to relay effectively on each other and developing cases in this area.

4 Conclusions

Resuming, the following ideas emerged during the discussion.

Information and communication between the different actors have a key role to play. Manufacturers should not feel that impossible targets have been set and that they are subjects to a presumption of guilt whatever they do.

Coordination should be deepened, especially at international level. The participants agreed that the definition and classification of waste should be the same all over the world. it was also suggested that the separation os waste law from product law turned out to be detrimental but the opinions remained divided on this. nevertheless, everybody agreed that regulations on waste management should not focus on waste disposal only should take a cradle-to-grave approach.

While most participants agreed on the need to speed up the ratification process of the Basel Convention (which it was felt would be a first step towards a better international management of waste transhipment), some raised doubts about its future enforcement pointing to the disappointing results of the EEC Directive which inspired it.

It was also stressed that an existing international structure, Interpol, is willing to play a more active role in the fight against illegal international transhipment of waste.

Waste management strategies need to be designed in accordance with the economic possibilities and with the social and cultural conditions of the country.

There is a little hope for efficient enforcement where the necessary infrastructure is lacking, not only technology and appropriate equipment, but also education and training.

THEME #7: PUBLIC DISCLOSURE AND CITIZEN'S ROLE IN ENFORCEMENT

Reporter: Ann E. DeLong

1 Goals

An exploration of the role of public disclosure, citizen's and others in the enforcement process and their implications for achieving more widespread compliance.

2 Presentations

Ms. M. Bowman, Director, Environmental Program, Environmental Law Institute (USA) spoke about "The Role of Citizen's in Environmental Enforcement". She presented an overview of the ways citizens can influence and enhance the ability of governments to enforce environmental laws. Among the suggestions she outlined were included publicizing legal requirements to citizens and industry, monitoring and reporting environmental violations, commenting on draft laws and regulations, suing government to perform the duties required by statutes, suing industry to comply with laws and leveraging nuisance and trespassing laws for environmental benefits. In order for citizen suits to be effective, environmental standards need to be clear, the judicial system must be amenable to citizen suits, adequate training in enforcement procedures must be provided and citizens need access to information. Citizens are the greatest natural resource for environmental laws because they have a personal stake in the environmental problems which directly affect them.

Mr. R. Hallo, Coordinator for International Affairs, Netherlands Society for Nature and Environment presented his paper "Citizen Role in Enforcement: A Spur, a Supplement and a Substitute". He emphasized four important roles citizens (or citizen groups) can play in environmental enforcement: 1) to spur governments to act in a timely and effective manner, 2) to supplement governments efforts in environmental enforcement, 3) to act as a substitute for governments and act in cases where the government chooses not to (i.e. in low priority cases). To be effective in these ares, Mr. Hallo emphasized the importance of access to information, clear, enforceable laws and a sympathetic judicial system. He also warned against the danger of losing a citizen's suit and the subsequent difficulties that would pose for other citizen suits.

Mr. R. van Heuvelen, Acting Director, Office of Civil Enforcement, U.S. EPA presented "Citizen Participation in U.S. Environmental Enforcement". He discussed the utility of citizen suits to enhance government activities in environmental enforcement. He listed the benefits to government of citizen involvement including, identification of violations, participation in settlements, initiation of citizen suits and review of regulations. Activities governments can initiate to encourage citizen participation include public education on laws and procedures, access to information, institutionalizing statutory reward authorities and paid informant programs.

Mr. M. Führ, ELNI (Germany) discussed the "Citizen's Role in the Enforcement of Environmental Law in Europe". He described the importance of citizen participation in decision-making procedures. He stressed the importance of easy access to information and also the need for good data. Citizens currently have access to government information but not to industry data. Citizens, governments and polluters need to work together for the most effective enforcement programs.

Ms. F. Irwin, Director, Pollution Prevention, World Wildlife Fund. (USA) presented her paper: "From Public Disclosure to Public Accountability: What Impact will it have on Compliance?" She described three tools governments and industry can use to communicate environmental information to the public and how that information can be used to encourage public accountability by industry. The United States has enacted a community right-to-know regulation which requires industry to provide information to the government on annual emissions, recycling of chemicals, accidental releases and source reduction measures taken by the industry. This information is available to the public through the government and has been used by NGO's to push pollution prevention measures by industry. Industries are also encouraged to prepare environmental audits and to make this information available publicly. Lastly, in the EEC, companies are using product labelling to make environmental claims.

Mr. N. Blackburn, Director, International Chamber of Commerce (France) described "Public Disclosure and its Impact on Compliance". He addressed the impact of public disclosure on compliance. He stressed that many businesses have voluntarily agreed to establish environmental policies, that UNCED promoted public disclosure of environmental information and that many businesses are preparing environmental audits and environmental performance reports designed for public consumption. He suggested that economic instruments, such as tradeable permits, were favoured to promote environmentally sound business practices.

R. De Baere, Bond Beter Leefmilieu (Belgium) discussed "Disclosure of Environmental Information and Enforcement of Environmental Law in Flanders: The Complementary Role of Governmental Authorities and NGO's". He described the complementary roles of the government and NGO's in environmental enforcement in Belgium. Citizens can participate in licensing procedures, for example, however, access to the information leading up to the licensing decision is not available to the public. This was a general problem with access to information--that information is only available upon demand (the government does not take a proactive role in publishing environmental data) and that the secrecy of duty code for public servants was a barrier to accessing environmental information. Mr. De Baere called on the EEC to set minimum standards for licensing procedures, accessibility of information and public participation.

Dr. E.R. Klatte, DG Environment, Nuclear Safety and Civil Protection, Commission of the European Communities presented his paper: "Enforcement of EEC Environmental Legislation; the role of Citizens and Citizens' Groups". He provided practical information regarding the role of the EEC in supporting citizen participation, providing access to information and regulating compliance by member states. He reviewed the three types of EEC legislation--directives, regulations and decisions--that are legally binding on member states. He also stated that implementation of EEC directives by member states is very poor but that the member states do not want the EEC to monitor their compliance. Citizens, therefore, play a key role in ensuring compliance through

citizen complaints. Citizens have the right to complain, the right to petition the EEC Parliament, the right to obtain information, the right to participate in the legislative process and standing in the European Court of Justice. When a citizen complains, the Commission sends a letter to the appropriate agency in the member state requesting clarification. This procedure is effectively used by NGO's to access information otherwise difficult to obtain. Any citizen (even from non-member states) can request information.

Mr. E. Popov, Ecoglasnost (Bulgaria) discussed "Public Disclosure and its Impact on Compliance: Results and Mistakes (the Case of Bulgaria)". He described the difficulties experienced by a Bulgarian NGO in increasing the environmental awareness of citizens and government officials and influencing changes in environmental legislation. Problems encountered include the fact that government officials are not aware of citizen's rights, individual citizen's initiatives are not seen as credible by the government and that no provisions for public participation are included in current legislation. New EIA legislation is addressing this problem by incorporating provisions for public comment on draft and final rules and for public hearings. With the movement towards privatization of industry, citizens need to be even more involved in decision-making and policy-making roles.

