Task Force for the Implementation of the Environmental Action Programme for Central and Eastern Europe (EAP)

Institutional Aspects of Environmental Enforcement

OECD Countries experience presented at the Third Annual Meeting of the New Independent States' Environmental Compliance and Enforcement Network

17-19 September 2001
St. Petersbourg, Russian Federation
FOREWORD

Enforcement of legislation is an essential prerequisite for achieving environmental policy goals. Within the New Independent States (NIS) a regional partnership, the NIS Environmental Compliance and Enforcement Network (NISECEN), was established in 1999 by the Environment Action Programme (EAP) Task Force to address this issue. The long-term objective of NISECEN is to increase the effectiveness of enforcement agencies in the NIS and promote compliance with environmental requirements.

The Third Annual Meeting of the NISECEN, held in September 2001 in Russia, was devoted to a discussion of the institutional development of NIS environmental enforcement agencies. Representatives from NIS environmental agencies, including policy and enforcement units, attended the meeting. Experts from Latvia, Poland, Sweden, the United Kingdom, the IMPEL Network of the European Union, as well as representatives of environmental NGOs from the NIS also participated in this event.

These Proceedings present a range of OECD Member countries’ experience in establishing institutional frameworks for environmental enforcement. The lessons learned will be of interest to both environmental policy makers and inspectors. Enforcement systems in the European Union are presented. The approaches adopted by the Netherlands, Sweden and United Kingdom show how the application of a common framework is shaped by different administrative traditions and contexts. Relations between national and sub-national units in the United States illustrate enforcement issues within a federal system. The lessons learnt during the reform of the environmental enforcement system in Poland underline some of the challenges faced by transition economies.

The meeting was organised, and this volume compiled, by Angela Bularga and Krzysztof Michalak, under the direction of Brendan Gillespie in the Non-Member Countries Division of the OECD’s Environment Directorate which serves as secretariat to the EAP Task Force. Financial support was provided by the government of the Netherlands. This work was carried out within the framework of the OECD’s Centre for Co-operation with Non-Members and is published on the responsibility of the Secretary-General.

The views expressed in this publication are those of the individual authors and do not necessarily reflect those of the OECD or its Member countries.

Eric Burgeat
Director
Centre for Co-operation with Non-Members
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SUMMARY OF THE MEETING

Prepared by the OECD/EAP Task Force Secretariat

On 17-19 September 2001 officials and experts from New Independent States (NIS), countries of Central and Eastern Europe (CEE) and members of the Organisation for Economic Co-operation and Development (OECD) met in St. Petersburg, Russian Federation to discuss the framework and targets for institutional development of the NIS enforcement agencies. This discussion was based on experience existing in NIS, OECD and CEE countries. Meeting participants initiated the preparation of common principles for effective environmental enforcement in the NIS. The current summary of the meeting highlights the main elements and conclusions from plenary presentations, small groups work and decisions on the follow up activities.

The meeting was hosted by the Ministry of Natural Resources of Russian Federation and its Department for Natural Resources for Northwest Region. The Dutch Government provided the financial support. The meeting gathered members of the NIS Environmental Compliance and Enforcement Network from Armenia, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Russian Federation, Tajikistan, Ukraine and Uzbekistan at the level of key decision-makers or principal experts. The participation of Ms Nino Chkobadze, Minister of Environment of Georgia, and current Co-Chair of the EAP Task Force, demonstrated that environmental enforcement in the NIS is receiving a higher profile as one of the aspects in the process of environmental policy implementation.

Country briefs and presentations that summarised the enforcement systems in the NIS supported the discussions in plenary and small group sessions. The experience from the OECD countries was reflected either in country specific papers from Sweden, Poland, the Netherlands, the United Kingdom and the United States of America or in a comparative analysis of enforcement systems in the European Union.

An intensive exchange of experience, brainstorming and discussion in small groups and plenary sessions led to identification of a number of proposals for common goals and basic principles in organising environmental enforcement in the NIS. Among many principles with a specific character, which were evoked during the meeting, the following ones might be considered as overarching:

- Environmental quality should be the ultimate goal of enforcement agencies rather than the process of compliance control and enforcement *per se*. This implies renouncing to the traditional focus, which used to be put on such performance indicators as the number of inspections, the number of detected violations, penalties, and violators brought to compliance, or the level of imposed and collected fines. Although the state of the environment depends upon many other factors than inspectors actions, the positive environmental effect of enforcement efforts should be considered while assessing the institutional effectiveness;

- An integrated approach towards environmental media should be progressively applied in working methods and reflected in organisational structure. This should help to avoid the transfer of pollution from one media to another one, prevent pollution and reduce waste generation, as well as help to decrease administrative burdens and compliance costs, and improve the permitting and
inspection process. The integrated approach should be accompanied by establishing better links to other phases of regulatory cycle (e.g., environment impact assessment, environmental expert evaluation and permitting);

• A right balance of command-and-control and incentive-based approaches should be achieved, and deterrence of environmental violations should be a priority over the ex-post response; in other words, prevention is better than cure;

• The enforcement powers should be proportional to responsibilities and appropriately distributed between central and local enforcement agencies. This principle is extremely relevant while decentralising enforcement or assigning new responsibilities;

• Environmental requirements should be realistic and fair, so as the rights and interests of the regulated community are respected. If industry representatives see that the requirements are technically feasible and not excessively costly, it is easier to pursue them feeling committed to meet the limit values decided on;

• Dialogue with the regulated community and the general public should be improved and serve the purpose of an increasing compliance. Relations with the regulated community should aim to explain and clarify environmental requirements and find more effective ways of compliance, while the better relations with the public and NGOs should help to engage them in identification of violations, as well as compliance promotion;

• Enforcement agencies should act with transparency, integrity and professionalism. They should not be exposed to the impact of vested interest. A higher institutional authority is an important prerequisite for this. However, moral and material stimuli for inspectors play a fundamental role. Regular staff training, appropriate facilities and improved financial support also are instrumental in respecting this principle;

• Partnership relations with main governmental and non-governmental stakeholders should be based on information sharing, mutual respect and trust. To this end, a feedback and interaction mechanism should be put in place. Although stakeholder interests are worth taking into consideration, they should not be put above the law or available resources;

• Performance assessment should be part of the management cycle, and feedback to law- and policy-makers should be regularly provided. Currently the NIS inspectors do not participate adequately in the policy and legislation development, and their practical knowledge is hardly taken into account during the process of regulatory reform;

• The principle of continuity and consistency of institutional reforms should be used. During the last decade, structural changes of the enforcement agencies were occurring in the NIS almost with a frequency of one government's lifetime. Quite often these changes were haphazard and led to inconsistency in the distribution of responsibilities, enforcement powers, working methods and procedures. Therefore, an effective enforcement would need continuity in institutional reforms.

The implementation of these common principles will depend upon the ability of the NIS environmental enforcement agencies to deal with actual severe constraints. During the past decade the transfer of knowledge to inspectorates and experience exchange were simply absent. The lack of basic facilities and analytical equipment prevents inspectors from carrying out their duties, including from measuring the real environmental impacts. Low salaries nourish the "brain-drain" and corruption
phenomena. Unfortunately, solving these problems is in many cases beyond the human capacity, material and financial resources of the NIS enforcement agencies.

The implementation of above-mentioned principles will also require admitting that "universal" models for enforcement systems do not exist. Notwithstanding the high similarity in problems and challenges within NIS, the enforcement activity is much influenced by country-specific social, economic and cultural factors. The entire spectrum of these factors should be taken into account when transposing common goals and principles into concrete actions.\footnote{A concise description of the NIS enforcement agencies and their common problems is presented in the \textit{Survey of Current Practices of Environmental Inspectorates and Options for Improvements}.}

In order to develop further common principles for better enforcement and compliance in the NIS, a thematic Institutional Strengthening Working Group was established. This group will elaborate the key aspects of institutional strengthening, such as:

- Mission and scope of activity;
- Vertical and horizontal institutional setting;
- Enforcement responsibilities and powers;
- Activity planning and performance assessment;
- External communication and partnerships;
- Human resources management and facilities;
- Budgeting and financing enforcement activities.

The NIS experts also considered the international dimension of environmental enforcement efforts in the context of implementing bilateral, regional and multilateral environmental agreements in their region. Among others, meeting participants indicated problems, which arise from little or complete lack of information and involvement of the enforcement agencies in the negotiation, ratification and implementation of international conventions. They called for urgent steps to be undertaken by the governments to engage enforcement agencies into the process of negotiating the Multilateral Environmental Agreements and the assessment of feasibility of compliance with the new requirements and enforcement burdens. They also stressed that networking among enforcement professionals can be a powerful mechanism to improve the co-operation at the international and regional level.

Several participants expressed the opinion that the legal and normative framework of environmental policies, which is the basis of enforcement, can and ought to be harmonised. The EU environmental legislation could serve as a reference point for such harmonisation. This process, however, would need a careful adaptation to the NIS realities.

Progress in implementing the work programme of the NIS Environmental Compliance and Enforcement Network (NISECEN) was presented by the Network Co-ordinator. This included an explicit identification of products and key events. There was a general agreement on the good progress with the implementation of various project elements. A brief summary follows.
In the period after the Second Network meeting (end of November 2000), the detailed Terms of Reference were developed for various project components. Two working groups (on environmental permitting and on inspection) were established. The scope of work on environmental permitting was defined during the first Expert Meeting and the initial assessment of the permitting systems in the NIS is under way. The outline for a Toolkit on Inspection Criteria and Procedures was agreed upon among the members of the Inspection Working Group. Close relations are maintained with other networks (mainly IMPEL and INECE).

Decisions on the operational level included setting deadlines for major outputs of various activities and expanding membership in already existing working groups on inspection criteria and procedures and environmental permitting. The need to formally establish National Focal Points and provide aid in strengthening their institutional capacity was repeatedly mentioned.

Important suggestions for the enrichment of the Network's work programme included a study on financing of enforcement, including charging schemes for inspectorate’s activities. A more extensive preparation and dissemination of case studies concerning effective enforcement actions is needed.

New opportunities for co-operation and partnerships received due attention during the meeting. The presentation of a EU/Tacis project to support the implementation of environmental policies and NEAPs helped to identify opportunities for carrying out in-country demonstration projects which would strengthen environmental enforcement. The virtual network of local environmental agencies in the European region -- EURREPAS -- was presented.

The participants evaluated the contents of meeting as satisfactory. The openness of discussion, the interest to generate ideas, to share experience and to develop common principles and approaches in enforcement were highly appreciated. The bilateral discussions during the meeting initiated a number of sub-regional initiatives, as for instance joint inspections with participation of Georgian and Armenian inspectors. In this respect, the participants proposed that in the future time is allocated for sub-regional exchange and dialogue. According to the participants' opinion, continuity in nominal representation of the NIS at the Network meetings is required.

All meeting materials (e.g. agenda, presentations, country briefs, discussion summary and list of participants) are available on the EAP TF Secretariat's web site (www.oecd.org/env/eap). For more information please contact Ms Angela Bularga, Network Co-ordinator at angela.bularga@oecd.org.
OPERATIONAL MODELS FOR THE IMPLEMENTATION AND ENFORCEMENT OF EUROPEAN UNION'S ENVIRONMENTAL LAW IN THE EU MEMBER STATES

Terence Shears on behalf of the IMPEL Network

Introduction

Transposition and Implementation

There is a substantial amount of environmental legislation in European Union's (EU) Member States. Indeed, most of the environmental legislation in the Member States is now based on EU legislation. The first step, when legislation has been adopted in the EU, is to ensure that it is transposed in a correct and timely way into the legislation of Member States. But laws which are not properly implemented and enforced have little value. If legislation is to be effective, it must be properly implemented and applied in practice, that is to say it must be enforced on the ground. It was in part to help ensure that this happened that the IMPEL network as an informal body of environmental enforcers was established.

Administrative framework in the Member States

The administrative framework in the Member States varies considerably. There are differing legal systems and permitting is often done in different ways. The laws vary, and so do the methods of implementation and compliance checking and enforcement. These differences reflect the different approaches of the various countries to the implementation of legislation, and also to some extent their traditions and what they have found effective.

In most Member States legislation related to permitting is developed by the central government and applied nationally though in some considerable legislative power is delegated to the regions. The Ministry of the Environment, or its equivalent, is the lead ministry in developing environmental legislation. In some Member States other ministries or agencies take the lead in certain sectors.

The body of EU environmental legislation is quite large and covers the following main areas: (i) water; (ii) control of air pollution; (iii) waste; (iv) harmful substances: chemicals; and (v) noise. In recent years much work has been done on the harmonisation of environmental legislation in Member States but it still contains considerable differences.

Legal and permitting framework in the EU Member States

Compliance with environmental legislation is achieved by, amongst other ways, public law enforcement. This can be divided into administrative law, criminal law and private law enforcement. An environmental inspector mainly makes use of administrative law enforcement instruments.

Officials of the competent authorities may have the following administrative law powers to make supervision possible:
• Demand to inspect and take copies of books and other business records;
• Halt means of transport and search their cargoes;
• Enter all places with equipment (except private houses);
• Arrange to be accompanied by other persons when they enter premises;
• List, examine and take samples of goods;
• Inspect processes and emissions.

The following administrative sanctions can be applied:
• Executive coercion (taking remedial action at the expense of the offender)
• Penalty payments which last as long as the person/firm in question infringes the rules (though this is not possible in all Member States)
• Change the licence or the exemption
• Partially cancel the licence or exemption
• Use a formal letter or notice to require the offender to take remedial action

**Recommendation on Minimum Criteria for Environmental Inspections**

There has recently been adopted in the EU a Recommendation on Minimum Criteria for Environmental Inspections (2001/331/EC), itself very much based on work done by the IMPEL network. The Recommendation highlights that there is a wide disparity in inspection systems and mechanisms in Member States. The fact that it is a Recommendation incidentally means that it is not legally binding: nonetheless, Member States will be required to report on their progress in implementing the recommendation. It describes how environmental inspections should be organised and carried out while urging coordination of inspections to prevent illegal cross-border environmental practices. It proposes that there should be plans for environmental inspections that take account of the potential risks of emissions from the controlled installations concerned. It describes what should happen on site visits: full reports should be written after such visits and made available publicly within two months of the inspection. IMPEL is specifically invited to carry out work on the Training and Qualifications of Environmental Inspectors and the review of Inspectorates and Inspection Practices.

**Comparison of the frameworks in various EU Member States**

I have used the IMPEL Reference Book on Environmental Inspection as a source for material for much of this presentation. I would strongly recommend you to have a look at it. At the end of the presentation I will give you the address of the IMPEL website where you can find it.

