



India Focus: Principles for Effective Environmental Governance

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Effective Environmental Compliance and Governance: Perspectives from the Natural Resources Defense Council available at: http://docs.nrdc.org/international/int_10051901.asp

India has the second-fastest growing economy in the world. This rapid development could exacerbate the already severe pollution problems the nation faces. There is a growing recognition that India's existing structures to enforce environmental laws are inadequate to tackle the scale of the pollution problems. As a result, Indian civil society and the Indian environment ministry have put forward proposals to strengthen environmental governance in India, including government proposals to create a new agency focused on compliance and enforcement. To support these important efforts, NRDC's new report, *Effective Environmental Compliance and Governance*, draws on our extensive experience in compliance and enforcement of environmental laws in the United States and elsewhere. The report considers the successes and failures of efforts in the United States and sets out key best practices for ensuring environmental compliance, as outlined below:

1. Multiple Enforcement Tools

Environmental agencies in the United States can use multiple enforcement tools, depending on the seriousness of the violation. The tools range from administrative penalties for less serious violations, to court-ordered civil or criminal penalties for more serious violations. The use of administrative authority frees up agency time and resources through quick enforcement, without lengthy court cases. With fewer cases, the courts can deal with the worst violations. Swift and consistent enforcement goes a long way toward making compliance more attractive.

2. Self-Monitoring and Self-Reporting

Building on the "polluter-pays principle," self-monitoring and self-reporting require industries to track their emissions of pollutants and report that information publicly. These monitoring and reporting requirements are a condition of

the company's permit to operate its facility. The permit includes specific pollution limits, and the company is required to track and report prescribed information about emissions and operations to determine compliance. Self-monitoring and self-reporting requirements give industries an incentive to correct their own violations and can often save industries money by reducing waste and preventing penalties for violations. These self-reports, backed up by serious penalties for falsification of information, also provide the factual basis for enforcement against polluters by both regulating agencies and citizens.

3. Clarity In Federal and State Roles

In the United States, the federal government sets minimum standards that apply to all states. States can go beyond the minimum national standards to create stronger environmental requirements to address local needs. States also often administer the



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federal laws—once they develop their own programs to meet federal standards and are approved by the U.S. Environmental Protection Agency (EPA). If a state fails to ensure the national standards are met, the EPA steps in to administer that laws itself. This “cooperative federalism” system is designed to allow states to address local conditions without sacrificing a baseline of clean air, water, and land use standards. The clear definition of federal and state roles also helps avoid confusion about responsibility that can hamper enforcement efforts.

4. Meaningful Public Participation

The public has a rooted interest in making sure that environmental laws are properly carried out, because local communities are directly harmed by pollution. In the United States, agencies are required to engage meaningfully with the public on decisions, such as permits for new power plants. Public participants in the administrative process range from individuals to larger, expert non-profit organizations. Public input can support and improve the work of the agencies by providing independent analysis and identifying violations.

5. Citizen Suits

Citizen suits empower ordinary people to sue polluters for violations as well as government agencies for failing to carry out the law. In the United States, environmental statutes include specific provisions explicitly enabling citizen suits. Citizen suits supplement the work of resource-strapped enforcement agencies and take agencies to task when necessary. Through these cases, communities can go directly to the court to stop pollution and protect public health. Successful litigation brought by citizens can motivate an entire industrial sector to reform their practices and reduce pollution. Citizen suits also encourage government agencies to increase enforcement actions.

6. Highly Qualified Agency Professionals

To effectively put environmental laws into action, agencies must have an expert staff and dedicated funding. Agency staff must be skilled with cutting-edge science, legal analysis, complex statistics, and economics. A skilled staff is essential for the agency’s credibility in engaging with regulated industries and stakeholders, and its ability to use all available avenues to reduce pollution. In order to compete with the private sector for qualified professionals, the agency must offer a clear vision and mission, adequate compensation, attractive benefits, opportunities for advancement and training, and job stability.

7. Agency Accountability

Accountability is critical to the effectiveness of any agency. In the United States, both internal and external review to determine if agencies are meeting their mandates promotes accountability. The

ENVIRONMENTAL REVIEW

In India, environmental review is a central component of environmental governance, with all proposed projects that require a permit reviewed by either the Ministry of Environment and Forests or the State Pollution Control Boards. In comparison, multiple U.S. agencies conduct environmental reviews. The U.S. requires environmental review for all “major Federal actions significantly affecting the quality of the human environment.” (42 U.S.C. 4332(C)). The National Environmental Policy Act outlines how environmental reviews must be carried out, including minimum requirements for meaningful public participation and issues that must be discussed in the environmental review, such as a study of all reasonable alternatives to the project. Several states also have their own laws requiring environmental review for state and local government actions. The Administrative Procedure Act also establishes minimum requirements for reasoned agency decision-making and public participation. More information on U.S. environmental review is available at <http://ceq.hss.doe.gov/>.

EPA has an independent Office of the Inspector General, with separate funding, which regularly audits agency performance, such as quantifying the number of enforcement actions in a given year. The U.S. Government Accountability Office (GAO)—the arm of Congress charged with investigating matters relating to the receipt and payment of public funds—routinely assesses the performance of agencies. Public participation and engagement in agency decision-making, judicial review of agency decisions, and the EPA’s supervision of the states’ administration of national standards also create accountability.

8. Incentive and Outreach Programs

Outreach programs to educate regulated industries about environmental laws and ways to meet pollution standards help industries reduce pollution. Outreach programs are especially important for small and medium enterprises that may have limited resources. Incentive programs that provide financial assistance to resource-poor enterprises also help those enterprises reduce pollution and meet environmental requirements.

Over the past four decades in the United States, environmental compliance and ecosystem protection have improved significantly through the use of these tools, leading to cleaner rivers and safer air-quality levels. Yet, more is still needed to improve environmental compliance and governance. For instance, a 2009 *New York Times* investigation highlighted thousands of unenforced violations of the Clean Water Act. Better implementation of these compliance tools at federal, state, and local levels can go a long way toward preventing violations and assuring a healthy environment.

While each of these principles is independently crucial for creating a foundation for effective environmental governance, these principles have proven to be most helpful when implemented together.

NRDC’S India Initiative

In 2009, NRDC launched a new effort focused on India to advocate increased cooperation between the United States and India on the shared challenge of climate change and clean energy. NRDC is working with Indian partners on strategic projects to encourage and assist in India’s current efforts to move toward a green economy. We are encouraging more energy-efficient building construction, addressing adaptation needs resulting from the health impacts of climate change, and providing support for strengthening environmental enforcement and compliance.