Mr. P. Keough, Deputy Regional Administrator, US EPA, Region I discussed the "Use of Public Disclosure in Environmental Protection Programs to Enhance Compliance and Change Behaviour in the United States." Because almost all of the data submitted to the EPA by industry is public, disclosure of this information can have a profound effect on how a company does business. EPA trains journalists how to obtain and interpret environmental data and views the disclosure of this information as an important tool for enforcement. Also, the publication of enforcement actions taken by EPA in the press has a deterrent effect on other members of the regulated community. Currently, EPA is trying to design a program to recognize environmental excellence on the part of industry and to publish that information as well.

3 Open discussion

Civil suits brought against government agencies for a failure to enforce provide an incentive for the government to get serious about their own enforcement efforts.

Several of the speakers and participants emphasized that citizen participation does not necessarily mean that the government is not doing its job--citizen participation should be seen as a supplement to government action.

When developing legislation governing citizen participation, it is important to provide for access to information and to the courts. Also, a mechanism needs to be provided to overcome the cost impediments to citizen suits. In the U.S., technical assistance grants can be provided to citizens groups active at Superfund sites. In England, in court cases, the loser pays all of the court fees.

Representatives from the EEC and Central and East European countries stressed that citizens should work within the mechanisms currently available to them to stimulate governmental

action on environmental issues. For example, some countries do not currently have a provision for citizen suits. However, citizens and NGO's can work within the existing system, using the media and other means to make their concerns heard. This can be just as effective as citizen suits and is much less costly and time-consuming.

The importance of citizen participation in monitoring efforts was discussed. Citizens know their environment, have a vested interest it the quality of that environment, and can play a central role in monitoring, setting permit limits and keeping an eye on the company's and government's actions. Citizens can continue to be involved after permits are issued.

The issue of data quality and reliability was raised, particularly in the context of citizen suits and monitoring. While data to be used in court typically has to meet certain quality criteria, other measurements can be used to stimulate citizens to become involved in the problem.

It was generally agreed that citizens need to become more active in requesting data, educating themselves on the meaning of that data, and getting involved. An active citizenry is necessary to have an impact on the government and on the environment.

4 Conclusions

Citizens need to be involved in enforcement programs to fill in where governments fail to act, to spur governments to act more swiftly or forcefully and to enhance government efforts in enforcement.

Citizen's participation can take many forms: providing input on draft legislation, monitoring and reporting environmental violations, publicizing legal requirements and violations and initiating citizen suits.

For citizen involvement to be effective, it is necessary to have clear environmental laws and standards, access to information, a judicial system that is receptive to citizen suits, and adequate training for citizens to enable them to interpret the information and initiate the procedures.

Governments need to support NGO participation in the enforcement process and involve NGO's in the current legislative and administrative framework.

Examples of effective information and educational tools that could be used by governments to enhance voluntary compliance and pollution prevention were suggested, including publishing chemical emission data, requiring environmental audits and regulating product labelling.

Business can play an active role in environmental protection through voluntary source reductions, environmental audits, and environmental labelling. Governments can assist in these efforts by providing technical assistance and information on waste minimization technologies.

CLOSING REMARKS FOR THE SECOND INTERNATIONAL CONFERENCE ON ENVIRONMENTAL ENFORCEMENT, Budapest September 25, 1992

On behalf of the Executive Planning Committee for the second International conference on Environmental Enforcement, we want to thank the speakers, panelists, moderators, and, of course, participants for your contributions which made this Conference a success. We look forward to your formal evaluations of the Conference, but from all the comments we have received, the very active participation and lively discussions, we can comfortably say that the purposes of the Conference were achieved.

The Conference sponsors, the United States Environmental Protection Agency, the Netherlands Ministry of Housing, Physical Planning and Environment, and the Commission of the European Communities, assisted by the Executive Planning Committee, (including the sponsors as well as the Environmental Ministries of Poland, Hungary, Czech and Slovak Federal Republic as well as the Regional Environmental Center in Budapest, the United Nations Environment Programme IE/PAC and Hungary's Public Prosecutor), prepared this Conference as a response to the growing awareness of the importance of environmental concerns and the necessity of enforcement to achieve the goals of environmental requirements which are designed to address environmental problems.

The Conference focused on the development and enhancement of domestic environmental enforcement approaches, particularly in Central and Eastern European countries. However, our participants from almost 40 nations and organizations all around the globe have found there is more common ground than differences in the fundamental principles of environmental enforcement, broadly defined to include actions to compel and encourage compliance. The challenges we all face may require different solutions from one nation to another, but the basic issues and range of approaches from which to choose are quite similar.

The Conference addressed the following seven themes over a four day period:

Theme # 1: Context for Enforcement.

Theme # 2: Designing Enforceable Environmental Requirements.

Theme # 3: Developing an Effective Compliance Monitoring Capability (e.g.Inspection Capability).

Theme # 4: Developing Authorities and Legal Enforcement Capabilities to Respond to Violations.

Theme # 5: Economic Development And Ownership Issues.

Theme # 6: Applications to a Particular Environment problem: Solid and Hazardous Waste.

Theme # 7: Public Disclosure and Citizens' Role in Enforcement.

The final published volumes of the Proceedings will include summaries of each of the seven themes, key papers and discussions. We do not propose to summarize them here, but rather, would like to offer some highlights of the past four days on which we think we can build for what we can all look forward to as the third International Conference on Environmental Enforcement.

First, this Conference has been part of an ongoing process and commitment to work on a global scale to build strong, creative, effective domestic enforcement programs worldwide.

The goal of this Conference is compliance with environmental requirements. Compliance cannot be expected to happen voluntarily. Without active efforts to enforce, that is to both encourage and compel compliance, environmental policies and requirements are paper tigers, ineffective and unimplemented. However, the reasons we are focusing on environmental enforcement are many. Without enforcement environmental laws are not credible, and there is no respect for institutions responsible for environmental protection. Without enforcement there is no level playing field in the free market-place and those that choose to comply are economically disadvantaged, creating incentives to violate the law. And finally, without effective enforcement and implementation of environmental requirements, our societies bear more costs for cleaning up problems caused by unaddressed environmental pollution, there is little incentive to prevent pollution.

We have progressed since the first International Enforcement Workshop in Utrecht, the Netherlands, in May 1990 and we have several new frameworks on which to build:

- *The Principles of Environmental Enforcement*, presented in Theme # 1, was developed initially as an international training course in response to a request for assistance by the Government of Poland. It provides a general set of definitions, principles, framework, and options for designing effective compliance strategies and enforcement programs in any cultural or legal setting. Following this Conference, it will continue to be used as a general frame of reference for exchange of experiences internationally. Agenda 21 calls for further institution-building in enforcement and compliance and this can serve as its foundation.

- Within this framework, we have a general recognition that enforcement must be defined broadly, recognizing that compliance with environmental requirements, and achievement of environmental results and behavior change require both promotion of compliance and more traditional enforcement approaches to compel compliance. Together they can create an atmosphere of deterrence in which most choose to comply rather than to violate requirements, in which efforts to overcome barriers to compliance such as ignorance of requirements and lack of technical know-how or financing ability, and efforts to provide disincentives to violate the law are made effective.