In recent years, tasks and responsibilities of environmental enforcement inspectorates in EU Member States have become more complicated. Partly this stems from harmonisation of national legislation with EU requirements and partly from the development of self-regulatory instruments like Environmental Management Systems. Organisation of inspectorates and constraints faced in day to day practice can vary enormously between the EU Member States.
The tasks and responsibilities of inspectorates are mainly the implementation and enforcement of environmental legislation. Implementation is well developed in most Member States but enforcement can sometimes be underdeveloped.

Implementation means checking and promoting compliance: it mainly consists of activities which companies undertake to comply with legislation. Problems can arise in connection with implementation. Sometimes little attention is paid to aspects of implementation in the formulation of policy. Personnel and financial resources made available are not always adequate. Finally government bodies do not always have practical knowledge about the effective implementation of legislation.

Enforcement is the application of statutory means of coercion and sanctions to ensure compliance in a situation where it has been established that there is non-compliance with an act or regulation.

Lessons learned from enforcement in practice can be part of the basis for drafting new laws and rules or amending existing laws and rules. Evaluation of enforcement practices may also result in modifications to existing policy.

I should now like to look at examples in some different Member States to illustrate the points I have been making.

**Austria**

The licencing authorities in the Austrian Länder are also responsible for inspection activities. All permitting activities are covered by three authorities. Depending on the characteristics of the various types of industrial activities, different laws apply and thus different authorities are responsible.

- Air pollution and noise aspects are covered by the local authorities (Gewerbebehörde) and have the industrial act (Gewerbeordnung) as legal basis;
- Waste aspects are covered by waste authorities (Abfallbehörden) and have the waste act (Abfallwirtschaftsgesetz) as legal basis;
- Water pollution aspects are covered by the water authorities (Wasserrechtsbehörden) and have the water act (Wasserecht) as legal basis.

The industrial act forms the basis for most inspections. The act describes which categories need to have a licence and which installations can operate without a licence. This depends on factors like the size of the installation, pollution risks etc.

Administrative law is the first tool for achieving compliance with environmental regulations. Licences are issued to companies under the relevant act. There is no special inspecting organisation. Action taken in cases of non-compliance depends on the degree of the violation, for example conceding a time period to restore the original situation, imposing a fine or closing down a facility or parts of them.

The second tool is criminal law which applies in parallel to administrative law. It is used when the public prosecutor has been informed of the serious extent of environmental pollution. Penalties or imprisonment are available depending on the degree of pollution.

**Denmark**

Environmental regulation in Denmark is decentralised: there is no state inspectorate. Denmark has a system of integrated permitting to control emissions to air, water and land that applies to all enterprises
with emissions to the environment. Complex activities require a licence from the Counties whereas those which are less complex require one from municipalities: the least complex must simplify notify the Municipalities of what they are doing.

Licences are issued for a minimum period of eight years unless new environmental hazards or information on pollution effects arise which could not have been predicted when the licence was granted.

In a case of non-compliance inspectors can send notices and official warnings, prohibit continued operation and where necessary order removal of the activity. They can order the responsible party to restore the original situation and order measures to be taken at the expense of the responsible party when the specified time limit has expired.

The police may initiate legal action in response to reports from county or municipal officials. Fines may be imposed and imprisonment is possible in serious cases which are prosecuted under criminal law.

The Ministry of Environment and Energy is responsible for environmental policy and for establishing the legal framework in Acts. The Danish Environmental Protection Agency issues Orders and provides Guidelines on how to implement the Acts at an operational level. The 16 counties and 275 municipalities are the main players and are responsible for issuing licences and undertaking inspections and environmental enforcement.

Provinces (or counties) and municipalities undertake enforcement in Denmark. The legislation defines which installations fall under whose responsibility. Installations having an environmental impact on water systems in more than one municipality fall under the responsibility of a county. The same is true for air emissions. Installations owned by municipalities are under the responsibility of a county.

The counties are responsible for about one sixth of total compliance checking and enforcement of installations. The other installations fall to the municipalities. Municipalities are not subordinate to counties but are the same level of authority.

**France**

Organisation for environmental inspection is centralised in France. The people in charge of inspection are civil servants paid by the State. The Ministry for Spatial Planning and the Environment is responsible for the preparation of legislation and for the promotion of inspection.

France is divided into 100 geographical areas known as Départements. Each of these has a Prefect who deals with all environmental matters at a local level. He is under the authority of the Minister and is the legal representative of the central government within the Département.

The Regional Director of Industry, Research and Environment is responsible, under the authority of the Prefect, for organising the inspection of Classified Installations. There are 1,300 inspectors (full time equivalent of 680).

In France installations with a limited impact on the environment must remit a dossier containing a declaration specifying, amongst other things, the type of activity contemplated. The Prefect examines the dossier and issues a copy of the general requirements that apply to the relevant class of activity. Installations involving the most serious risks or inconveniences may not operate without an authorisation from the Prefecture. The request for authorisation must include in particular an impact assessment and a risk assessment: its scope must also take into consideration the number of foreseeable impacts on the environment.
There are two classes of installations: class 1 installations are those which require a licence and class 2 installations require a declaration. Technical aspects of licensing and inspection are the responsibility of Regional Directorates of Industry, Research and Development. These are an external service of the Ministry of Industry but they report to the Ministry of Environment on environmental issues.

The inspector for classified installations verifies compliance with the technical requirements imposed on the installation and intervenes if a complaint is filed or an accident or incident occurs. If the inspector notes that the requirements are not adequate, he or she may make a recommendation to the Prefect for additional requirements to be imposed by administrative order. Where an operator fails to comply with the mandatory provisions under the legislation on classified installations administrative and criminal penalties may apply.

The mechanisms open to inspectors work through advice to the Prefect who is empowered to impose administrative sanctions placing funds in trust, the Prefect organising the undertaking of the works required and claiming costs back from the polluting facility and the closure of the plant by order of the Prefect. The judicial routes involve inspectors laying a complaint with the Public Prosecutor. When this leads to the case being referred to the appropriate court, the court may force the operator to comply with the requirements under court-ordered penalty for non-compliance and impose a fine.

**Germany**

The Federal Republic of Germany consists of 16 states known as Länder. Each has its own Ministry of the Environment which initiates laws, ordinances and administrative guidelines. The District Governments (Bezirksregierung) are responsible for permitting larger installations that are in need of an environmental impact assessment. State authorities for environmental protection (Staatsliche Umweltämter) issue permits to medium and smaller installations and are responsible for compliance checking of large, medium and small size installations whereas the Municipalities (Kreise) are responsible for the small size installations in the fields of waste and waste water.

In case of non-compliance in Germany inspectors issue warning notices. Continued failure to comply results in the issue of a formal compliance notice. Inspectors are empowered to close down installations. Failure to comply may result in court action. Inspectors are empowered to impose administrative fines. If fines are not effective, cases may be passed to the public prosecutor.

**Ireland**

Ireland is a unitary state with a centralised structure of Government. At the central policy level the Department of the Environment is responsible for the coordination and implementation of environmental policies together with the preparation and execution of environmental legislation. The Environmental Protection Agency grants Integral Pollution Control Licences, supervises installations’ activities and supervises local authorities’ activities. The local authorities issue single medium licences to smaller industries involving emissions to air, wastewater discharges and waste disposal. They are also largely responsible for compliance checking and enforcement.

Installations that constitute a potential risk for major accidents are checked by the Occupational Health and Safety Authority.

In Ireland enforcement actions in cases of non-compliance range from informal action such as oral contact to formal action such as legal proceedings. Each informal enforcement notice may require the licence holder to submit information. A formal enforcement action requires a specific response to be made by the licence holder within a specific time frame. The response is reviewed to determine whether further action is warranted.
Administrative fines are not available but criminal sanctions may be imposed by the courts as a result of action taken by the public prosecutor on advice of the authorities. Criminal law provides that it is a criminal offence for any person to cause or license polluting matter to enter waterways, or for the occupier of any premises to cause or license an emission from any premises in such a quantity or in such a manner as to be a nuisance. Also a person shall not hold, transport, recover or dispose of waste in a manner that causes or is likely to cause environmental pollution.

Civil law allows any person to apply to the appropriate court where any person is causing pollution as defined under the water and air pollution acts and the waste acts. Personal liability sanctions are available, including imprisonment.

**The Netherlands**

In the Netherlands the 12 Provinces, 572 municipalities and 68 Water boards are largely responsible for permitting and compliance checking. However for certain sectors such as hazardous waste these activities are performed by central organisations like the Inspectorate for the Environment (part of the Ministry of Housing, Spatial Planning and the Environment) and the Directorate general of Public Works and Water Management. The Inspectorate General carries out a supervisory role over provinces, municipalities and water boards, including first and second line compliance checking and enforcement.

Environmental regulation in the Netherlands is somewhat fragmented. At the policy level the Ministry of Housing, Spatial Planning and the Environment develops and coordinates general environmental policies and the Ministry of Transport, Public Works and Water Management develops those relating to water management. At an operational level several organisations (Inspectorate for the Environment, Provinces, Water Boards, Municipalities) have an important role in environmental inspection and enforcement.

There are three distinct approaches to non-compliance. Non-compliance with hazardous waste regulations generally results directly in court action. Major installations are first given a time period to make modifications. If responses are inadequate, court action is initiated. For minor installations, initial action focuses on education and persuasion. This may then be followed by definite time periods being set for improvement and finally by court action. Local authorities may close down facilities. To initiate legal action, inspectors’ reports are forwarded to the police/public prosecutor who then takes over the enforcement process. Inspectors give advice to the police and the Public Prosecutor.

Civil and administrative sanctions are applied more frequently than criminal sanctions. Local authorities may impose administrative fines and courts may impose fines and imprisonment. An appeal system is in force in all cases.

**Portugal**

Dealing with non-compliance in Portugal depends on how serious the case of non compliance is. However, generally speaking in a case of non compliance the inspector will carry out a site visit and check licences, authorisations, self monitoring and other documents. The inspector will make a judgement of the seriousness of the case and, if necessary, issue a warning or a prohibition notice during the on site visit. A warning notice will always be followed by a second on site visit to check on what has happened following the deadline given in the notice. Sometimes there are warning notices only for administrative purposes where the process is ended if the operator sends the documents before the deadline. The prohibition notice together with the inspection report and documents attached are the first documents of the file for each installation to be completed with administrative information and later on with the administrative fine. An
appeal against the fine is possible. When there is failure to pay administrative fines, the process will end in a court case.

The Inspectorate General for the Environment is a relatively new body in Portugal installed within the framework of the Ministry for the Environment. The main licence for an industrial installation is issued by the Ministry of Economy with the part concerning the environment endorsed by the Ministry for Environment. The competent authority for implementation and enforcement of environmental law is Inspectorate General for the Environment, with an integrated approach for inspections dealing with different types of pollution – air, noise, water, solid wastes, and also other aspects related to environmental legislation, eg industrial safety, critical areas for risk.

The Inspectorate General for the Environment also deals with checking compliance with environmental contract and water supply systems, discharges from municipal waste water plants and collective waste water plants and accidents. For all the cases inspections are carried out by unannounced site visits. Permitting for waste water discharges is a matter for the five regional departments of the Ministry for Environment.

Sweden

The supervision of environmentally hazardous activities is divided between the Swedish Environmental Protection Agency (SEPA), which is the central supervisory body, the County Administrative Boards (CAB) and the municipal board, that is, the Environmental and Public Health Committees (EPHC). The SEPA coordinates the work of supervision. The function of SEPA includes issuing recommendations and providing other guidance for the CAB and EPHC planning. The CAB supervise activities requiring licences under the Environment Protection Act, and the EPHC supervise all other activities under the Act.

For Sweden the system of operator self monitoring is an important part of supervision. It is founded on the principle of the reversed burden of proof which has been part of environmental law there since 1969. Legislative reform in 1999 made the operator’s responsibility for self monitoring even stronger. For activities which do not require a licence the supervisory authority may issue an injunction concerning such precautionary measures or prohibitions as are necessary for compliance with the permissibility rules. Should a licence holder disregard any condition specified in the licence, the supervisory authority may require him to rectify the matter. In its injunctions a supervisory authority may impose fines. Should anyone fail to observe the provisions of an injunction or disregard any conditions specified in a licence the supervisory authority may order rectification at his expense. A supervisory authority may require the proprietor to submit the required information. It may also require the operator to carry out investigations into the activity and the actions necessary for the fulfilment of supervision.

If it is considered appropriate the supervisory authority may appoint a person other than the operator to carry out an investigation. The performer of the activity would have to bear the cost of such an investigation. It is incumbent on the supervisory authorities to seek to ensure that offenders under the Environment Code are taken to court. If a prosecution is initiated by a prosecutor, the case is handled in a general court of law.

United Kingdom

In the UK there are essentially three different systems for the regulation of the environment. This is due to the different legal systems which exist for England and Wales, Scotland and Northern Ireland. The general pattern is that environmental laws and regulations are made at national level and then implemented by an environmental Agency, which is semi-autonomous.
Inspectors in the United Kingdom have the right to enter premises, carry out inspections, remove samples, interview staff etc. The inspector has a duty to compare a regulated company’s performance against the conditions of the permit and to initiate formal action where appropriate. Non-compliance may result in the issue of warning letters or notices (prohibition notices, enforcement notices etc). The next step is legal action through the courts. Reports regarding such action will be written by the inspector and these may include reports to the public prosecution service in Scotland. In England and Wales the public prosecutor is not involved. Instead the Environment Agency has its own legal experts and instigates its own proceedings.

Prosecution may lead to the obligation to pay fines or restore environmental damage.

**IMPEL Network**

**Background to IMPEL**

IMPEL is the European Union Network for the Implementation and Enforcement of Environmental Law. Each of the Member States is a member of IMPEL, together with the European Commission. It was set up in the early 1990s as the Chester network, named after the race-course in England where the inaugural meeting was held. It was set up because there was seen to be a considerable range of environmental legislation as well as differences in the ways in which Member States were implementing Environmental law. There were more and more Environmental Laws but no matching improvements in the environment: if anything, the environment was getting worse. The conclusion drawn was that there were weak points in the regulatory chain. Furthermore, disparities in enforcement systems were likely to impose unequal burdens on industry across the Community.

The idea was to have an informal network to bring together those responsible for implementing environmental law in each country. Member States saw this as a preferable alternative to concepts such as a European Environment Inspectorate or an Inspectorate of Inspectorates which were then being considered.

IMPEL’s role was recognised in the 1996 Commission Communication on Implementing Community Environmental Law and the June 1997 Resolution of the Council of Ministers. More recently there are several references to IMPEL in Recommendation 331 of 2001 on minimum criteria for environmental inspections and in the 6th Environmental Action Programme.

**How IMPEL functions**

The essence of IMPEL and its work is the projects it carries out and which are led by one of the Member States. Projects are partially funded by the Commission and are usually concerned with identifying good practice in a particular field with a view to making that good practice known across Europe. Its informal nature means that it is very dependent on the goodwill of its members and their willingness and enthusiasm to make sure that others in their respective Ministries and Agencies know about its work.