- *Enforceability:* All Conference participants stressed the importance of developing enforceable requirements, during Theme #2 and other discussions. We now have established criteria for defining what makes a requirement enforceable. In developing enforceable environmental regulations and permits there are seven criteria that have to be met:
  understandability, precise definition of coverage, clear standard of product, measurement of compliance (preferably quantifiable and measurable), clear deadlines for compliance, self-monitoring, recordkeeping and reporting requirements, and a proper adoption procedure. We heard many examples of how poorly designed and drafted requirements have rendered them unenforceable and ineffective. We also discussed without conclusion, the merits of establishing requirements which are more or less stringent or difficult to achieve. We also heard examples of national laws which were designed to make compliance easy. Ultimately, to ensure enforceable rules, those that are responsible for enforcement must play a role in their design. Also, involvement of the public helps to ensure support for implementation.

- *Organization:* We also have a framework for evaluating organizational options for environmental enforcement based upon the purpose of an enforcement program, its capabilities and qualities along with a range of options for such organizations. We recognized that any enforcement organization requires substantial coordination across levels of government and among government agencies. Cooperation is needed in enforcement, both nationally and internationally, for exchange of information and the effectiveness of implementation of enforcement authorities. Among participants there was the feeling that enforcement bodies should benefit from a certain independence from general administrative authorities.

Second we established some common ingredients for making enforcement programs more successful:

Compliance Monitoring, Theme #3:

- *Multi-media inspections* are preferred to ensure an integrated approach. However, there are practical difficulties such as the complexity of several laws and the complexity of large industrial sources which raise a multitude of issues. They may be addressed by several actions:
  - a team approach, combining single-media specialists;
  - support from a central elite team;
  - extensive training or coaching, and
  - inspectors might best be trained in specific industries.

- *Source self-monitoring, reporting and record-keeping* needs to be required more as the basis for compliance monitoring as inspection resources are too limited to provide the necessary coverage and it shifts some of the cost burden from government to regulated entities who must do much of this monitoring anyway to maintain compliance. There are concerns however, with the economic burden placed on the regulated community, particularly medium and small sized facilities. Such impacts must

be considered in designing requirements, and required reporting is best tailored to focus more reporting from facilities with a greater potential environmental impact.

- All programs lack resources for extensive inspection activity so priorities must be set for inspections at a higher frequency for those facilities which are most polluting. Inspection resources may be increased by funding them through fees which can be based upon the potential pollution or environmental impact, number of employees or other factors. This is an approach that Norway uses as an alternative to funding through general revenues. The fee schedule, while providing program funding, essentially dictates how and where inspections can be made. One advantage is that because the inspections are funded by the regulated community, the government is pushed to ensure a quality inspection.

Enforcement Authorities, Theme #4:

- A range of authorities, including administrative, civil judicial and criminal enforcement authorities are needed to address the range of environmental violations. Administrative enforcement will be most widely used in most instances because of its lower cost and quicker response time.

- Penalties and other sanctions should be set at appropriate levels to change behavior and not just lead to payments to pollute. They should be commensurate with the violation but also strong enough to have a deterrent effect.

- Voluntary compliance should be promoted to avoid the costs of having to use enforcement authorities.

- Enforcement by local authorities having expertise related to environmental control can effectively leverage limited regional and national resources, this includes enforcement authority for municipalities, police and regional governmental units.

Citizen Involvement and Public Disclosure, Theme #7

- We all agreed that citizens play a critical role in making enforcement effective in achieving compliance.

- Public support and an educated citizenry are essential to support enforcement. This can be accomplished through disclosure to the public of information on releases.

Third, we discussed ways of addressing some very difficult enforcement problems, facing General and Eastern Europe, in particular, but not exclusively:

- In theme #5, the problem of enforcement against government owned entities was discussed. All agreed that environmental requirements should be obligatory for everybody, for government and non-governmental entities alike. It was generally acknowledged that enforcement against government entities is difficult. Technical

assistance and training can play an important role. The organization housing the enforcement function must have the necessary authority to be able to harmonize the efforts of environmental compliance of other government agencies. The public can play a particularly important role if information is made available about violations. Also, assigning enforcement to a different level of government can ensure independence. Despite its difficulty, nations such as the U.S. and Canada have had success in taking enforcement against their own government agencies.

- Enforcement is not easy, particularly in areas experiencing economic difficulties. This can be experienced in any nation, but will be almost a universal condition in Central and Eastern Europe and developing nations. Speakers with experience in enforcement identified several approaches to use to enforce and achieve compliance at such facilities through creative enforcement responses. The U.S. experience with steel mills in the 1970's employed many creative approaches to work with that industry to come into compliance. Enforcement agreements were negotiated involving all levels of government, using approaches such as pilot projects and then trying it out in one or two parts of the plant (if the violator argues that control equipment is too costly or technically infeasible), using a phased-in approach to lower the cost burden by spreading out the cost, asking for research studies as part of agreements to enable the facility to develop new designs, requiring reports on progress, using less expensive interim controls for a limited time or using alternative reduction programs to achieve same reductions with a different mix of controls within a plant. Ability to pay can be a factor in assessing a penalty. These agreements need the commitment and perseverance of government officials, cooperation from industry, and innovative approaches to recognize economic conditions and address them.

- Privatization is happening at a very rapid rate in Central and Eastern Europe. It is complicated by at least 14 paths of new ownership arrangements. Environmental agencies, even if properly involved in the process, could not hope to be involved in each negotiation. However, privatization presents a unique opportunity to leverage foreign capital and technological and environmental management know-how toward ensuring future operations in compliance with environmental concerns. Foreign investors are also in need of some certainty as to the standards that will apply and that the proposed schedule and actions to correct existing problems is acceptable. The following elements were discussed regarding privatization:

  1. environmental factors should be introduced by law and practice into the privatization process ... if not by law then in practice by ensuring the involvement of environmental officials in transactions and negotiations.
  2. environmental audits, a key part of the process for governments and private parties, should be required for all paths of privatization.
  3. institutional relationships must be established between Ministries of Privatization and Environment and local governments.
  4. environmental requirements and standards must be clear ... e.g. for soil clean up ... if costs are to be assessed, and clear-cut decisions are needed on the problem of who bears the coat for past damages.

5. to gain full benefits of privatization it is desirable to set aside some of the privatization purchase price monies to provide clean up funds to ensure funds go toward improvement of environmental conditions.

- Given the difficulties of enforcement in Central and Eastern Europe it was suggested that the countries might join together to enforce requirements related to a common environmental priority such as cleaning up the Danube River in a coordinated way.

Fourth when applied to a particular environmental problem, illegal shipment of hazardous waste, Theme #6, we discovered that all elements of environmental enforcement are needed.

- The overwhelming feeling in theme #6 is that strategies for handling solid and hazardous waste need dramatic improvements. Three main priorities emerge from the discussions:

  1. More communication. Better communication will ensure that the targets to be reached will not be unrealistic or that there is no contact between the regulated community and the enforcing bodies.
  2. More coordination will result at the international level in a clear definition and classification of waste. The importance of the Basel Convention has been underlined. Its ratification is strongly encouraged by participants from industrial as well as governmental origin. More pressure is needed for a quick ratification. Nevertheless ratification is recognized as only a first step, after which many are needed to fulfil its goals.
  3. More pragmatism is needed in designing waste management strategies so that they are in accordance with the economic capacities and social and cultural context of the country.