IMPEL Meetings are held twice a year towards the end of each presidency of the EU and decide which projects should go ahead, receive reports on projects in progress and adopt reports on completed projects. They are co-chaired by the country holding the presidency and the Commission. The most recent one was held in June in Falun, Sweden and the next one will be in December in Namur, Belgium.

IMPEL’s current work programme has some 15 or so projects. IPPC has always been a priority for IMPEL and current or recent projects connected with that include one on the food production/processing
industry, one on the use of general binding rules and one on energy efficiency, a relatively new concept in environmental permits.

The recommendation on Minimum Criteria for Environmental Inspections also features highly in IMPEL’s work. The recommendation invited IMPEL to set up a scheme for Member States to report and offer advice on inspectorates and inspection procedures in Member States; this has become IMPEL’s Review Initiative. The first candidate to volunteer for this review is Germany and the next one will be Ireland. IMPEL was also asked to develop training programmes for environmental inspectors and to draw up minimum criteria concerning the training and qualifications of environmental inspectors. A project on this was also adopted at the meeting in Falun.

**Candidate Countries**

There is a sister organisation for the thirteen candidate countries which are seeking to join the European Union. Those countries also take part in some IMPEL projects. This is enabling them to bring their environmental legislation and enforcement practices more in line with that in the Member States. They have exchange programmes in which members from IMPEL have been involved, and they have particularly benefited from IMPEL’s work on inspections.

The IMPEL Meeting in Falun that I have already mentioned included the first joint meeting between the two networks and it is clear that the networks will now work ever more closely together. They will of course gradually merge as the candidate countries gradually become members of the EU.

**IMPEL Website**

May I end on a note of publicity? There is an IMPEL website where you can find details of what is happening in IMPEL and reports on projects so far undertaken. The address is [http://europa.eu.int/comm/environment/impel](http://europa.eu.int/comm/environment/impel). I would encourage you to look at this site for more information about IMPEL, what it is doing and its products.

**Conclusions**

In this presentation I have not looked at the systems in all Member States, nor even the systems in all of the Member States described in the IMPEL Reference Book for Environmental Inspection. That would be very time-consuming, nor would it be necessary to illustrate the point about the differences between the various systems. There are variations between the centralised systems and those where there is a greater degree of devolution.

I think it is possible to identify what I might call a core system from these examples. There is usually a central Government Ministry responsible for policy and law-making and an Agency or Inspectorate is responsible for implementation and enforcement, at least as far as those industries with a major potential for pollution are concerned: the less polluting industries often fall to local authorities or municipalities. The point is that these different systems can all be made to work effectively: the legal and administrative framework themselves are less important than the need to ensure that there is effective implementation and enforcement on the ground.

I should also like to take this opportunity to emphasise the value and usefulness of networks such as your own network of the newly independent states. They provide an excellent opportunity for sharing problems and experiences and this in turn leads to opportunities for identifying good practice. In all, they have a very important role to play.
ENVIRONMENTAL FEDERALISM AND ENFORCEMENT
IN THE UNITED STATES OF AMERICA

Richard W. Emory, Jr., Attorney, International Enforcement and Compliance Division,
Office of Federal Activities, United States Environmental Protection Agency

Introduction

It is indeed an honour and a pleasure to be here representing the United States Environmental Protection Agency (EPA) at this forum on environmental enforcement and compliance in the New Independent States (NIS). To introduce myself, I will just say that I am an attorney of 34 years experience, including 22 years in environmental enforcement in the United States. I have worked internationally as I do today, at the national level where for a while I was the legal advisor for EPA’s criminal investigators nation-wide, and also in my younger years for my State of Maryland both as an elected legislator and as a trial-court prosecutor of environmental violators. So I have lived environmental protection in different levels and branches of government, and also criminally, civilly and administratively.

As an attorney, I will be speaking to you about how to improve human behaviour toward the environment. Achieving this depends on government ability and will, and this depends on societal support and success in balancing economic considerations. Today we will not consider scientific or technical issues; we will consider the architecture of good governance. In summary, I will tell you that in the U.S. today the national government strongly encourages and relies on the States to do most environmental protection and enforcement. Most States use their traditional authorities to implement pollution source-control standards that are set mainly at a national level. EPA considers States that are accountable for their performance to be full, co-operating partners. Where a State declines or fails to act, EPA as a back up will step in to directly enforce the national standards. Yet overall, in our approach to environmental federalism, most important are the effective sub-national units. Our States are the keys to our success.

To begin, a few necessary definitions: “Pollution control” as we use it in the U.S. often means by regulation to limit the volume and concentration of pollutants emerging to receiving waters as discharges from pipes and to air as emissions from stacks or chimneys. Compliance usually is measured by testing the level of pollutants emerging at the end of the pipe and the end of the stack against what is allowed by permits. In recent years, our governments have increasingly exercised authority inside the polluting facilities to reduce, for example, “fugitive” air emissions from small leaks, stack emissions from polluting fuels, and non-point source emissions from evaporating coatings. In such cases, controls have required changing production processes, feed stocks, and products. Recent water-pollution controls focus on non-point sources such as construction sites, parking lots, and farm fields. In the NIS, your governmental powers may be even greater and allow more intervention to require very extensive redesign of industrial processes.

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2 This speech could not be delivered by the author personally because of the tragic events of September 11, 2001 in the United States.
“Pollution prevention” reduces pollutants before end-of-pipe/stack pollution controls are applied. Pollution prevention (“P2”) causes industry to see where it is wasting energy and product that become pollution, often by looking upstream in the industrial process. P2 can achieve very cost-effective, impressive results, and it should be considered in an overall plan for both managing pollution and ultimately protecting ecosystems and natural resources. P2 can be regulatory, and also in the U.S. often is non-regulatory when polluters voluntarily chose to go beyond what is required (for pollution-control compliance). As an appropriate function of a national government, EPA promotes many voluntary P2 measures, described on the web at: http://www.epa.gov/partners.) State governments can do well by doing likewise. Unfortunately, I will not be able to discuss further this aspect.

For most purposes, the U.S. national “pollution-control” agency is the U.S. Environmental Protection Agency, called “EPA”, that regulates the sources of pollution. In contrast, a “natural-resource protection” agency focuses on the life forms and non-living resources to be protected. Our main U.S. resource-protection agency is called the Department of the “Interior” in English, which in Russian is the same as the Department of Natural Resources. This agency shelters resources such as endangered species of flora and fauna, public timber, minerals on public lands, parks, scenic lands and waters. In the western States of the U.S., the national government owns much of the land as a public resource, and the government protects endangered species wherever they are found in the U.S. Because these resources may be receptors of pollution among other consequences of human exploitation, any of which may damage or destroy the resource, EPA also protects natural resources, not by sheltering them directly, but by controlling the sources of pollution.

Man divides tasks both functionally and geographically, and in both ways a clarification of roles and responsibilities is always needed. A competent pollution-control agency of government must:

- differentiate horizontally between (a) governmental sub-units divided geographically and (b) government agencies divided functionally whose duties may overlap or fail to meet,
- divide responsibilities vertically or in parallel among different levels of government,
- assure teamwork among professionals and specialists within the government who may come from very different personality types and cultures,
- accommodate the useful involvement of regulated industries and other societal institutions and non-governmental groups including banks, insurance companies, and environmental groups, and
- co-operate internationally.

I have been asked to address topic (2) specifically as to enforcement – the division of environmental enforcement responsibilities between the national government, and the sub-national state governments in the United States of America. We may call this topic “environmental federalism”.

In the U.S., within the national government we have EPA headquarters in Washington, D.C., and below it 10 EPA “Regional Offices”, each one of which works with about five States to implement EPA standards. We will not have time or need to differentiate among types of sub-national units including counties and local governments. There is not time to discuss the tribal governments of the Native American “nations” who live on “reservations”. Today, we will discuss only the national government of the U.S. represented by my agency, EPA, in relation to the 50 States.

In the NIS, you have national governments that in English we call “states”, and within the U.S. we call our national government the “federal” government. To avoid confusion today, we must have a
common terminology. I propose to use “national” to refer either to the U.S. national government or the national government of a NIS. As for the sub-national units based on geography and sometimes population, there is an entire variety, depending upon country. You may call them oblasts, regions, republics, territories, provinces, districts, or have other names. To keep it simple, today “regional” will refer to the principal sub-national units in the NIS, and “Region” will translate or compare to a “State” and of the United States. If you do not have "Regions" in your nation, please substitute the name – whatever it may be -- of your own, most important, sub-national unit of government.

Today we will only relate (1) upper-level, national government, to (2) lower-level state or regional government. It is a truism of organisation and of human nature that the higher-to-lower level control issues will always have the same dynamics. So we do not have to discuss the relationship between regional and local government, because it will not be very different from the relationship between national government and the region.

Overview of U.S. Experience

You may ask whether our experience in the U.S. is relevant to your situations in the NIS. My impression is that since 1991 and today in the NIS you are considering the advantages of some decentralisation. In the U.S., since our strong assertion of national power in 1970, we have been experiencing a steady return to decentralisation. In this way, our evolution may be similar to that of the NIS. To present U.S. history quickly, I will start in 1945. After World War II, U.S. industrial development and production continued at very high levels. The U.S. was then very much like a rapidly developing nation of today. During the 1950s and 1960s, in the U.S. there were very few environmental laws, less enforcement, and some of our 50 States even became pollution havens. Many States competed in a "race to the bottom" to attract investment, businesses, and jobs. By 1970, it was clear that without national leadership we were getting a very dirty country. At the same time in many nations in the West, there was wide popular disgust over uncontrolled pollution. We had the first Earth Day, April 22, 1970, a celebration of the earth that still today is observed in many nations.

Social change brought an assertion of dormant national power and legal change. Late in the year 1970, using authority inherent in our strong national Constitution but not yet exercised, the Congress and President started to enact laws to both “nationalise” and at the same time “federalise” pollution-control authority. They created a new agency, the EPA, and gave it nation-wide powers to regulate polluting sources and bring them under control. First EPA addressed air and water, setting national standards limiting emissions and discharges.

Later in the 1970s, EPA addressed the use of chemicals and the management of hazardous wastes. We observed for the first time that States with weak hazardous waste laws were victimised as hazardous waste was shipped in from States with stronger laws. Because our Constitution mandates free trade in interstate commerce, and waste is a tradable commodity, one State could not exclude such waste coming from another State. To regulate shipment, treatment, storage, and disposal of hazardous waste, we enacted national laws. These laws restored fairness, levelled the interstate playing field, and ended most conflicts between States over waste mismanagement.

Until 1976, enforcement of air and water pollution laws had focused on business facilities or plants that did not hide or move and could be punished effectively by monetary civil penalties. Hazardous waste was different because it was carried on trucks, often at night, and then dumped illegally. Criminal law was needed, to make available the skills of police investigators and the punishment of prison time. Starting in about 1980, EPA began to develop a criminal enforcement program capability, and today EPA is authorised to employ 200 criminal investigators, a national force of “green” police.
In the new organisational setting since 1970, the same national laws planned to engage the States as partners with the national EPA. So there has been a gradual process of “federalising”, decentralising, or devolving direct responsibility to the States that agree to implement the national standards set by EPA. In the 1970s and 1980s, we experienced a great increase in enforcement by States of the power they had not exercised before, provided they agreed to meet national standards of pollution control. Many States set up their own legal authorities, environmental programs, and began enforcing in their state court systems that pre-existed and parallel the national courts. At the same time, there was a growing number of national enforcement actions, most handled before EPA administrative law judges authorised to impose multimillion-dollar penalties on violators. There is also very close EPA co-operation with the Department of Justice environmental trial attorneys for quick access to national courts.

Today, we have a national-state relationship, which we call "co-operative federalism", in which the different levels of government work in partnership. Within the U.S., nation-wide pollution-control standards set the threshold or floor below which companies and States may not fall. These create (1) a nation-wide, level economic playing field for all enterprises and all States as competitors within the United States; (2) no more "race to the bottom" or destructive competition; (3) no trade disputes based on complaints about environmental damage; and (4) a strong national economy made even stronger because competition is now not destroying the environment. These outstanding results have been widely popular. While the EPA is not always popular with enterprises it regulates, public opinion polls that most Americans widely regard the EPA as a great success in modern government. Presidents Clinton and Bush have treated the Administrator as a member of the President’s cabinet of his most senior officers, and now President Bush also is proposing that EPA be elevated to the rank of a cabinet “Department”.

The U.S. Constitution

I hope that you will now allow me a short digression into U.S. history and the architecture of our Constitution of 1789. It forms the basis for the world’s oldest, continuous democracy, and defines the federal relationship in which our EPA and States operate today. Our version of federalism comes directly from a war of liberation fought from 1776 to 1783 by 13 colonies of transplanted Englishmen against their King in England. For the 6 years from 1783-1789, the 13 States were loosely united in a confederation rather like that of the European Union today. Then in the summer of 1787 came the defining moment when the 13 former colonies negotiated a “treaty” called the Constitution. By it the colonies simultaneously united while also remaining in many ways sovereign states. In 1789, our liberating general George Washington, a man who put down his sword and returned to his farm, was unanimously elected the first President. He is called “The Father of Our Country”, and the rest is history.

This Constitution was so novel, and even today is so profound, almost magical, that it allowed 13 States to grow to 50, spread over the width of a continent, and take in a diversity of people as continental European-, African-, Asian-, and Hispanic-Americans. All live in a state of organised freedom or ordered liberty. I recommend to anyone a study of the words of this Constitution, because even today it seems a miraculous blessing of providence. I think that if it worked for us, as freedom-loving, happiness-pursuing, diverse, profit-seeking, and even almost chaotic as we are in the U.S., it could work for anyone.

The new Constitution did not prescribe a highly unitary nation in which sub-national units are really just departments of the national government. Neither did the new Constitution describe the other end of the spectrum of possibilities, a loose federation where there is a national government only as a coordinating body. (In a loose federation, there may be great sub-national flexibility in specifying the details of national standards and implementation only at the sub-national level.) Between these extremes, the U.S. government is neither a unitary one, nor is it a loose federation. It is in a middle position that I will now describe.
First let us observe that the Constitution establishes the horizontal relationship between the 50 competing States. The Constitution disables state laws that impede interstate commerce, including pollution-control laws that discriminate against out-of-state sources. Our national economy is so strong because it is unified and without trade barriers even for environmental reasons. It is interesting that our Constitution in its wisdom anticipated the rules of free trade that now are elaborated internationally in the World Trade Organisation. Today the tensions between the competing values of free trade versus a clean environment play out both domestically within the 50 United States under a national EPA, and internationally where there is no EPA. But enough of this, because the horizontal relationship between equal States or nations is not our topic today.