It is felt that the transport of hazardous waste has to get more attention from international enforcement organizations like Interpol. Interpol offered such support.

Fifth, despite the fact that we all agreed that environmental enforcement is essential if environmental programs are to be implemented, there is still a fundamental lack of political support and commitment to environmental enforcement in many regions of the world, leaving environmental requirements ineffective. Developing this awareness requires several actions: Publicizing and educating the general public about environmental concerns is critical. An informed electorate ensures that political leadership is also sensitive to environmental matters. Providing for citizen involvement in enforcement can ensure that their interests are protected, indeed, the greatest natural resource for enforcing our laws are our citizens, as they are closest to the problems and most affected by irresponsible actions. For citizen involvement to be effective, it is necessary to have clear environmental laws and standards, access to information, a judicial system that is receptive to citizen suits, and adequate training for citizens to enable them to interpret the information and initiate the procedures.

Governments need to support NGO participation in the enforcement process and involve NGO's in the current legislative and administrative framework. Examples of effective information

and educational tools that could be used by governments to enhance voluntary compliance and pollution prevention were suggested, including publishing chemical emission data, requiring environmental audits and regulating product labelling.

Business can play an active role in environmental protection through voluntary source reductions, environmental audits, and environmental labelling. Governments can assist in these efforts by providing technical assistance and information on waste minimization technologies. For citizen involvement to be effective, it is necessary to have clear environmental laws and standards, access to information, a judicial system that is receptive to citizen suits, and adequate training for citizens to enable them to interpret the information and initiate the procedures. Governments need to support NGO participation in the enforcement process and involve NGO's in the current legislative and administrative framework. Examples of effective information and educational tools that could be used by governments to enhance voluntary compliance and pollution prevention were suggested, including publishing chemical emission data, requiring environmental audits and regulating product labelling. Business can play an active role in environmental protection through voluntary source reductions, environmental audits, and environmental labelling. Governments can assist in these efforts by providing technical assistance and information on waste minimization technologies.

Further we must develop and provide for creative ways to harmonize economic and environmental interests, both within the process for enhancing economic development and within the context of enforcement. We must publicize successful approaches to make those who think that economics and enforcement are competing interests aware of the opportunities for achieving both.

Finally, the major milestones being achieved in the area of free trade and increased international cooperation are putting new pressures on each government at all levels to ensure that their obligations are met in regard to environmental standards and pollution. Membership in the European Economic Community has already spurred commitments of each of its member states to meet the growing body of EC environmental regulations. While compliance has been uneven, the pressures within the Community are increasing substantially and will likewise affect those nations in Central and Eastern Europe wishing to join the community. These pressures also are evident in the "green" North American Free Trade Agreement, recently negotiated between the U.S., Mexico and Canada.

Given the intensity of the program over the past four days, in one sense we are ready to go home and reflect upon what has been discussed here. But more has occurred than can be measured by the points raised in presentations or discussions. We will all go home with a renewed commitment to continue to improve environmental enforcement, to continue to develop the new friendships and professional relationships we have made, and to continue to exchange useful experiences on the most effective ways to achieve compliance with environmental requirements.

In Utrecht, we began with representatives from 13 nations and two international organizations, focusing on the U.S., Netherlands and Western Europe. In Budapest, the Commission on the European Communities joined sponsorship and we have representatives from

almost 40 nations and organizations, focusing on Central and Eastern Europe. We are pleased to be able to announce that the government of Mexico has offered to host the third International Conference on Environmental Enforcement. While we plan to focus on the problems of developing nations, and a regional emphasis on South and Central America, we also plan to continue to build upon the first two Conferences which focused on developed industrialized nations. Central and Eastern Europe and other regions of the world. The sponsorship will expand, to include the United Nations Environment Programme. We hope to have representatives from many more nations in this exchange.

Thank you everyone, and please keep the momentum going.

H. Tate Jr.
Assistant Administrator
US EPA

P. Verkerk
Inspector General
VROM

MR. LUDWIG KRÄMER European Economic Community

Ladies and Gentlemen,

I have to say some words for the EEC Commission to rap up this Conference. First of all of course to deliver our warm thanks to the Hungarian government which hosted this Conference so successfully and allowing us to enjoy quite a number of very pleasant moments, like last yesterday night where we went out to see some really good dancing, horse riding, getting some food and so. On my turn I have to thank all the people behind this screen and it is impossible to innumerate them all, all the more since the EEC Commission, while officially cosponsoring this event, has been relatively little involved in the actual administrative day to day preparation. The Commission is a small body compared to the EPA and this might be the reason for this relative discretion, believe me ladies and gentlemen, all the more do we know to appreciate the tremendous effort the Dutch Department of the Environment and EPA have invested into the preparation of this Conference. That was a tough time these three years for these two bodies and they had difficulties and they overcame them with a lot of courage and a lot of enthusiasm to bring us all here together. I would also like to say something in substance to perhaps this part of the continent and these are five points which I would like to make.

The first point is that I would like to take up a word which my friend Miltos Vassilopoulos had mentioned two days ago. Colleagues from Eastern and Central Europe. We are on your side. If you look into the state of enforcement inside the EEC, and I have no authority to talk for anybody else, we still have to do these things which we all have been discussing these last four days. You have heard relatively little I would say about failures of enforcement in Western Europe but there are. It is sometimes horrible and it is sometimes deploring what kind of waste of effort there is done in not protecting the environment by not enforcing the rules which have been set by parliaments, by governments and by authorities.

A number of Western countries inside the EEC have a tendency towards environmental problems which might also be found back in this region, that pollution is an act of god that it is not something which you can go against, which you can fight, where you can try to start the citizen action, ask for information for transparency and so on. It comes somewhere from the sky and you just suffer from it and this is part of the EEC reality today 1992. We try to change these things but it goes very gradually, very slowly and there is no hope even with such brilliant conferences. There is no hope of making a switch and all change to the better.

My second point is, and it was already Mr. de Vries who mentioned it a moment ago, it has been raised on a number of remarks during the Conference but I believe it needs to be stressed because I also think it is of paramount importance. We have talked a lot of enforcement and we have talked much less of the environment. This is clear because enforcement is part of the whole undertaking and this Conference concentrated on the environment. But where we should be aware of problems is the problems of nature. Of nature conservation and protection considering licenses, issuing good licensing permits certificates authorization is very good but

where there is a conflict between a project and construction of an installation, construction of a road, motorway or an airport or an industrial plant and nature the EEC experience is that in 99 cases out of 100 nature is on the losing side. We have not managed these last 20 years despite all our legislation and despite all our efforts to bring the slow and gradual and progressive downgrading of nature, the disappearance of fauna and flora to hold, to reverse the tendency in Western Europe and be careful in this part of the continent which has maintained a great number of natural beauties, be careful that you do not believe it is a fatal way that nature must disappear by human activity expense. There are possibilities to go against it and I submit to you that neither in the west nor in the centre or in the east of this continent we do enough to protect the nature, fauna and flora.

All these words of sustainable development the Commission has issued a green book on sustainable transport but sustainable is written in letters which you can not read and transport is written in capital letters and that is the problem of economic development. The conflict between ecology and economy is the economy which prevails and if do not manage with our enforcement procedures to change this tendency if we then look ahead 25-30 or more years ahead there is not much which we can give our children or grandchildren or can leave them. This I find the biggest challenge for any enforcement body, for any enforcement authority indeed for any environmental authority because we have a tendency since we talk and communicate with polluters, actual or potential, industrial developers and so on. We have a tendency of overemphasising this aspect of arranging with polluters. In her book "The Silent Spring" Rachel Carson told us, and again I take up this point, that nature dies away in silence, that nature does not have voice, and if we do not manage to give a voice to this disappearing nature. All our efforts in economic and industrial development they are not that successful I would say.

The third point was touched already upon. I do not believe that either in Western Europe nor in Central and Eastern Europe we will have the capacity of drafting legislation which is revolutionary. Societies are not made like that. Progress arrives by inches of millimetres, if at all. The lesson for Central and Eastern Europe, if there is any, can only be tried to base on your indigenous potential of law making of structures and to improve that step by step gradually. If you can go quicker OK but be careful because imports of systems sometimes have reverse effect. Greater transparency, increase of standing for NGO's, increase of participation are all very important but these are to developed step by step otherwise the machinery, the administration, the bureaucracy if you so wish which has the power in the west of Europe and perhaps in this part of Europe too will hit back and the achievements are abroad to nothing.

This is another aspect and this is my fourth point that we must be careful, certainly on this continent I can not say anything about the United States or North America. We must be careful of avoiding that we come into a situation of legalized pollution, that public authorities, enforcement agencies arrange with polluters in order to set environmental legislation which finds agreement and acceptance among public authorities and among polluters but which might not be that acceptable for the environment. This, certainly on this continent or in Western Europe if you so wish, demonstrates the overwhelming need to have somebody to criticise and to put into challenge the authorities. During these days you have heard relatively little on criticism of enforcement agencies, on public authorities. If democracy is to be taken seriously then we need criticism challenging of law makers and law enforcers by media, by NGO's, by citizens because power tends to corrupt we learn at school. And absolute power tends to corrupt absolutely. In

Western Europe we have given most of the protection of the environment and the enforcement of the protection legislation to the administration.

The power is there and already sharing the knowledge about pollution meets this kind of objection because sharing the knowledge means sharing power and therefore it goes ahead so slowly and raises so many difficulties. The legalised pollution is a thing which we must be very careful of. Inside the EEC we find very nice words that environment impact assessments have to be made for any motorway which is built, but I quote this example just to inform you that there is an enormous effort of the whole transport sector all over Western Europe to get out of this rule and not to make environmental impact assessments or first get a governmental decision or a decision by parliament or by whomever to have this and that built and then make the assessment and keep the decision, the option open. This is a risk which probably enforcement agencies alone cannot solve.

This brings me to my last point, and than I would not longer bother you. I do believe that the biggest problem for enforcement agencies is the problem that enforcement agencies which are set up in our countries do not enforce. For one reason or the other, either they cannot enforce or they will not enforce. We might have to address much more in detail the point what do we do in order to make enforcement agencies actually enforce. In Western Europe no enforcement administrations, to my knowledge, has ever been brought to court. These kind of court suits in theory do exist. In practice they do not exist. If that is correct that the failure is with the non-enforcement by those bodies which are set up than we have to think of remedies and means to counter, attack or tackle this failure in our society. All this to show that one should not take back from this Conference that inside the EEC or in Western Europe, again I do not, cannot and will not talk about the United States, that things are alright. They are not. The environment is not in a good shape in Western Europe.

The Dutch example, with the greatest respect and admiration to the Dutch system, is not a model which is generally existing in Western Europe. We all know that and the Dutch know it themselves quite well. Do not think that there is a gap between the West and the East in these things, they are different degrees in problems. This is the whole of the of criticise what I was trying to say. Let us try to go away from this Conference and see what we can do in order to get environmental legislation better enforced. We have some very negative experiences in the West. Perhaps one day we could share those negative experiences also with you because we all can learn from the past.

I have to thank you for your patient attendance. The program organizers have made a very heavy program, Sometimes it was tough to sit in more than 15 speakers a day. I am sure now that the end is closed and the final reception too all this is forgotten. I do hope that this is a beginning of a fruitful discussion and cooperation in this area of environmental enforcement.
Thank you very much. Good luck.

CONFERENCE EVALUATION

To enable the Conference Staff to evaluate the Conference and apply lessons and suggestions to future Conferences, each participant was requested to complete an evaluation form. The Conference Staff received 80 percent of the evaluation forms that were distributed (approximately 130). Therefore, this evaluation fairly represents the views of the participants. Of those responding, 45 % have expertise in the legal aspects of enforcement, 25 % have technical expertise and 53 % are involved in policy and management. Some respondents indicated they have expertise in more than one field.

1 CONFERENCE PURPOSE, GOALS AND PARTICIPANTS

The vast majority of participants were very enthusiastic about the second International Conference on Environmental Enforcement. The initiative to organize a Conference with a focus on the development of domestic enforcement approaches was considered an excellent idea or very useful by 82 % of the respondents. Only 11 % found it moderately useful (7 % no reply). No one thought it was not useful. The focus on Central and Eastern Europe was appreciated even more. Ninety-two percent found it an excellent idea or very useful. The remaining respondents (6 %) found this focus useful (2 % no reply).

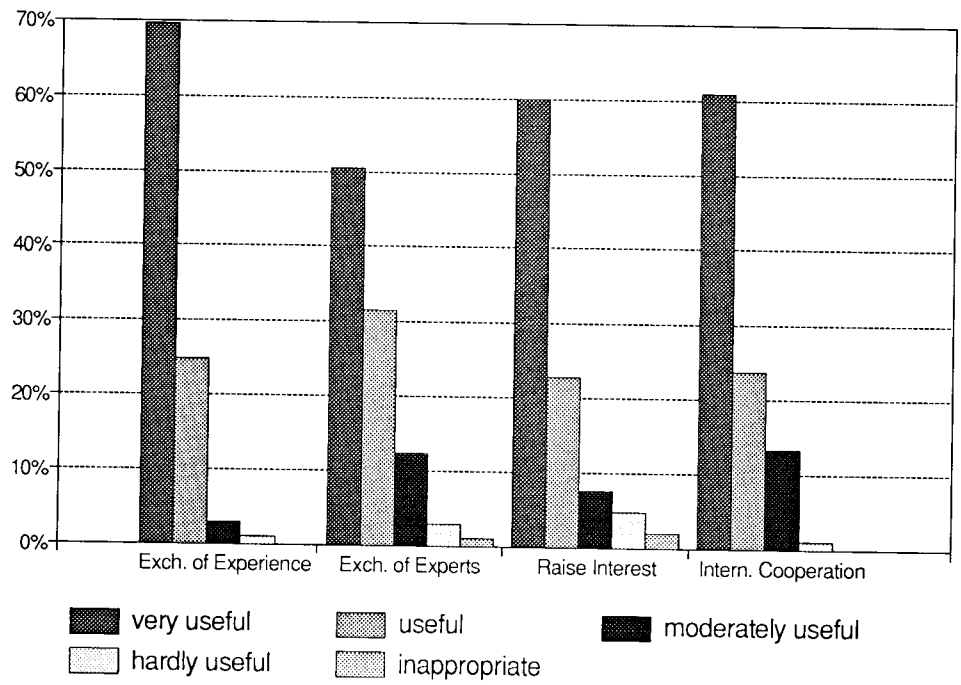

Figure 1 Appropriateness of the purpose and goals.