Five Elements of Environmental Federalism

My subject is the national-state relationship. While the national government is supreme and above the States in functions or fields of competence such as interstate commerce and pollution control, in many fields State governments have traditional, inherent, and retained powers and are sovereign in these areas. U.S. States operate with the same three branches of government, as does the national government. So rather than picture the national government as placed above the States, it is more accurate to show the governments operating side-by-side or in parallel. All governments operate under the Constitution and for the people whom each government may regulate directly within fields of competence defined by the Constitution. (For a good description of the legal basis for environmental enforcement authority in the U.S., visit the website of the International Network for Environmental Compliance and Enforcement at: http://www.inece.org/1stvol1/reich-shea.htm. Also in this volume are additional articles on environmental federalism and enforcement.)

The EPA national pollution-control laws since 1970 have of course all been written and applied subject to the Constitution’s framework of 1789 establishing the relationship between the still existing and powerful States and the new and powerful national government of the United States of America. My impression of the NIS is that today you too have dominant national governments that are considering the advantages of some degree of decentralisation or are actually devolving some national authority to the Regions. Now it seems that we are at very similar stage in federalism of approving sub-national environmental programs as sufficient to qualify for the delegation of national authority to the sub-national units.

First let us recognise that a national government can do many things that a state or local government may not do well. National functions include expensive scientific research and development, standard setting based on scientific findings, information management, planning and tracking of performance, and control of interjurisdictional or transboundary issues. Some of these national functions cannot be shared or devolved. Yet national government is distant. It is a fact of life that there will always be tension between the goal of national consistency or harmonisation of sub-national approaches, on the one hand, and on the other hand the goal of assuring sub-national flexibility to address specific problems and local preferences.

Some decentralisation is desirable and politically necessary -- this is widely, really universally, recognised. Local people closest to an environmental problem often bring greater concern, insight, and energy to solving it. However, there is the natural human tendency to want to save local jobs and to shelter employers who provide the jobs – sometimes even though they are bad polluters. This is especially true where the pollution flows downstream to another town or State. At any level of government, enterprises that chose to pollute to cut production costs may be politically and financially powerful, and they may obtain government protection that is not deserved. So I think we will all agree that there must be some, perhaps much decentralisation, within an overall framework.
From the viewpoint of the national government, to operate a well planned decentralisation presents a number of issues or elements including the following five:

National legal authority clarifying what level of sub-national authority is allowed or required for:

A. Standard setting; and
B. Enforcement and prosecution;

National approval procedures for the qualification of sub-national programs as having the legal authority and program resources including trained staff able to implement national requirements;

National supportive mechanisms to encourage sub-national units, including (a) capacity building or training, and (b) grants of funding to help implement sub-national programs;

National operational, continuous oversight mechanisms including (a) performance standards, (b) reporting requirements, and (c) consequences for sub-national failures to perform; and

Dispute-resolution mechanisms for resolving tensions inherent in federalism.

1. Sharing Legal Authority between the National and Sub-National Levels

Now may I address in turn each of the five elements of the architecture of environmental federalism. In any nation, the constitutional relationship between that national and sub-national units of government determines this, and everything that follows depends on. Like the relative freedom of our citizens, the relative freedom of our States presents a big challenge to our national government that wants both environmental compliance down to the local level along with a high degree of decentralization of control. Probably many of you face this same dilemma in the NIS. We begin with the U.S. national legal authority needed to clarify what level of sub-national legal authority is (a) required, (b) allowed, and (c) not allowed.

First, when different state standards are not allowed. Where Congress clearly states its intent, and there is a legitimate national purpose such as uniformity, then national standards “preempt” and preclude different (even more protective) state standards. Some examples of this are the standards for motor-vehicle fuels, and for allowed production and use of pesticides and other toxic chemicals. Especially for such products traded widely in interstate (and international) commerce, national enterprises often prefer the uniformity and simplicity of one set of EPA national standards to the confusion of fifty different state standards. Where national standards are “preemptory”, often EPA programs are national managed and not delegated to States. We will not be discussing further this aspect.

The usual rule in the U.S. is that higher state standards are allowed. By “higher” I mean more stringent or more environmentally protective. States have great freedom to implement higher standards. For pollution-control, there are two types of standards, ambient and source-based. Ambient standards are allowed by Congress where local conditions allow flexibility in choosing the means to the desired end or goal. Ambient standards are set nationally for air, and by States for bodies of water, based on receiving capacity considering health and environmental effects. Congress then allows great State independence and flexibility in planning and choosing the means of overall attainment. For example, when applying the national ambient air standards, State Implementation Plans can be implemented in almost any fashion and with minimal EPA oversight provided national goals are met. State ambient “water-quality” standards, while required by national law, are mostly written, applied, and enforced by State agencies, with little national involvement provided the goal of “fishable, swimmable” water is met. However, ambient
standards (whether national or state) are not the primary means of regulation in the U.S., and we will not be discussing further this aspect.

The most widely used U.S. pollution-control standards are source-based limitations on discharges, releases, and emissions. In this presentation we will have time to focus only on these standards, which we may call “source control”. The U.S. has relied mainly on source-control standards because they can be enforced without proving environmental harm to an entire ecosystem and without proving the environmental harm caused by one of many sources affecting an ecosystem – both things often impossible for the government to prove.

In the U.S., state source-control standards usually may be above the EPA national standards, and States also may enforce more strictly that EPA requires. The most well known example is that our State of California long has had stricter standards of automobile air pollution control than does the national government. States also may regulate more broadly to cover other problems that the national government does not address, such as noise pollution and many problems of non-hazardous municipal waste.

But while States may reach for a higher level of pollution control, of course the bigger problem historically has been that until 1970 they generally failed to control pollution. As for what the U.S. national government may require of our 50 States, remember that we do not have a “unitary” government. Under our Constitution of 1789, our States have always been and today remain quite free and “sovereign” entities. In 1970, when Congress gave EPA parallel powers (that until then were dormant), our States did not lose any powers -- except for the few areas in which national standards are unitary and preemptory. Usually, States may apply state laws, States may adopt national law as state law, or States may chose to do nothing. It may surprise you, but the U.S. government cannot command a state legislature to make particular environmental laws. The U.S. cannot command state officials to regulate polluters in the State in any particular way, or to enforce any national regulatory program.

What exactly if anything can the EPA require of a State? Really, only that the State be accountable to EPA if the State wants EPA to authorise and defer to the state pollution source-control program. If a State does not co-operate, the national government is not powerless. Remember also that the U.S. national government, while not unitary, is much stronger than a loose confederation. At this point, it is important to distinguish now between a state government, on the one hand, and the people living in that State. Even though a state government is independent and with impunity may fail to protect the environment, what the national government can do is bypass the state government and directly apply national source-control standards to the people, enterprises, and polluters residing within the State. EPA does this both in (A) setting national source-control standards, and (B) directly enforcing within States that fail to meet national expectations for state enforcement.

A. National Source-Based, Pollution Standards

Most of our EPA source-control laws set a nation-wide floor of allowable limits on discharges, releases, and emissions of pollutants from facilities to the environment. Even though States may chose not to implement these standards, for 70-80% of EPA programs, States have chosen voluntarily and agreed to operate at the national level. For a State to qualify, its State legislature must enact state laws no less stringent than the national laws. To say this differently, the State source-control standards – to be nationally acceptable – must be at least as strict as national standards, which are minimum ones. State standards cannot be negotiated. As to permits, EPA must approve state permits and may disapprove or veto them if they are not adequate. In this way, the burden of controlling pollution is applied by a State to its people in a way that is fair and nationally consistent. Where this happens, the national government regards the State as its partner in a collaborative effort to control pollution. In co-operating States, the national government greatly reduces its direct intervention.
On the other hand, there is always the risk that a State may choose to shelter local polluters and unfairly attract jobs and investment from clean States operating at or above the national level. States are free to do this, to do nothing, or to impose standards less stringent than the national source-control standards. But in none of these circumstances may a State receive national authority. Where a State is less stringent than the required national approaches, the national government does not regard the State as a fully co-operating regulator. In these States, the EPA regulates the directly the people in the State.

B. Sub-National (State) Enforcement and Prosecution Authority

In addition to the level of the source-control standards themselves, their enforcement also is to be at a level that is fair and reasonably consistent throughout the U.S. As a matter of national policy or law, EPA has expectations that state enforcement will be no less stringent than, or at least substantially similar to, national enforcement. Over the years since 1970, one at a time, EPA has approved most state enforcement programs as equivalent to the national program, delegated national authority to States that agree to enforce at the level of the national standards, and given to States some funding for their environmental programs. Statistically, today States do more than half, up to about 80% of all inspections, enforcement responses, actions, and prosecutions. The result in the U.S. today is that – while we have national source-based standards of pollution control and enforcement – implementation today is mostly by the States. We have decentralised up to about 80% to take advantage of greater knowledge and resources today available at the sub-national level. Usually EPA acts as a reserve or back up to assist co-operating States.

However, some States do not receive EPA approval of a state program and so do not receive national authority; in these States, EPA must directly implement and enforce the entire national program. Some States receive national authority but fail to implement it; here EPA watches (by exercising oversight) to identify state enforcement cases that are not “timely and appropriate”. Recall that national laws also provide for parallel EPA enforcement authority even in States for programs that EPA has approved. If necessary – and usually it is not necessary – the national government will take direct action within an approved but lagging State to directly enforce national law.

We think it very important that EPA does not approve a state program and then walk away, closing the national effort. The U.S. is one of the few (or perhaps the only) nations in the world where national enforcement is still a possibility after a State has been empowered to enforce. The national standards and EPA presence helps the States to maintain their performance. Many States are actually relieved by the national back up and use it as a weapon in reserve. Some call EPA "the gorilla in the closet"! For example, if an enterprise polluting within a State threatens to move to another State that is more lax, the first State may tell the enterprise that it will inform the national government to come to enforce wherever the enterprise is located, so there is no reason to leave the State! Enterprises know that moving to another State should not change things. All 50 States in this way compete fairly to attract and keep jobs and investment.

It may not surprise you that major polluters in the U.S. are or were the Department of Defence and the Department of Energy, both agencies of the U.S. government. Today, by law all national-government agencies also must meet both national EPA and also state requirements. You may be surprised to learn that in the U.S., individual States may sue and sometimes penalise national-government facilities, including military bases and nuclear energy facilities, if they fail to control their pollution. Agencies of our national government are not exempt and must obey the same laws as do our people.
2. Qualification Procedures for Approving Sub-National Programs

There are established EPA national qualification procedures for approving sub-national programs as having both the legal authority and the program resources including trained staff able to implement national requirements. In a program-by-program, formal application process, state officials must certify and EPA by study and review must verify that all the ingredients of an effective, operational state program are in place. There is public notice and opportunity for private citizens and groups, including NGOs and enterprises, to comment on the proposed national approval of the state program. All of these procedures and requirements are established in national laws and regulations.

Once a state program is approved, theoretically it can be retracted by EPA for state failure to implement effectively. But this is an ad hoc event caused only by extraordinary circumstances, and in fact EPA has never taken back a state program without its consent. On a very few occasions, States have voluntarily given back programs to EPA. EPA probably would have to take funds from its other programs or obtain additional Congressional funding to find the resources to operate state programs were EPA to take them back for direct national management.

3. National Support to Sub-National Units

National mechanisms to encourage sub-national units include (A) capacity building and (B) grants of funding to help implement sub-national programs. Capacity building may be formal education or training, and more informal mentoring and technical assistance. [Graphic 8] EPA operates a National Environmental Enforcement Training Institute (NETI) that officials of State and also foreign governments are invited to attend without charge for tuition or materials. We invite foreign visitors including any of you from the NIS to attend our NETI courses if your English is good. Increasingly NETI is using distance-learning techniques such as satellite and Internet based courses, and compact disk (CD) interactive courses are available. To see NETI's many offerings, visit its web site: http://www.epa.gov/oeca/neti .

Also, EPA field officials often co-operate with their state counterparts in joint inspections and other collaborations. These team-building, co-operative activities serve to informally transfer technical assistance in both directions, and EPA has learned much from state techniques. As the States have become stronger, national technical assistance has become less necessary.

Grants of national funding to States are important too. In the 1970s, the national government funded up to about 80% of many state programs to get them started. Since then, States have greatly expanded the funding of their own programs, and most have created state EPAs that are effective and powerful. Now EPA grants provide funding averaging about only 10% - 20% of total state money for environmental programs. States pay most of the cost to implement their programs as equivalent to the national, EPA programs. This increased state financial responsibility is consistent with the level of state operational responsibility that is much greater than that of the national government in most States. Over time, because of both the decline in national funding and the increase in States’ capacity, quite naturally with the States there also has been an increased expectation of greater flexibility and freedom from national control and oversight.

The national grants are not altogether “free” but are agreements that carry certain obligations. They are awarded yearly or for multiple years in advance, and States must apply describing how they will use each grant to implement aspects of the national and state programs. Today EPA and many States chose to combine all grants in one overall “Performance-Partnership Agreement” that agrees to all national expectations and state flexibility in the implementation of state programs including enforcement accomplishments. Attached to the end of this paper are excerpts from two such agreements for the states.
of Colorado and Connecticut. (For copies of these and other Performance Partnership Agreements, visit: http://www.epa.gov/ocir/nepps/agreements.htm.) Should a State fail to perform, EPA may withhold its grant funds as a sanction. But this will only make the state program worse, so the emphasis is on constructive assistance to improve state programs. A greater sanction is another provision of law (in the Clean Air Act) that allows EPA to stop the much larger transportation grants for interstate highway construction if a State fail to implement some pollution-control laws. I understand that in some of the NIS you too may use such intergovernmental budgetary transfers of funding as an effective tool to encourage good sub-national performance. But we all know that withholding the money may lead to political controversy, and in the U.S. it is a rare event.

EPA also provides grants to associations of state and local organizations that are active in environmental protection including enforcement. For further information, please see the web sites of the Environmental Council of the States at http://www.ecos.org and of the Local Government Environmental Assistance Network at http://www.lgean.org. EPA also supports the National Association of [State] Attorneys General in its publication of a “National Environmental Enforcement Journal” (not available on a public web site).

In the year 2002, EPA may experience a decline (about 8%) in national enforcement resources and a corresponding increase in EPA grants to state enforcement programs. The rationale for this reduction is because most big sources of pollution by now have been controlled, while the remaining uncontrolled sources of pollution are often small, scattered, and so best addressed below the national-government level. A decrease in national enforcement capacity would also reflect the increasing tendency to regard the States less paternalistically and more as equal partners. EPA trusts and hopes that the States will meet their ever increasing responsibilities.