In response to a question about opinions on the appropriateness of the Conference purpose and goals and its success in achieving these, 80 % of the respondents found the purpose and goals of great value or very useful to the participants. Only 9 % found it moderately useful. No one found the purpose and goals not useful (11 % no reply).

Figure 1 represents responses regarding the appropriateness of the purpose and goals. This question is divided into four subquestions. 86 % of the respondents found useful or very useful the exchange of experiences (Figure 1, Exch. of Experiences) and experts (Exch. of Experts), the increase in the level of interest in enforcement (Raise Interest) and the enhancement of possibilities for international cooperation (Intern. Cooperation). Only 12 % found these to be moderately useful to not useful (2 % no reply).

Figure 2 represents responses regarding the success in achieving the Conference purposes: over 71 % of the respondents thought that the Conference was successful or very successful in achieving its purposes. 24 % found the Conference to be moderately to not successful (4 % no reply).

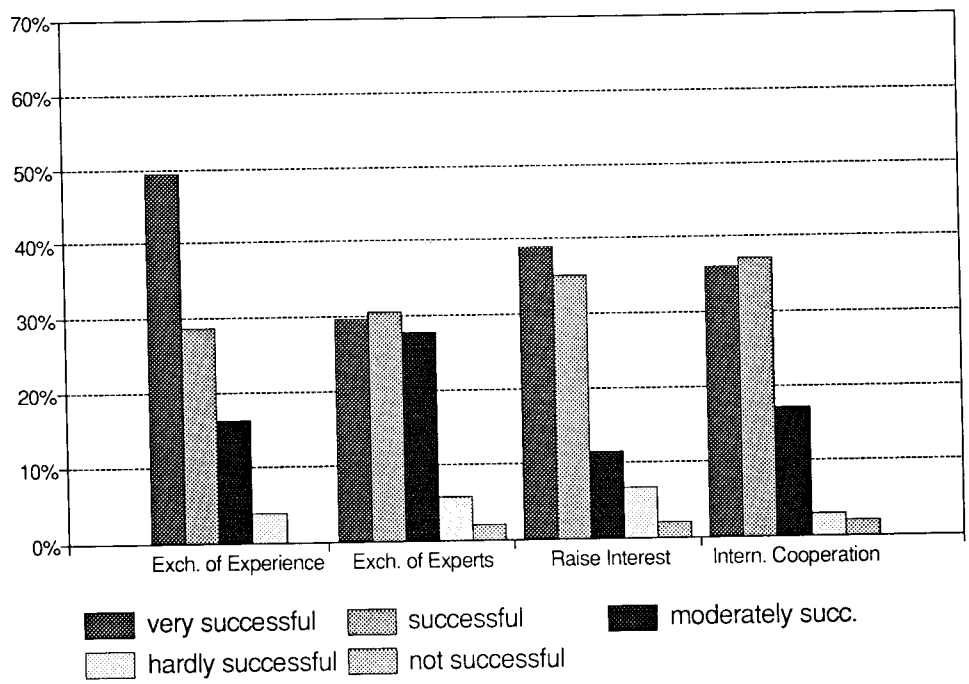

Figure 2 Succes in achieving the Conference purpose.

Figure 3 represents responses regarding the participants attending the Conference: the number, the level and the mix of expertise of the participants (respectively No. of Indiv., Level of Indiv., and Mix of Expertise) was considered successful to very successful by 80 % of the respondents. 19 % found these to be moderately successful (2 % no reply). There were no scores lower than moderately successful.

The number of countries and organizations (respectively No. of Countries and Organizations) represented at the Conference was considered very successful or successful by 74 % of the respondents. 25 % found this to be moderately successful to not successful (1 respondent did not reply).

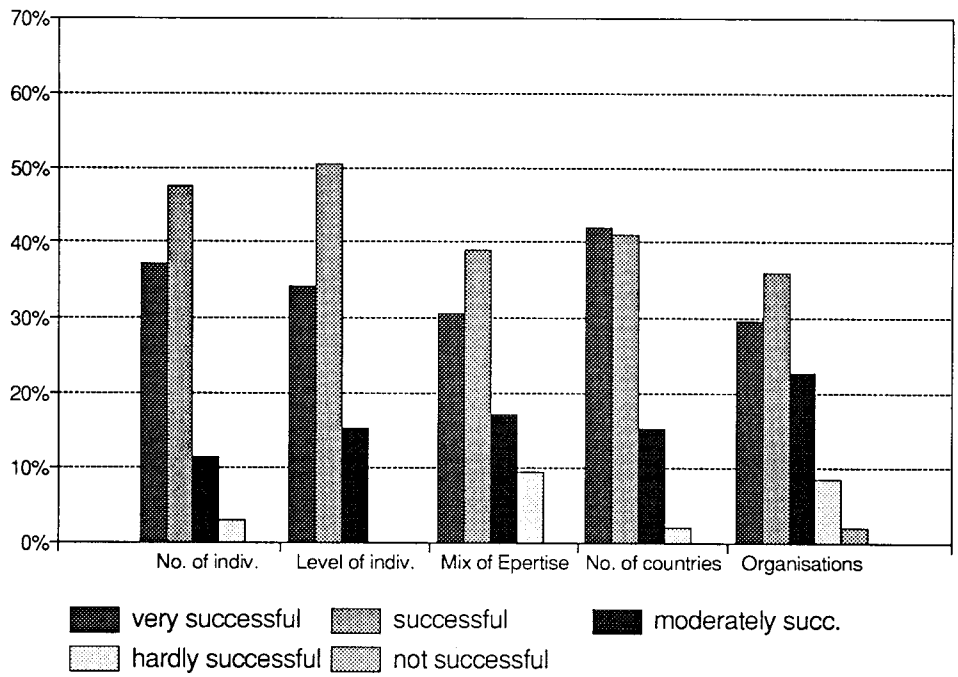

Figure 3 Participants attending the Conference.

2 CONFERENCE THEMES

2.1 Responses from the Evaluation Forms

For each theme the evaluation contained a question regarding the usefulness of the theme contents and the mix of topics addressed. From Figure 4 it can be concluded that over 79 % of the respondents thought the theme contents were useful or very useful. 14 % found it moderately or hardly useful. One person found a theme not useful (7 % no reply).

If we look at the separate themes it can be seen that the themes *Context for Enforcement* (see Figure 4, "Theme #1, Context") and *Public Disclosure and Citizens' Role in Enforcement* ("Theme #7, Public Disc.") score highest, with respectively 88 % and 79 % successful or very successful responses and with more very successful than successful responses. *Designing Enforceable Environmental Requirements* ("Theme #2, Designing") and *Developing an Effective Compliance Monitoring Capability* ("Theme #3, Compliance") score also very high with respectively 89 % and 85 % successful or very successful responses. The other themes, *Developing Authorities and Legal Enforcement Capabilities* ("Theme #4, Capabilities"), *Economic Development and Ownership Issues* ("Theme #5, Economic"), and *Solid and Hazardous Waste* ("Theme #6, Waste") score a little less with respectively 78 %, 68 %, and 69 % successful or very successful, but with relatively more responses being moderately or hardly successful.

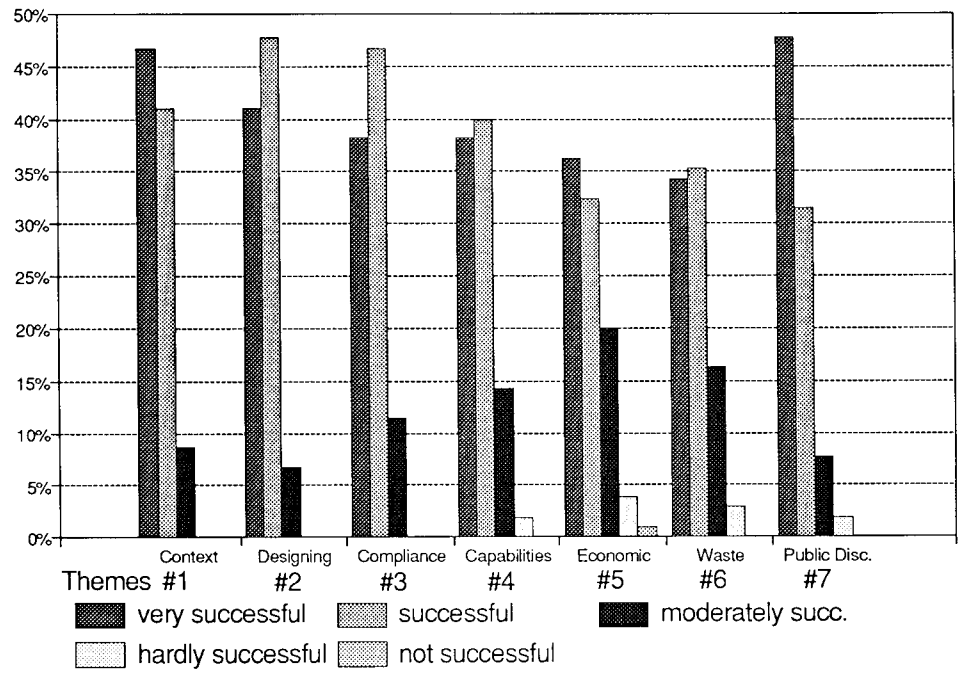

Figure 4 Usefulness of theme contents.

A similar response was obtained for the mix of topics addressed (Figure 5, same indications for theme titles); in general over 65 % found the mix of topics (very) useful. 23 % found it moderately to not useful (2 persons found a particular theme not useful) (12 % no reply for this question). The pattern of the last question is also visible: themes 1 and 7 have high scores (respectively 74 % and 66 % successful or very successful) and more responses being very successful than successful. Themes 2 and 3 also score very high with respectively 69 % and 68 % successful and very successful. Themes 4, 5, and 6 again score a little less with 64 %,

53 %, and 63 % successful or very successful, and with relatively more responses being moderately to not successful.

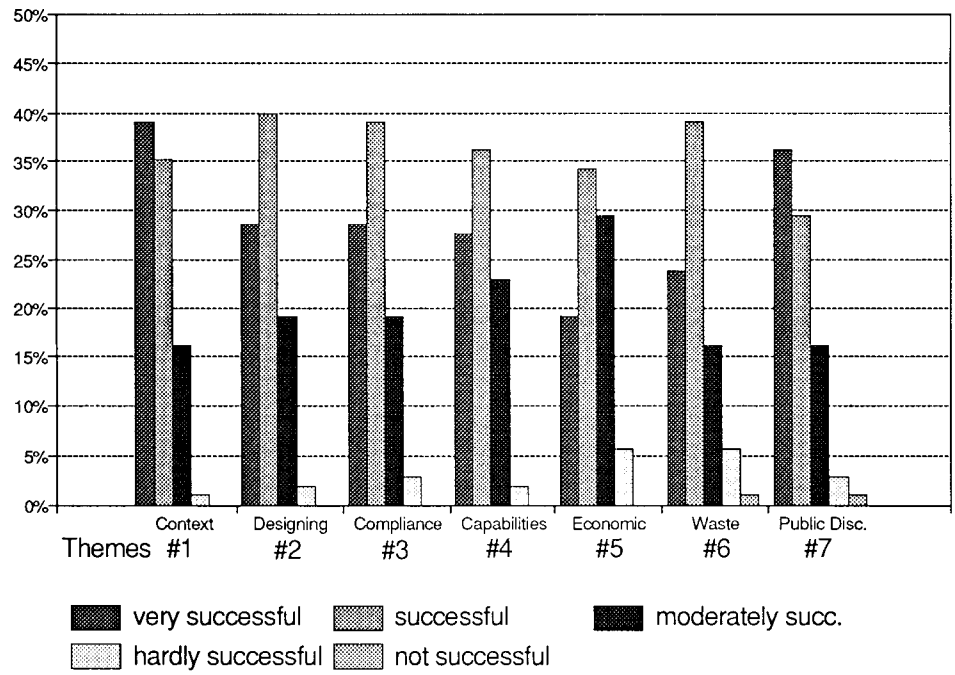

Figure 5 Mix of topics addressed.

It is noted that the scores for the contents are generally higher than the score for the mix of topics by an average of 14 %. The scores for the *Context of Enforcement* are best. The theme on *Economic Development and Ownership Issues* scores least, but even then only 5 % thought the theme contents to be less than moderately useful.

2.2 Additional Remarks

Specific remarks were made by a large number of respondents. The Conference Staff has tried to give an overview of these remarks by categorizing the type of remark and by selecting the most representative suggestions. In the following paragraph these are presented per theme.

Theme #1: Context for Enforcement

- Setting the context for the Conference was essential was mentioned three times.
- The economic (cost/benefit) aspects given in the context of enforcement could have gotten more attention according to two repondents.

- It was felt by one participant that more consideration should be given to matters unique to the region (Central and Eastern Europe).

Theme #2: Designing Enforceable Environmental Requirements
- The theme was felt to be somewhat too general and theoretical by four respondents. A more practical approach with real examples for developing countries is needed.
- The problem of achieving full environmental compliance with EEC-standards by Central and Eastern European countries is left open.
- The key ideas for this topic were very well underlined.

Theme #3: Developing an Effective Compliance Monitoring Capability
- Some remarks (5 respondents) were concerned that the theme did not have sufficient variation with duplications of speakers on theme #1 and duplicate of each other). A Japanese presentation and presentations on Central European countries would have been interesting.
- One participant thought this theme could also be somewhat less theoretical.

Theme #4: Developing Authorities and Legal Enforcement Capabilities
- The evaluation of this theme also resulted in some (6) comments that the content was considered too theoretical. More specific country scenario's would have heightened the interest.
- However this was described by some other respondents (2) as being the most successful theme, since it got people in the region thinking about practical solutions.