4. National Oversight and State Accountability

National oversight mechanisms or tools include (A) performance standards, (B) data requirements, and (C) consequences for sub-national failures to perform. These tools apply to all important aspects of a state program, including the exercise of state enforcement authority. Performance standards and measures cover both outputs (activities) and outcomes (results). The Performance Partnership Agreements also contain requirements for state data collection and State-to-EPA reporting of the numbers of inspections and enforcement actions taken. EPA is working with States to obtain information also on the environmental results and health effects achieved from state program implementation.

Even on a case-by-case basis, a controversial state enforcement case may receive national scrutiny. The criteria for case review are set by EPA’s national program offices and expressed in policy guidance documents that establish clear expectations for satisfactory state enforcement, especially the timeliness and appropriateness of state enforcement response to significant violations. While subject to some negotiation, these national enforcement policies are incorporated in agreements for state program grants or in the overall Performance Partnership Agreements.

Where EPA believes that there must be a national enforcement action, it will seek first to include the State in one co-operative, joint EPA-State case against the violator. Where the State does not agree, EPA can begin an enforcement case at the national level. This may even be on top of a state case in what we call an "overfiling". EPA will only do this if the state case was clearly inadequate or there is a compelling national interest to take separate action. On rare occasions, there has even been EPA versus State litigation in court in cases where the correct government response is highly contested. A much preferred and less litigious approach is being tried in frequent cases of disagreement over clean up of abandoned waste sites,
where mediation now is regularly used to try to bring together governments, citizens, and entities responsible for the contamination.

5. Dispute Resolution

In the U.S., inter-governmental disagreements arise regularly. The national government may see a State as protecting favoured local polluting industries and damaging the goal of national consistency. On the other hand, a State may see the national EPA as heavy-handed, too enforcement-minded, and not respectful of the local goal of tailored and flexible response. States also object to the steady stream of new national pollution-control requirements, often without new national money, that States call “unfunded mandates”. While there are consultations between the environmental authorities of the national government and of the States, there is no truly effective dispute-resolution mechanism of an administrative or bureaucratic nature.

There is one very effective dispute resolution mechanism – this is a national or State election. Every four years, we elect nationally a new President who appoints new leaders of the national EPA. Starting in 1980, the results of most Presidential elections have been small, incremental policy or resource shifts toward easier devolution and increased state freedom of action. Elections of State governors can similarly cause significant shifts in state environmental policy and relations with the national government, sometimes for more co-operation, sometimes for more confrontation.

While the U.S. national environmental enforcement system relative to the States is very slowly being diminished somewhat from it high point in about 1980, I do not want to overstate the decrease in national power. EPA enforcement remains, routinely issuing demands and negotiating with violators while also preparing to file formal cases in court. Most cases do not go to trial but are settled in administrative consent agreements. EPA's filed cases are mostly before EPA Administrative Law Judges, and EPA also sends cases to the national civil and criminal courts where the Department of Justice provides legal representation. This back-up national power is active, and it is not about to disappear. Because EPA is watching, like a gorilla in the closet, we think that our States do even better in doing most of the enforcement.

Two Toolboxes For An Environmental Protection Agency

Several times before, I have told you what this paper is not about. This paper also has not been about the means or tools for controlling individual polluting sources. (For a good description of these tools, visit the website of the International Network for Environmental Compliance and Enforcement at: http://www.inece.org/1stvol1/wasserman.htm ). To summarise or outline these governmental tools of regulation and enforcement, they are the familiar ones of (1) establishing legal authority in laws and regulations, (2) applying requirements to particular facilities and sources usually by permitting, (3) promoting compliance by education and perhaps some financial assistance, (4) monitoring compliance and finding violations, and then (5) correcting and resolving violations, by adjudication and penalties if necessary. In the U.S., any regulated, polluting source that satisfies the government agency as to these five things can operate its business successfully, or happily, and be in full compliance with pollution-control requirements.

In a system of intergovernmental relations between a national government and its sub-national units, it is quite the same. Any State that satisfies the national EPA as to five things can operate successfully, or happily, and be in full compliance with the partnership requirements of environmental federalism. What is remarkable is how the five elements or tools of environmental federalism are very similar to the tools of source regulation and enforcement. From the viewpoint of a U.S. State – or a NIS Region – seeking less
national control, the challenge is quite the same. A sub-national unit of government must (1) receive from the national government legal authority that is both allowed and required of it, (2) establish its regulatory program as qualified, (3) obtain training and funding to build the capacity of its regulatory program, (4) satisfy national oversight and be accountable for performance, and (5) effectively resolve intergovernmental disputes. Using all of these tools, it is legitimate for a State or Region to operate quite freely and successfully to control pollution within its borders. Like a regulated pollution source, the State or Region will be in compliance with national expectations.

**Summary and Conclusion**

To summarise, I was invited here to talk about how we applied the advantages of federalism to control pollution in the U.S. I have told you how beginning in 1970, the U.S. began to make the necessary changes in the parallel relationship between its national government and its sub-national units, the States, to achieve the generally good results that you see today in the U.S. Some of what we did in the U.S. may seem strange to you and not useful today here in the NIS. That is for you to decide. Different nations and cultures must take measures appropriate for their own situations. But the environmental problems that we face are the same or at least similar. In many respects human nature is universal, and both the U.S. and the NIS are inhabited by energetic people who are motivated to profit from their work. As government officials, we all face the same problem of persuading our people that their profits and comfort cannot come from damaging the environment. All governments must seek the proper extent and means of decentralisation of authority.

On behalf of the U.S. EPA, I conclude by saying to you this. I do hope that our thirty years of learning experience within the U.S. will be known to the NIS countries so that you may chose to learn from that experience. We hope this for the sake of the public health and environment within your nations. Also, for economic reasons we do not want to see any other nations become pollution havens, and we want international trade based on clean production in a global environment that can sustain all people. I hope also that you will consider USEPA to be your friend and ally in your important work.
Annex 1: Colorado Environmental Performance Partnership Agreement – 2001-2002 (Outline)

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ORGANISATIONAL STRUCTURE AND RESPONSIBILITIES OF THE POLISH INSPECTION FOR ENVIRONMENTAL PROTECTION

Wieslaw Sobczyk, Deputy Director, Inspection and Administrative Ruling Department, Inspectorate for Environmental Protection (Warsaw, Poland)

I. Historical and organisational background

The State Inspection for Environmental Protection (Państwowa Inspekcja Ochrony Środowiska - PIOŚ) was established pursuant to the Act of 1980 on Protection and Management of the Environment. At that time the Inspection was a one-level institution. The Chief Inspector for Environmental Protection, who headed PIOŚ, managed nine Field Teams that covered several Voivodships each, and two national teams: Inspection and Environmental Assessment Team based in Warsaw and Team for Prevention of Extraordinary Environmental Hazards based in Gdańsk. At that time, PIOŚ did not have any laboratory facilities.

Apart from the State Inspection for Environmental Protection, inspection tasks in the field of environmental protection were performed by Environmental Protection Departments of Voivodship Offices (which employed Voivodship inspectors for environmental protection) and by Environmental Research and Control Centres subordinate to Voivods, which had laboratories for monitoring the condition of the environment. At that time enterprises were inspected both by PIOŚ and by Voivodship bodies. Inspections by PIOŚ were usually less frequent and were conducted in larger enterprises. However, they were comprehensive and controlled the enterprise operation’s impact on all elements of the environment. PIOŚ inspectors also analysed production technologies used by enterprises, in order to more efficiently identify potential sources of pollution. Inspections by Voivodship bodies were more frequent but were usually limited to narrow aspects of environmental protection, e.g. water and waste water management or pollutant emission to the air. Environmental Research and Control Centres carried out control measurements of pollutants, but those inspections were often limited to the checking of emission levels of a specific type of pollutant. Obviously in individual cases joint inspections were conducted; in such cases comprehensive inspection was performed of formal and legal aspects as well as of emission levels of various types of pollutants. PIOŚ did not have extensive powers that would allow for enforcing environmental protection regulations. PIOŚ could issue post-inspection orders, which however did not have the status of administrative decisions so they could not be executed under the administrative procedure. PIOŚ could also apply to public administration bodies for taking relevant measures. Inspectors had the right to impose fines on persons responsible for violation of environmental regulations (in the case of minor offence) or to file lawsuits in the case of crime.

In 1991 the Act on State Inspection for Environmental Protection entered into force, which radically changed the work of PIOŚ. Under the new structure, the State Inspection for Environmental Protection was joined with the Environmental Research and Control Centres. The inclusion of the laboratories enabled actual monitoring of environmental pollution; inspection personnel was also included within the structures of PIOŚ. Voivodship Offices ceased to conduct inspection tasks in the filed of environmental protection, and focused mainly on issuing permits for the utilisation of the environment. PIOŚ, subordinated to the Minister of Environment, became a uniform, two-level institution, responsible for environmental
inspection and monitoring. The body responsible for implementation of statutory tasks of the Inspection was the Chief Inspector for Environmental Protection, who fulfilled his obligations through the Chief Inspectorate for Environmental Protection and 49 Voivodship Inspectors for environmental protection (at that time each Voivodship had its own Inspectorate). The work plan, budget and implementation of tasks of the entire Inspection were within the responsibility of the Chief Inspector. In the 1990’s in all Voivodships inspection procedures were uniformed, and standard measurement methodologies were prepared and implemented. At that time the laboratory potential of Voivodship Inspectorates was developed, which allowed for researching the condition of the environment and for reliable control of compliance with environmental regulations. In addition, rules of operation of the National Environmental Monitoring were developed, and work on the programme of measures aimed at counteracting extraordinary environmental hazards commenced. A system for control of transboundary movement of waste was also created.

Since 1991 the State Inspection for Environmental Protection has been granted much more efficient instruments for enforcing the law. These instruments include:

- the right to impose fines on enterprises for exceeding permissible pollutant emission levels. The fines are imposed as a result of control measurements of emissions; decisions imposing fines have the status of administrative decisions by Voivodship environmental protection inspectors. The decisions can be appealed from to the Chief Inspector for Environmental Protection. There is also the possibility of postponing the date of payment of a fine if the enterprise undertakes to implement within 5 years an investment which will eliminate the reason for non-compliance with environmental regulations (if the enterprise completes the investment within that period the fine is included in the investment costs). Furthermore, it is possible to divide the fine into instalments if the enterprise documents that it has financial difficulties and intends to pay the fine later. Approval of the postponement of the payment or of dividing it into instalments is granted in the form administrative decision;

- in the case control measurements conducted by a Voivodship Inspectorate for Environmental Protection prove non-compliance with environmental regulations, costs of the measurements are covered by the inspected enterprise; the costs are imposed by an administrative decision according to a price list included in a relevant ordinance by the Minister of Environment;

- the right to suspend the launching of a new or modernised project that may have a significant impact on the environment and does not comply with environmental regulations; the suspension is made by means of an administrative decision;

- the right to suspend the operation of an enterprise/installation if its operation has negative impact on the condition of the environment or is harmful or life-threatening to human beings; in cases where other instruments of enforcing the environmental law are not effective an administrative decision is issued to suspend the operation until the non-compliance is eliminated. After eliminating the non-compliance, the owner of the enterprise is obliged to notify the Voivodship Inspector for Environmental Protection of this fact. The inspector, after verifying that the non-compliance has been eliminated, issues an administrative decision restoring the operation of the enterprise.

II. Current organisation structure and powers of the Inspection

As a result of the system reform of Poland, since 1 January 1999 a new administrative division of Poland has been introduced, which reduced the number of Voivodships from 49 to 16. In addition to gminas (local communities – the basic territorial units which existed before), new middle units of territorial
division were introduced, called poviat (*district*). Decentralisation of responsibilities and reform of public administration system followed.

The administrative reform in Poland have resulted in the following changes in the work of the State Inspection for Environmental Protection:

- the number of Voivodship Inspectorates for Environmental Protection decreased from 49 to 16 (former Voivodship Inspectorates in the liquidated 33 Voivodships became field delegations of the remaining Voivodship Inspectorates for Environmental Protection, in accordance with the current territorial division of Poland);

- Voivodship Inspectorates for Environmental Protection came under Voivodship administration structures managed by relevant Voivods (heads of Voivodships);

- the name of the Inspection has been changed; the word “State” was deleted and the present name is: Inspection for Environmental Protection. The reason was that the responsibility for environmental protection issues has been switched from the central level to Voivodships. A Voivod, on application by the Voivodship environmental protection inspector or with his approval, by means of mutual agreement took over the responsibility for environmental issues (formerly within the powers of the Voivodship Inspector). The Voivod, on behalf of the Voivodship Inspector, issues administrative decisions to poviats within his Voivodship (before Voivods did not have this right);

- tasks of the Inspection come within the responsibility of: a) the Chief Inspector for Environmental Protection, who is the central governmental administration body appointed to control the compliance with environmental regulations and monitor the condition of the environment, and: b) the Voivod assisted by Voivodship Environmental Protection Inspector, who is a head of the Voivodship Inspectorate for Environmental Protection (constituting a part of the Voivodship administration system);

- the Inspection is headed by the Chief Inspector for Environmental Protection who:
  - is responsible for the implementation of statutory tasks of the Inspection, i.e. for proper and timely completion of these tasks at the central and Voivodship levels;
  - may perform any inspection task which is normally within the responsibility of the Voivodship Inspector, if he/she considers it justified by the importance or complexity of the issue in question;
  - co-ordinates the work of the National Environmental Monitoring conducted within the national and regional networks,
  - has the right to control work progress on and quality of tasks implemented by the Chief Inspectorate and Voivodship Inspectorates,
  - proposes to the Voivod (head of Voivodship) minimum three candidates to the post of Voivodship Inspector for Environmental Protection, appointed by the Voivod. If the Voivod does not appoint the Voivodship Inspector within 30 days of the date of proposal of the candidates, the Chief Inspector nominates the candidate to be appointed by the Voivod.
  - has the right to apply for dismissal of Voivodship Inspector, and approves such dismissals.
The Chief Inspector determines general directions of work of the Inspection. He/she also specifies general rules of EP Inspectors’ proceeding and co-operation with other public administration bodies in the case of extraordinary environmental hazards.

According to the Act on Public Administration in Voivodship, and the Law on Inspection for Environmental Protection, Voivodship Inspector is subordinate to the Voivod and implements his tasks and uses his powers on behalf of the Voivod.

According to the Act on Public Administration in Voivodship, tasks of the Voivod as the superior to the Voivodship Inspector for Environmental Protection include among others:

- control of tasks performed by the Voivodship Inspector for Environmental Protection in accordance with relevant Acts, executive regulations, regulations by the Council of Ministers, and ordinances and instructions of the Prime Minister,
- the right to give instructions to the Voivodship Inspector; the instructions however may not relate to resolution of issues subject to administrative decisions,
- co-ordination of work of the Voivodship Inspector with the work of other public administration bodies,
- ensuring conditions necessary for effective work of the Voivodship Inspector.

Apart from the Voivodship Inspectorate for Environmental Protection, public administration structures on the Voivodship level include the following bodies (whose offices are located in the same city as the Voivodship Office):

- Voivodship Headquarters of State Fire Brigades,
- Voivodship Police Headquarters,
- Voivodship Board of Education,
- Regional Delegation of National Inspection for Agricultural Products Sales and Processing,
- Regional Inspectorate of Plant Seed Inspection,
- Voivodship Inspectorate of Pharmaceutical Supervision,
- Voivodship Commercial Inspection,
- Voivodship Veterinary Inspection,
- Voivodship Sanitary Inspection,
- Voivodship Delegation of National Board for Protection of Monuments of Culture.

The Act on Inspection for Environmental Protection also specifies rules of co-operation with self-govermental bodies; among others, the Act sets forth the following rules:
Voivodship Inspector for Environmental Protection is under obligation to provide, on application by relevant Gmina (local community) Council, Poviast (district) Council or Voivodship Council, information on the condition of the environment in the poviat / Voivodship. Poviast council and Voivodship Council analyse such information at least once per year. In addition, the Voivodship Inspector is under obligation to inform the Poviast Board and the Voivodship Board about results of inspections of facilities/installations of main significance for the area concerned;

in connection with information on the condition of the environment, provided by the Voivodship Inspector, the Poviast Board has the right to determine, by means of a resolution, the directions of further work of a relevant environmental inspection body, in order to ensure adequate protection of the environment in the area concerned;

in case of direct risk to the environment, starosta (head of village), wójt (head of gmina), or mayor of town/city may order environmental inspection bodies to undertake measures to remove the risk. The order should specify the nature of measure to be taken or the specific case of non-compliance with environmental law, which requires correcting. The order may not, however, instruct the environmental inspection body to use particular methods of proceeding or ways of performing its tasks. Such orders should be executed immediately. If he is unable to fulfil the order, or if the order is non-compliant with the law, the Voivodship Inspector for Environmental Protection immediately forwards the issue to the Chief Inspector. Orders non-compliant with the law are not valid. The body responsible for classifying the order as not valid is the Voivod.

II.1. Organisation of Voivodship Inspectorate: general rules

The rules of the organisation of Voivodship Inspectorates for Environmental Protection and of their delegation units are determined in the Ordinance of the Minister of Environment acting in consultation with the Minister of Internal Affairs and Administration, of 30 December 1998. Based on the ordinance, regulations of Voivodship Inspectorates have been drafted in consultation with the Chief Inspector. The regulations have then been approved by the Voivods.

Voivodship Inspectorate is headed by the Voivodship Inspector assisted by: Deputy Voivodship Inspector, heads of delegation units of the Inspectorate, and managers of organisation units of the Inspectorate.

The structure of Voivodship Inspectorate incorporates:

1) field delegations,
2) Voivodship Inspectorate’s departments for particular categories of tasks,
3) Voivodship Inspectorate’s Laboratory,
4) Laboratories of field delegations,
5) Field delegations’ sections for particular categories of tasks,
6) Independent specialist work-posts for issues directly supervised by Voivodship Inspector, his/her deputy or head of field delegation.

In particular, the following units should be established within the Voivodship Inspectorate:

1) Inspection Department,
2) Environmental Monitoring Department,
3) Laboratory,
4) Sections / units / independent specialist work-posts for:
   a) budget and finance
   b) administration
   c) legal issues
   d) public procurement
   e) organisation
   f) human resources and training
   g) international co-operation
   h) defence
   i) fire prevention and industrial health and safety.

Detailed organisation of Voivodship Inspectorate is specified in the Organisation Chart developed by the Voivodship Inspector for EP and approved by the Voivod (after prior approval by the Chief Inspector for EP). The Organisation Chart constitutes a part of the Organisation Chart of the Voivodship Office.

II.2. Organisation of the Chief Inspectorate

The Chief Inspectorate is headed by the Chief Inspector assisted by: Deputy Chief Inspector, Director General and department directors answerable to the Chief Inspector for tasks within their scopes of responsibilities. In case the Chief Inspector is not present he/she is substituted by the Deputy Chief Inspector.

The Chief Inspectorate consists of the following departments:

1) Inspection and Administrative Ruling Department
2) Monitoring Department
3) Department for Prevention of Extraordinary Environmental Hazards (with office in Gdańsk)
4) Organisation Department
5) Economic and Administration Department.

Department is headed by Department Director responsible for all the issues within its scope of responsibilities, in particular for: correct and timely implementation of tasks; efficient work organisation; internal allocation of tasks; ensuring compliance with the law (in particular in the fields of: classified data protection, personal data protection, industrial health and safety, and fire prevention); ensuring and effecting co-operation with other departments and Voivodship Inspectorates.

The Chief Inspectorate’s departments include the following sections:

1) Inspection and Administrative Ruling Department
   a) Inspection Section
   b) Administrative Ruling Section
c) Section for Transboundary Movement of Waste

2) Department for Prevention of Extraordinary Environmental Hazards
   a) Section for Prevention of Extraordinary Environmental Hazards

3) Organisation Department
   a) Legal and Organisation Section
   b) International Cooperation Section
   c) Computer System Section

4) Economic and Administration Department
   a) Budgetary Section
   b) Administration Section
   c) Human Resources and Training Section.

Currently about 2400 persons are employed within the structures of the Inspection for Environmental Protection on the national scale. Out of them, 75% deal with direct implementation of statutory tasks of the Inspection. In the year 2000, the total budget of the Inspection on the national scale was over 150 million PLN (about 37 million USD). Out of that:

- about 66% came from the state budget;
- about 16% - from the grants by the National Fund and the Voivodship Funds for Environmental Protection and Water Management (in particular, the grants were for purchase of modern measuring equipment for the laboratories and upgrading laboratory premises to meet standards specified in the law);
- about 16% - from measurements ordered by outside institutions (those resources are spent mainly on co-financing of monitoring tasks and purchase of materials and spare parts for laboratory equipment);
- about 2% - from refunding of inspection costs by organisation units in which non-compliance was identified.

In addition, small amounts of money come from foreign sources, either under joint projects related to Poland’s adjustment to relevant EU directives, or under co-financing of environmental protection inspectors’ participation in international contacts (e.g. under the IMPEL network).

In the year 2000, in connection with Polish regulations’ approximation to the EU law, substantial changes were introduced into the environmental legislation. Most of the regulations will enter into force either on 1 October 2001 or on 1 January 2002. The changes also relate to the work of the Inspection for Environmental Protection.

Statutory tasks of the Inspection shall include (new tasks and dates of their entry into force are marked in italics):

- control of compliance with regulations relating to environmental protection and rational use of natural resources,
- control of compliance with permits for utilisation of the environment,
• participation in proceedings related to localisation of projects that can exert significant impact on the environment

• participation in launching of projects that can exert significant impact on the environment

• inspection of equipment / facilities protecting the environment against pollution,

• taking decisions on withholding activity non-compliant with environmental protection requirements or with permits for utilisation of the environment,

• co-operation, within the field of environmental protection, with other control and inspection bodies, the Police and the Prosecutor’s Office, Judiciary Bodies, public administration bodies and social organisations,

• organisation and co-ordination of the National Environmental Monitoring, researching the quality of the environment, observation and assessment of its condition and changes in it,

• development and implementation of analytical and research methods as well as control and measurement methods,

• initiation of measures aimed at creating conditions allowing to prevent extraordinary environmental hazards, to remove effects of such hazards, and to restore the environment to its proper condition,

• control of compliance with legal regulations and permits granted on the grounds of those regulations, with the exception of laboratory control, within the area of proceeding with genetically modified organisms – enters into force on 25 October 200,

• control of compliance with legal regulations on packages and package wastes – enters into force on 1 January 2002,

• control of compliance with legal regulations on entrepreneurs’ obligations within the area of management of certain waste categories and on product fee and deposit fee – enters into force on 1 January 2002,

• control of compliance with the Act on Proceeding with Substances Reducing the Ozone Layer – enters into force on 1 July 2002.

Also, according to the new regulations the Inspection will, among others, have the power to:

• enforce and execute compliance with post-inspection notes issued,

• withhold the operation of installation operating without integrated permit or whose operation is non-compliant with the integrated permit for a period longer than 6 months,

• control transport vehicles.
III. Summary of changes in the Inspection for Environmental Protection, related to the administrative system reform in Poland and the adoption of new environmental legislation.

The administration system reform in the country resulted, first of all, in a change of organisational structure of the Inspection. The number of Voivodship Inspectorates decreased from 49 to 16. However, the whole potential and resources of the former Inspectorates have been incorporated into the new system and utilised in the best possible way (the liquidated Voivodship Inspectorates have become field delegations of the Inspectorates that remained Voivodship ones). The reorganisation entailed a decrease in employment by about 5%. The dismissals however did not apply to employees working directly on implementation of statutory tasks of the Inspection.

In the current system, Voivodship Inspectorates for Environmental Protection are subordinated to the Voivod, and come within administration system of the Voivodship. On the one hand, it enables more efficient utilisation of the inspection service on the Voivodship level. On the other hand, however, management of the whole Inspection service by the Chief Inspector has become more difficult. After the administration system reform, the following bodies may give orders and instructions to the Voivodship Inspectors: Chief Inspector for Environmental Protection, the Voivod, and self-governmental bodies. In case the orders/instructions contradict difficulties with their fulfilment appear.

Budgetary resources for work of Voivodship Inspectorate for Environmental Protection are allocated by the Voivod (formerly they were allocated by the Chief Inspector). Since the introduction of the new administration system, a significant decrease in state budget allocations to the work of the Inspection has been recorded, while the scope of the tasks has remained almost the same. It is thus necessary to seek other sources of funding. However, the resources are insufficient for the implementation of the necessary tasks.

As a result of the recent changes in the legislation, the Inspection for Environmental Protection has been granted new inspection powers. In addition, the scope of instruments necessary for better enforcement of environmental legislation has been broadened. Yet, due to financial constraints there is a risk that the Inspection may not be able to fulfil all the tasks assigned to it.

It should be stressed that over the 20 years of its work, the organisation structures of the Inspection have been continuously improving. Current instruments of work have been improved and new ones introduced in order to more effectively enforce the environmental legislation. The inspection powers have been extended based on the new environmental regulations implemented.

Further strengthening of the Inspection is considered, one of the options being the establishment of the Environmental Protection Agency. The issue requires in-depth analysis and decision based on relevant Polish and foreign experience.
I would like to describe some of the developments within my country's Inspectorate of Environmental Health. I am sure that these developments are not unique. Many will also be familiar to you. Our start-up phase, the very first activities, setting and re-setting priorities, organisational structure, political pressure, our ambitions for the future: these are all aspects which we in the Netherlands share with many of our counterparts elsewhere. Obviously, time will not allow me to give a fully comprehensive history of my department. I must confine myself to the 'edited highlights'. Nevertheless, I suspect that many of you will recognise certain situations. After all, whether from the Netherlands or from Turkmenistan, we are all colleagues doing the same job. We will inevitably face similar situations with some regularity. Let me sketch the history of the Inspectorate in brief, illustrated with some of the actual situations and 'learning moments' we have faced.

The Netherlands' Inspectorate of Environmental Health is a relatively young organisation. It was founded in 1961. Your country's counterpart may pre-date ours or could be even younger. In any event, prior to the 1960s environmental legislation attracted very little attention in the Netherlands. We were rather pre-occupied with the reconstruction of our country following the Second World War. In fact, the Ministry of which the Inspectorate of Environmental Health now forms part did not even exist back then. For many years after the war, we were known as the Ministry of Public Works and Reconstruction. Not until 1982 did the Ministry of Housing, Spatial Planning and the Environment come into being.

At that time, the prime responsibility for environmental legislation lay with the local authorities. Their tasks with regard to environmental matters were largely those of issuing permits and enforcing the few regulations which were in place. In many cases, these responsibilities were not taken particularly seriously. Only in the event of disasters, conspicuous incidents or public protest - which was rare - would action be taken. In 1976, an inventory was taken of the number of companies holding an adequate operating permit further to our country's 'Nuisance Act'. Fifty per cent of companies were found to have no permit at all. Only 25% had a permit which could be considered adequate to cover the activities they carried out. A very poor showing.

The post-war reconstruction process was marked by greater general prosperity, an increase in car ownership, an increase in energy consumption, and mechanisation and expansion of scale in agriculture. There was a price to pay for these benefits in the form of pollution, by which I mean both the physical contamination of water, air and soil, and the equally insidious noise pollution.

During the 1970s, the government and the general public gradually became more aware of the pollution problem. Many environmental laws were enacted at this time. They generally targeted specific environment aspects, such as noise, waste disposal or processing, and the three specific considerations of

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3 This speech could not be delivered by the author personally because of the tragic events of September 11, 2001 in the United States.
water, soil and air. The legislation could therefore be said to be 'sectoral'. Concern for the environment had received official recognition and, in 1982, became the express responsibility of the new Department of Public and Environmental Health. From the political point of view, this was an important signal. The foundation of a department devoted to environmental matters not only indicated recognition of the problem but stressed the necessity of co-ordinating environmental policy with the other areas of government policy. Co-ordination with other levels of government was still in the very early phases. Much hard work went into setting up an adequate framework of environmental legislation. However, because legislation had hitherto been developed on a sectoral basis, there was a marked demarcation between the measures addressing soil, water, waste and noise.

The new legislation offered a good starting point, but the demarcation and fragmentation of existing legislation meant that little account had been taken of the interaction of the various components. There was little question of a uniform, recognisable approach: each of the various acts had different procedures for obtaining a permit, while licensing responsibility was spread over several different levels. This fragmentation also resulted in enforcement procedures being overly complex. While the intentions were good, in practice the new legislation proved difficult for all concerned, not least for the inspectorates responsible for ensuring compliance. Perhaps you recognise your own situation or experiences in this story. In the Netherlands, we quickly reached consensus regarding the necessity of a uniform approach. We realised that we had to resolve the multiplicity and lack of clarity in our current legislation. The situation changed once our Environmental Protection (General Provisions) Act came into effect in 1979.

For much of the 1980s, the Inspectorate of Environmental Health's main priority was legislation with regard to chemical waste. The growth of the chemicals industry and the development of sites such as Rotterdam Harbour meant that most attention had to be devoted to chemical waste. Rather less attention was devoted to enforcing rules covering other areas of environmental policy.

In the early 1980s, it became clear that while legislation had been made more clear and concise, its enforcement was still not all it might be. A report about the illegal dumping of chemical waste by a waste processing company served to bring home to everyone the enormity of the enforcement problem. Something had to be done.

To summarise, then…

- there was little compliance with existing environmental legislation;
- there was very little political interest in environmental legislation, compliance or enforcement;
- the Public Prosecutions Department showed little interest in enforcing the limited environmental legislation;
- those charged with enforcing the legislation had insufficient expertise and few resources at their disposal.