Theme #5: Economic Development and Ownership Issues
- The theme contained a good mixture of methodology and experiences of Central and Eastern European countries according to four respondents.
- Twice a remark was made that the differences between countries were too great to make a comparison.
- One participant considered it to be a good idea to compare environmental enforcement in different countries with the emphasis on the differences in enforcement between state owned and private enterprises.

Theme #6: Solid and Hazardous Waste
- Remarks on this theme differed between the belief that such specific topics would belong to a separate Conference and that this was among the best sessions because of the concreteness and practicality.
- The problems addressed in this theme are very important to Central and East European countries because of weaknesses in the environmental law system and the execution of it (3 repondents).

Theme #7: Public Disclosure and Citizens' Role in Enforcement
- Although this was considered by some to be a very important issue to address at the Conference, some others thought this to be a rather alien concept in the region. Many of the matters discussed do not bear on the situation in Central and Eastern European countries.

- One respondent thought that there was too much focus on citizen suits. Perhaps it would have been better to deal with broader citizen's roles first.

Most participants think that the Conference should be held annually (28 % of the respondents) or biannually (53 % of the respondents).

3 CONFERENCE ORGANIZATION

The last set of questions regarded the organization of the Conference (Figure 6). In general the respondents found the different organizational items good to excellent. Over 74 % thought the accommodation, location, schedule, information, service desk, displays, and transportation of the Conference to be very good to excellent. 21 % thought these to be good, moderate or poor (5 % no reply).

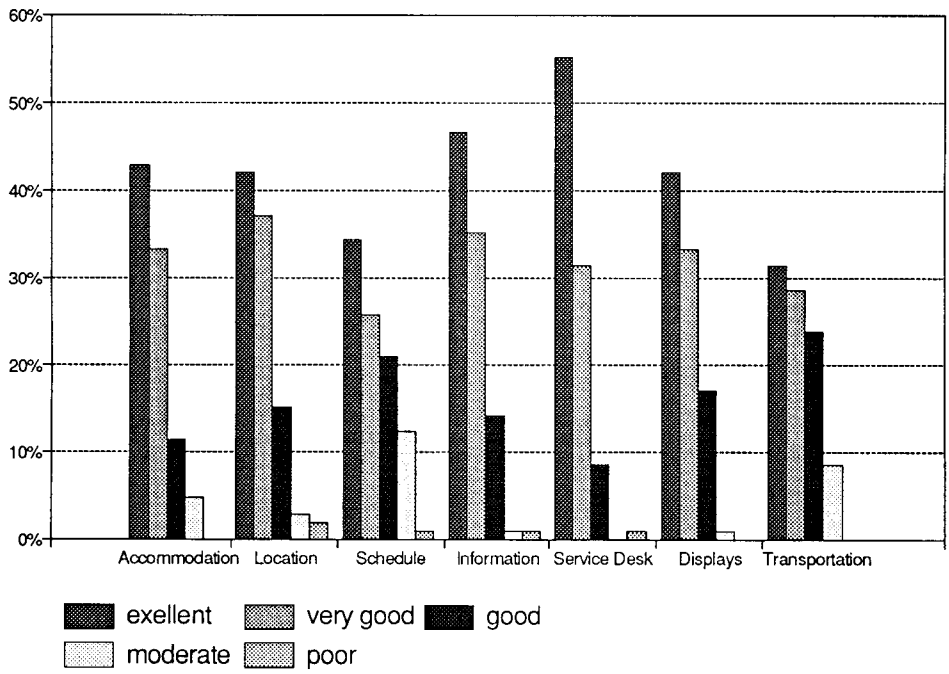

Figure 6 Information on Conference Organization

Especially the *Information on the Conference* and the *Service Desk* were highly appreciated. The *Conference Schedule* and *Transportation* were less appreciated by comparison, but were still considered "good".

The choice for having two hotels at such distance that bus transportation needed to be provided, led to the remark that when possible hotels need to be in walking distance of the Conference centre and need to be in different price ranges.

4 GENERAL REMARKS

Apart from the comments referring to a specific theme, general comments were given on the Conference. These have been categorized as follows:

- Many respondents expressed the need for more working group sessions to ensure a better exchange/discussion regarding experiences in managing environmental enforcement programs. This would also result in more time for informal discussions.
- The Conference Staff might consider selecting topics that are still emerging ideas or cutting edge issues and use a session to generate creative and real thinking.
- In general, several respondents asked for fewer themes, fewer speakers, more depth, more examples, more free time and more time for panelists (at least 15 minutes).
- Some respondents felt that there was not enough attention for the situation in Central and Eastern Europe. They missed the idea of having a dialogue. Some respondents disagreed with the basic offset that environmental enforcement as practised in the West is a specific method that can be taught (management techniques) and transferred to the East. However, countries differ a lot from each other and these differences in national character will affect the success of the transfer of various forms of enforcement techniques.
- The result of the next Conference should be a "Conference Declaration" subscribed to by participants and authorities.
- Respondents strongly support a broad international distribution of the Proceedings. One suggestion was to have translations made of a Summary of the Proceedings in languages of the Central and East European countries.
- The establishment of a newsletter would make it possible to exchange experiences during the period between Conferences.
- Another suggestion was to organize workshops (in "off years") on specific topics like the link between policy making and enforcement.
- Many thanks to the Staff and EPC-members for their excellent work before and during the Conference.

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ACKNOWLEDGEMENTS

The second International Conference on Environmental Enforcement held September 22-25, 1992 in Budapest, Hungary was made possible by the personal and financial contributions of many organizations and individuals. Funding of the Conference and participants was provided by the United States Environmental Protection Agency (EPA), the Netherlands' Ministry of Housing, Physical Planning and Environment (VROM), and the European Economic Community (EEC), supplemented by funds from the Netherlands' Directorate Generals Office of International Environmental Affairs.

An Executive Planning Committee whose membership is listed in these Proceedings, was created to provide leadership and direction in the design of the program, selection of the speakers and panelists, and identification of individuals from a range of nations who would be in the best positions to share practical experience in environmental enforcement and to improve or develop domestic programs. In keeping with its focus on Central and Eastern Europe, the Executive Planning Committee included the representatives of the Environment Ministries of Poland, Hungary, and the Czech and Slovak Federal Republic as well as Hungary's Public Prosecutor and the Regional Environmental Center in Budapest. The United Nations Environment Programme (IE-PAC) was also a key member of the Executive Planning Committee, in an effort to further expand the exchanges that began with the first International Enforcement Workshop, sponsored by the Netherlands Ministry of VROM and U.S. EPA, in May 1990 in Utrecht, the Netherlands.

Members and staff of the Executive Planning Committee, listed within these Proceedings, spent much effort discussing and reviewing staff proposals for the Conference structure and content and in identifying experts from government at all levels, NGO's and industry that would ultimately determine the success of the Conference.

Given the Conference location in Budapest, we wish to particularly acknowledge the hospitality and special efforts of Dr. Károly Misley and Dr. Nándor Zoltai to make this exchange not only productive but enjoyable.

Primary staff and coordinators of the Conference were Mr. Jo Gerardu of VROM and Ms. Cheryl Wasserman of US EPA who were responsible for drafting the Conference program and materials. The Conference logistics, preparation of the Proceedings, and handling of Conference communications was directed by Mr. Jeroen Bartels from Environmental Resources Limited Nederland.