Clearly, these problems could not be solved overnight. Much time and energy had to be devoted to creating broad public and political support, recruiting and training staff, and acquiring the appropriate budgetary resources.

Enforcement efforts were given a marked boost in 1984 with the formation of the Environmental Legislation Enforcement Department within the Inspectorate of Environmental Health, and the implementation of the 'Long-term Intensification Programme for the Enforcement of Legislation with regard to Chemical Waste'. Collaboration with other levels of government and the encouragement of more
effective enforcement measures enjoyed very high priority at this time. Furthermore, the regional inspectorates started to devote considerably more attention to their own enforcement activities than had previously been the case, although the main emphasis was still on chemical waste. Staffing levels were increased, not only at the central Inspectorate in The Hague (our country's seat of government), but also in the regional departments throughout the Netherlands.

Alongside the chemical waste issue, other specific points for attention were formulated. These included environmental incidents, cadmium, enforcement of legislation covering PCBs, streamlining of licensing arrangements for classified Ministry of Defence premises, measures to reduce acid rain by setting effective limits on the air pollution caused by power stations and factories, and reducing discharges of ammonia resulting from intensive livestock production. The list goes on, but these examples serve to illustrate the many and diverse factors which the Inspectorate dealt with on a daily basis. Indeed, the Inspectorate is still concerned with these issues today.

In 1985, the Inspectorate of Environmental Health embarked upon a second avenue of approach. This entailed the formation of the 'Environmental Assistance Team', the main task of which was to assist the public prosecutor in complex cases of environmental offences. Furthermore, a separate division charged with supervising nuclear energy production was set up within the Inspectorate. In the same year, a formal recommendation was made which eventually led to the creation of our specialised Environmental Inspection and Investigation Department.

In the period which followed, central government began to provide support, both financial and technical, to help local authorities in enforcing the Chemical Waste and Waste Oil (Regulations) Act. The local authorities were encouraged to examine compliance with other applicable legislation at the same time. Some ten thousand company inspections led to the conclusion that half habitually contravened the Chemical Waste and Waste Oil Act. Supervision was stepped up and this served to improve communication and co-operation with other departments and levels of government. As a result, the services of the Environmental Assistance Team’s services came to be very much in demand.

Looking Across the Borders

In the 1990s, the Netherlands’ Inspectorate of Environmental Health began to play a more active role on the international stage. In May 1990, the Inspectorate joined the American Environmental Protection Agency in organising the first international compliance and enforcement workshop. This event, held in Utrecht, was spread over several days and saw representatives of the Western countries joining those from developing countries and Eastern European countries. It led to the foundation of INECE: the International Network for Environmental Compliance and Enforcement. In subsequent years, the single workshop would evolve to become a series of conferences at which both policy-makers and practitioners from all over the world are given the opportunity to exchange thoughts on a wide range of topics relating to compliance and enforcement. Even as I speak, the Environmental Protection Agency and the Dutch Inspectorate of Environmental Health are again hard at work in preparing the sixth International Environmental Enforcement Conference, to be held in Costa Rica in April 2002.

As you know, pollution does not stop at national borders. This is why it was decided to place the topic of enforcement firmly on the political agenda during the Dutch presidency of the EU in the second half of 1991. This was the first time the subject had received attention at this level. Moreover, enforcement of environmental legislation became the main topic of the informal summit of EU environment ministers that year.

Partly at the initiative of the Netherlands, work began on setting up an enforcement network specifically for Europe. The result was IMPEL - the European Union network for the Implementation and
Enforcement of Environmental Law - the secretariat of which is based with the European Commission in Brussels. Since its inception, IMPEL has acquired an Eastern European counterpart in the form of AC IMPEL, with the 'AC' standing for 'accession countries': those which aspire to join the European Union within the foreseeable future. Through various projects, publications, a website, workshops, exchange programmes and meetings, these informal networks hope to place compliance and enforcement on a higher and more uniform international level. In this context I would also like to mention the recent EU Recommendation on ‘Minimum Criteria for Environmental Inspections’, a recommendation based on an IMPEL initiative. Members of the European Parliament welcomed the fact that the recommendation contains reference to the co-ordination of inspections to prevent illegal cross-border environmental practices and that reports on inspections are to be made publicly available. European Member States are now required to report to the Commission on their experiences with the Recommendation.

Around this time, we also saw the first bilateral agreements set down in the form of 'Memoranda of Understanding'. During the past decade, my ministry has entered into many cooperation agreements with other countries, some close to home and others farther afield, such as Benin and Bhutan. Most recently, we have been concentrating on bilateral co-operation with the countries of Eastern Europe and we have been trying to meet various requests for assistance in resolving some compliance and enforcement issues 'on the spot'. Alongside their regular duties in the Netherlands, several members of my staff have travelled to Eastern Europe to provide assistance there. I attach tremendous importance to such exchanges, which are often very educational for all concerned. The Inspectorate of Environmental Health also organises training courses in the Netherlands especially for our Eastern European colleagues. The next course is planned for 2002 and will cover a range of topics which are directly relevant to practice in the field.

Whether at national or international level, the exchange of knowledge is extremely important. This is why we decided to set up our National Co-ordination Committee for Environmental Law Enforcement in 1991. Among the aims of this committee is to achieve better overall co-ordination and to increase the practical enforceability of legislation.

In the early 1990s, a desire to abandon the 'laissez-faire' policy of tolerance and to place the emphasis on tackling serious environmental offences emerged. Detecting and penalising environmental crime remains a topical issue to this day, and has acquired international support through such bodies as Interpol and the World Customs Organisation. The Inspectorate of Environmental Health is now a willing and valuable partner to the police and public prosecutor when it comes to dealing with environmental offences.

**From Quantity to Quality**

In 1995, there was a marked shift from questions of quantity to those of quality. Previously, numbers had mattered: how many permits had been issued? How often were businesses inspected? How many reports were produced? How many qualified people were on the staff? From about 1995 onwards, we began to ask different questions: what do the inspections actually achieve? What is the level of compliance with current legislation? Are permit requirements really enforceable? Could the same ends be achieved by any simpler means? Is environmental policy adequately reflected in other areas of policy, such as spatial planning or economic affairs? Other levels of government and the private sector itself were now more actively involved in environmental matters. This meant a greater degree of shared responsibility and offered opportunities for joint action. All in all, this period marked a significant turning point in our approach.

In 1997, the Inspectorate of Environmental Health was restructured to form one central department with five regional branches. Supervision of compliance could then be exercised from an 'appropriate' distance, with the influence of the local representatives being given greater importance.
A number of major issues arose in 1999, including the Bijlmer air crash inquiry, the dioxin affair and a major legionella outbreak. Last year was certainly not without incidents either. The terrible firework disaster in Enschede and the foot-and-mouth epidemic which affected a number of European countries accounted for a heavy workload. I do not intend to consider these episodes in great detail today. Suffice it to say that each resulted in enormous economic loss and emotional distress. Furthermore, each prompted considerable political and social pressure for change, whereby the Inspectorate of Environmental Health was granted permission to expand its workforce considerably in order to perform its duties even more effectively. Based on the political desire to react more promptly to environmental incidents and (potential) social unrest with regard to pollution, the Inspectorate decided to adjust its strategy somewhat. The focus of its key tasks became its role as an inspecting agency. The priorities for 2000 were set accordingly: health and the environment, combating environmental crime, greater alertness for incidents, complaints and public nuisance, and supervision of other levels of government. The inspectorate has consciously adopted the motto: 'The IMH for a healthy environment'. The foundation of the Environmental Inquiry and Investigation team, along the same lines as that already used to combat tax fraud, will help us live up to this motto. I can also report that the Dutch Nuclear Energy Service, which until recently fell under the responsibility of the Ministry of Social Affairs and Employment, has now been amalgamated with our Inspectorate. I mention this only to demonstrate just how broad our field of activity has become.

Today, in the second half of 2001, my department still faces many new challenges. As from 1 January 2002, we shall operate as an 'Inspectorate-General'. The inspectorates of the other directorates within our ministry - those of Public Housing and Spatial Planning - will be integrated with the Inspectorate of Environmental Health and the Department of Investigation. This operation will demand considerable time and effort on the part of my staff, but in the fullness of time will help us all to operate more effectively and efficiently in our new integrated form. Furthermore, life will be simpler for our clients. Rather than three separate inspectorates whose areas of responsibility can sometimes be seen to overlap, there will be a single point of contact for all questions and requests.

Eventually, the new Inspectorate will have a staff of eight hundred, both full-time and part-time, spread among the existing five regional offices and the main office in The Hague. I see this integration process as an exciting challenge for all concerned. There will also be a marked shift in our departmental culture in that we shall henceforth be required to profile ourselves in the areas of public housing and spatial planning as well.

Success Factors

When I was invited to speak at this conference, I was specifically asked to say something about the success factors and the main ‘learning moments’ of our organisation. It is always difficult to describe one's own organisation as being ‘successful’. Indeed, it is rather dangerous to do so, since there may be a tendency to rest on one's laurels. We cannot permit ourselves to do so. I realise that our organisation, which already numbers a staff of over six hundred, faces major new challenges on a daily basis. National government, local and regional authorities, politicians and the general public all have high expectations, and quite rightly so. They make certain demands, which we must meet despite our limited resources. To do so requires ongoing alertness and decisive, unambiguous action. In recent years we have learned that the work of our Inspectorate and the ability to act effectively rely on two success factors - co-operation and communication. Indeed, these factors will determine the success of any organisation, whether in the Netherlands or in your home country.

Our work would be practically impossible without close cooperation with others, both in central government and at lower levels. We have to co-operate within our own countries as well as across the border. I mentioned the EU Recommendation ‘Minimum Criteria for Environmental Inspections’ earlier as an example of an international uniform approach to our work. The Recommendation may very well lead to
a Directive in the future. More and more I foresee an international need for guidelines in the field of compliance and enforcement, as illustrated by the working groups on the UNEP Guidelines and the preparatory working groups for the Pan European Ministerial Environmental Conference in Kiev 2003. Political support and political pressure at home and or from abroad are essential to our work. We must be a worthy discussion and negotiating partner and we must encourage co-operation with and between other government departments. Joint action and joint dissemination of the results will go a long way towards determining the success of our efforts. Exchanging information, building up a network of contacts, identifying partners within government, the private sector and social organizations - these are essential activities if our work is to succeed. We are expected to keep abreast of social developments at home and abroad, and to be able to recognise the possible effects of such developments on our work.

We must be able to identify our target groups, to inform our clients properly, and to time our actions appropriately. In everything we do, we must ask ourselves if the message we wish to put across is sufficiently clear, not to mention the need to create adequate support for the message and any relevant action. I expect my staff to maintain an active approach. It is essential that the Inspectorates in general are never regarded as 're-active' agencies, only springing into action once a disaster has already occurred. We know that this image is very much out of date, but it is one which may still be held by some members of the public. We must be alert at all times and must always think ahead.

I have mentioned the integration process upon which the Inspectorate of Environmental Health is to embark. This process is a prime example of co-operation in practice. Who knows what the future may bring? There are many other inspectorates active within the Netherlands, many of which demonstrate some convergence in their areas of responsibility. In the fullness of time, these too may be ripe for integration.

But let us return to the present. I cited 'co-operation and communication' as key success factors. This is precisely what we are engaged in here today. We can all derive the benefits of co-operation within NIS-ECEN: by exchanging information, learning from each other, and entering into dialogue, we are working towards the success of our respective organisations.
SOME VIEWS ON EFFICIENT ENVIRONMENTAL CONTROL AND ENFORCEMENT OF INDUSTRY FROM A SWEDISH PERSPECTIVE

Hans-Roland Lindgren, Director, Swedish Environmental Protection Agency

First, I want to clarify the following. My agency is responsible for a wide range of issues as pollution control, nature conservation and national parks establishment, hunting etc. Enforcement approaches and tools differ considerably among various fields of environmental work. My presentation will be limited to enforcement of environmental legislation, to sources causing pollution and will focus mainly on industrial pollution. It is based on my experience in and knowledge of the situation in a market economy of the Swedish model but also builds on knowledge from other countries visited during my years in the World Bank. I have learned that the situation can differ significant between different countries. What I say might therefore not be relevant in parts to all of you or your countries.

Second, I have a firm believe that enforcement and compliance work not leading to improvements in the environment is more or less useless. Fulfilling of regulations for its own sake should not be a priority. Not all lawyers in my country, not even in SEPA, agree on that. Unfortunately I have seen the same tendencies in other organisations.

Background information

Before I start my presentation I will give some background information about the responsibilities of my agency. SEPA is the central environmental authority in Sweden. In broad terms our tasks are as follows:

- Co-ordinate the environmental work at national and international level;
- Provide information needed for environmental policy decisions to parliament and government;
- Encourage sector authorities, regional and local authorities, business communities and the general public to integrate their environmental concerns.

The functions and tools in the agency to perform the above work are basically the following:

- Environmental research;
- Environmental monitoring and surveys;
- Environmental legislation and its implementation;
- Action programmes and studies;
- Grants and compensation;
• Acquisition of land and management of protected areas;
• Information, education and training.

The legal basis for environmental law implementation and enforcement in Sweden is the Environmental Code. It came into force in 1999. The Code was the result of merging 15 old environmental acts. The code covers almost all types of environmental issues. The main exception is radiation issues. But pollution problems, nature and resource conservation, health and sanitation, use of chemicals and pesticides, GMO, building in water, dumping etc. are all covered.

SEPA is not the only national agency involved in environmental work. The ideas from the Bruntland Commission to give responsibilities to sector agencies as well started to be implemented in Sweden. Responsibilities between different agencies involved in environmental work are clarified in the Code and enforcement of legislation is further decentralised compared to the old legislation. It will take us too far if I describe all the features of the legislation. I will come back to some specifics later in my presentation.

After providing this background information, it is time to discuss the subject.

Enforceability paradigm and stakeholder dialogue as basis of effective enforcement

There is a strong link between the conditions for regulating emissions and environmental impact and enforcement of the legislation. It is hardly possible to discuss one without discussing the other. Very strict regulations, requiring extremely demanding emission controls or close to zero influence on the environment, might not be enforceable at all. Such demands are counter-productive and will not result in environmental improvements. Below I give some examples.

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<th>Box 1. Some examples of poor enforcement while requirements are not enforceable.</th>
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<td>Germany had some years ago, in some areas, difficulties to meet the requirements in the EU Drinking Water Directive. The problem was higher concentrations then allowed of a specific pesticide used in agriculture. Different treatment technologies and combination of techniques, including filtration through activated carbon, were tested, in order to reduce the concentration to the allowed limit, with negative result. It was not simply possible to find a solution to a reasonable cost. The best solution would have been to simply ban the use of the pesticide in question. However, the free market rules in the union put hurdles in the way, if I remember correctly. I do not know if, or how, this problem has been solved.</td>
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<td>When I was in Moscow some years ago I learned from the authorities that the Maximum Allowable Concentrations (MAC-values) were so stringent that many of the industries did not reach the limits requested even if they had proper treatment installed. They therefore had to pay fines. As a consequence industries did not operat their wastewater treatment plants in order to, at least, avoid the operational cost for the treatment plant. An option to meet the limit values was to dilute polluted water with clean water. Such solution hardly contributes to a better environment.</td>
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So, is it possible to work with strict environmental limitations promoting at the same time compliance by the polluter?

In my view, dialogue between stakeholders and a flexible regulation, allowing for considerations of the local circumstances, serve that purpose. If an industry feel that the conditions set for them are fair, technically possible and not excessively costly it is easier to feel committed to meet the limit values decided on.

Industry also often accepts, at least in my country, quite stringent limitations if they get reasonable time for the investments preferred. Preferably the investments should be possible to combine with other
investments needed in order to keep the costs down. Environmental investments in old plants, so called retrofitting, are often 3 to 4 times more expensive compared to the same investments in a new plant. It has even been possible for industries, in my country, to agree, after discussions with enforcement authorities, to investments in new unproven innovative technology, with prospects to be better from an environmental point of view. The condition is normally linked to authorities agreeing not to take full advantage of the situation and immediately require more stringent limitations, but allow a period for the industry in question to learn how to operate the process before final more stringent limit values are conditioned.

The licensing authorities in Sweden have often used the option with a probationary period in the licensing process. The final conditions in such cases are normally set one or a couple of years after issuing of the basic permit. An industry has therefore the possibility to improve the operation of a process over time when they have gained experience of it. An often used possibility in such cases has been to introduce a special condition in the license requiring the industry and the enforcement authority to jointly evaluate the technique and report back for setting the final conditions. The environmental result of this approach has been excellent. The result of innovative techniques might sometimes be somewhat higher concentrations of pollutants in the waste streams but drastically reduced waste flows. Since Swedish authorities are not bound by rigid concentration standards this is also an option to reduce the total load of pollutants to the environment. Many new environmentally friendlier technologies have seen the light based on such conditions.

This working method has however also been heavily criticised, especially by lawyers. They have argued that the limitations in a license must be clear to everyone from the beginning. And the public has a right to know what the limit values are when a new investment in an industry is decided on. Over time most of the lawyers in my country however have accepted probationary periods as an instrument in permitting given good environmental results. Environmental groups, not trusting the authorities, often argue that authorities cut deals behind closed doors. To this can be said that the Swedish licensing process is open to the public and the licensing authority never take a decision without a public hearing where all stakeholders could argue for their opinion.

In addition to using probationary periods and the time factor, as instrument in licenses, the authorities use a mix of softer and harder conditions. Examples are limit values that are never allowed to exceed, limit values which are allowed to exceed a couple of times during a certain period, or guiding values which the industry should try to reach. The last type of value is often combined with a demand on industry to agree on actions jointly with the enforcement authority to improve the situation to meet the value if it cannot be achieved.

Not only emission limit values are used in the Swedish licensing process but also conditions on process option to use or avoid. I will give some examples to clarify what I mean. A condition for an electroplating plant is often to prescribe the use of three steps counter current water rinsing baths after the plating operation. The purpose of that is to reduce water demands and allow for recovery of chemicals in the concentrated wastewater. Banning the use of free chlorine for bleaching in the pulp and paper industry is another example. The advantage of that type of conditions is that the inspector easily could check compliance compared with when costly chemical analysis is needed.

The EU IPPC-directive (Integrated Pollution Prevention and Control Directive), which came into force 1996, is an interesting example of a piece of legislation which allow for some flexibility to consider local circumstances when issuing a permit. It will be interesting to see how the member states of the EU will be using that possibility.
What is the role of inspectorates and what should they concentrate on?

The close link between the regulation and enforcement bring me to the next question to touch on. What is the role of inspectorates and what should they concentrate on? Should they concentrate on compliance checking and enforcement or do they have a role also in regulation and permitting? Based on the factual situation in different countries there are obviously different opinions on that. Just some short comments considering also other presentations will touch upon those issues.

In my country we have proponents for both options. And there are valid arguments from both sides. The advocates for a large independent inspectorate, concentrating only on enforcement issues, use the following arguments. If the public should trust the system we must show that we set aside resources for enforcement. If inspectors also have other duties there is a risk that enforcement does not get enough attention. It has also been argued that inspectors involved in permitting and close discussions with industry might lose their integrity. An independent enforcement inspectorate also has a better chance to build up a high competence on monitoring and analytical issues.

Those who believe that inspectors also should be involved in regulation and permitting argue according to the following lines. Lessons learned from enforcement should be used as one of the basis in the permitting process and for new regulations. The transfer of valuable information is simpler if the inspectors are directly involved in such issues. The knowledge gained when taking part in regulation and permitting is useful for understanding where and why emission problems might occur. The increased knowledge helps inspectors to focus on the most important issues. And it helps in discussions pushing industry to solve the upcoming problems.

My experience among others as the Head of the Implementation and Enforcement Department in the Swedish EPA, a department which include divisions working only with enforcement and supervision issues and divisions working in an integrated way with permitting and enforcement, is the following. Inspectors working solely with enforcement tend to have a more theoretical and formal approach to their work, while those working in an integrated way aim for practical solutions solving the environmental problem maybe sometimes neglecting the legal requirements. Inspectors without the integrated knowledge seldom feel competent to discuss how to solve problems and therefore use a legal attitude in relation with industry, while the others tend to work more as consultants then enforcers of the rules. What is needed is probably a mixture and balance of both those two attitudes. Achieving result on the ground is of course a primary objective but in a law-governed society legislation cannot be neglected.

Assigning responsibilities to achieve best results

So, how should responsibilities assigned to inspectors and inspectorates be performed in the best way for achieving compliance and result on the ground? Here are some views.

First, it should be the duty of inspectors and inspectorates to inform the politicians and lawmakers when they find legal requirement counter-productive or inappropriate from enforcement and environmental point of view to have them changed. I will give one example.

The new Environmental Code which came into force in Sweden 1999 introduce a new charge system for polluters breaking against the conditions in the law or a permit given under the law. The charge should be paid whatever circumstance causing a polluter to violate some specified prescribed conditions. The former legislation enabled authorities to neglect minor violations if they were not cause by purpose or negligence. But this possibility does not exist any longer. It is quite common that industries deliver their yearly environmental reports a couple of days or one or some weeks too late and have to pay a charge. In some Swedish municipalities the inspectors have proposed charges according to the law but the political...
level taking the decisions has refused to charge the industries. This has been brought to the attention of the Swedish courts and in one of the municipalities the responsible politicians have been fined. For the inspectors squeezed between the requirements of the legislation and the decision-makers, the political level, the situation is far from pleasant. The same is true for the politicians who just valued the situation based on their common sense and neglected the legislation. Personally, I find it difficult to accept a charge for violations against the law totally independent of the reason for it. I find it especially disturbing in very minor cases without importance for the environment. A special committee is now evaluating the new Code and hopefully they will propose a solution.

Second, it is important that inspectors visit industries and other pollution sources and not only sit in their office reading papers. A true understanding of environmental priorities and issues require work on the ground. A visit to an industry says more then ten reports. Resources as travel budgets and the like are important tools in that respect.

In this context I cannot avoid to tell you the following. During the time I worked for the World Bank I visited one of the NIS-countries. My role was to give advice on environmental pollution priorities as part of a NEAP preparation (National Environmental Action Plan). I discussed with the chief inspectors in charge of different sectors and got the information that the worst air pollution problem in the country occurred in a city with a steelwork with a lousy wet scrubber for dust control and a cement plant without any air emission control at all. I decided to look at the problems myself. What I found was a steel plant with excellent dust control consisting of and enclosure, so called “dog house”, effectively capturing the dust. From the “dog house” the dust was evacuated through an electrostatic precipitator operating fairly well. The cement plant was equipped with dust controls, both on the furnace and clinker cooler. From distance you could not see any air emissions at all from the city. My first reaction was, the industries must be out of operation. But that was not the case. The inspectorate simply did not know what they where talking about. It goes without saying, without proper knowledge of circumstances effective implementation and enforcement is impossible. So I say it again, work on the ground

Third, training and other competence building activities are needed. It helps to be listened to by industry and other polluters if an inspector know what he is talking about. A holistic view on the problems in an industry should be targeted. A narrow media focus on air or water is not in the interest of industry. Industry normally prefers to solve problems by pollution prevention and process change. Adding end-of-pipe treatment plants, the normal result of a media focus, which just add cost for the production is the last option for industry. Preferably inspectors should therefore have, at least, a basic understanding of pollution prevention and cleaner production. It also helps if inspectors have some knowledge about costs (investment and operational cost) that might be needed for compliance. With such competence an inspector is more or less on equal footing with industry.

Fourth, focus on priority environmental problems. Inspectorates have not enough resources to do everything requested by politicians, the public and legislation. The tendency, which can be seen sometimes, to tackle the easiest problems and the weakest counterparts first, should be avoided. It is not the number of enforcement issues handled but the environment result, which should be the guiding principle.

Fifth, work with integrity. Inspectors should base their decisions on best professional judgement and not fall away for pressure from interest groups. The inspector should stay with his commitment even when criticised. Industry also appreciate an inspector expressing a firm view, even if it might go against them, instead of an undetermined person which might not dare to say what he has in mind before he is back in his office, and can express his views in written form. And finally, but not least, an inspector should not be able to bribe. Then the organisation gains respect among stakeholders, which helps in achieving environmental result.
Sixth, organise the inspectorate functions in such a way that, to the extent possible, there is an even playing field for industries and inspectors. It cannot be expected that a single inspector in a municipality, with limited resources, should be able to stand up against a large powerful international company. That should preferably be the task of a national enforcement organisation while it might overkill to use inspectors from the national level to handle minor local issues that are better taken care of by local people knowing the situation at spot. A powerful industry requires a powerful counterpart. So a combination of enforcement entities on national, regional and local level is preferable.

**Enforcement powers**

If an inspectorate should be instrumental in achieving compliance it also need political, public and legal support. It will bring to far to discuss how political and public support should be obtained so I limit my presentation to the legal part.

Different enforcement tools could be used as information, charges and other types of economic incentives, fines, revocation of permits, shutting down production and criminal prosecution as jail sentences. All those possibilities are available in the Swedish legislation. My believe is however, that the natural starting point should be a dialogue with the violator discussing the reason for the violation and how it can be corrected. Historically, in my country, we often avoided to take further action if an agreement on correction could be obtained in dialogue with industry. To punish someone is not really an environmental objective. And it was found very difficult for the authorities to successfully get someone sentenced in court cases. According to the former Swedish legislation the authorities had to prove, as mentioned above, the purpose or negligence of the violator. Based on those realities we used a quite pragmatic approach focusing on what was good for the environment and tried to agree on corrective measures. If a violator after discussions with the authorities did not take any corrective actions it was easier to prove purpose. It was normally enough to point that out for industries and they quickly agreed to take corrective actions.

As mentioned already the present Swedish legislation is stricter. It is not allowed any longer for an inspector to make his or her own decision if a violation should be taken to court. Now it is compulsory to inform the prosecutors about violations against the rules and conditions. The reason for this change was that the old system was not transparent. It was sometimes difficult for the public to understand why an inspector just made an agreement with a polluter and did not take a case to court. The present process give better possibilities for the public to see the reasoning behind a decision, since a court need to make that clear. The result, so far, is not much of environmental improvement. Now cases of environmental violations pile up in the police and court system. But maybe the public is pleased and has better confidence in the system now.

The number of cases where people have been fined or taken to jail because of violation of environmental legislation in my country are relatively few. A possibility more often used has been to inform a company it will be fined if corrective actions are not taken within a certain time period. That type of threat has proved to be quite effective when a dialogue end without an agreement acceptable to the authority. One reason for the effectiveness of such action, in an open market economy the Swedish, is that such actions from authorities give noise in newspapers.

A treat to shut down the production for a polluter is difficult to use in my country. The public and political acceptance for using that instrument is very low. Full employment is one of the primary objectives for the major political parties. If the authorities would have used the option to shut down operation too often, sending people out in unemployment, I am quite sure that the environmental authorities would have lost public and political support. The instrument has been used as an enforcement tool sometimes when serious pollution problems occurred caused by operation of a facility. This option is normally only used
when toxic pollutants effect many people or very valuable nature areas or bio-diversity is threatened. The closure of a dioxin emitting waste incinerator, close to a city might be a typical example.

In the new Code SEPA has also got the power to issue general instructions to help improving implementation and enforcement. Instructions are legally binding for the industries or sectors concerned. The possibility to issue instructions has not been used that much yet, but several are under way help meeting different requirements in EU-directives.

How to meet new challenges?

Political priorities and legislation change over time and an organisation had to adapt to changing responsibilities. The situation in many NIS-countries is rapidly changing. Which ways could be used to respond to new challenges and changing responsibilities? I do not think there is a general answer to that question, I can just try to give some information on how such issues are tackled in my country.

The normal way to respond to new challenges and changing responsibilities in my country has been to change the organisational structure. In my agency we have made smaller or larger changes every year. We had no special entity for enforcement when the agency was formed in the 60ties. Over time the attention to enforcement increased and an enforcement division was formed in the early 70ties. In the late 80ties an enforcement department was formed due to increased political attention to those issues. When the present environmental law was introduced enforcement was decentralised to regional and local authorities. The enforcement unit in SEPA is back on division level.

My experience is that it is often quite difficult for people to accept organisational changes or changing responsibilities. If a person is engaged in her work, feel confident with, it and has gained a certain level of expertise it is often quite disturbing to start with something new or work in a new way. It is easy for a person to feel that he is less valuable when his area of expertise get lower priority. The result is often a resistance to change. So how could such problems be met?

First, it is very important to point out that changing priorities has nothing to do with people as such but is a result of a changing world. Indeed, information on the rational for change is a necessary prerequisite. It is also important that people, who are asked to change their focus, are listened to. Possibilities to influence their own situation for instance by taking part of the planning of the new activities certainly helps. The opportunity to get training to manage to meet the new challenges is also helpful.

"Privatisation" - one of recent trends in enforcement

What type of changes could influence the work for enforcers? In my country there are two trends which are quite visible, privatisation and decentralisation. I have touched on some decentralisation issues above and therefore limit myself to privatisation of enforcement.

Self monitoring I do not consider it a true privatisation issue but more a result of the obvious fact that no public enforcement organisation, how rich a country is, can get the resources to perform the monitoring for all pollution sources. But it is not only the resource argument, which is valid. Self-monitoring is also needed so the polluter knows and can take action when high emissions occur because of disturbances in the production process. It should therefore be the duty of the polluter to monitor his own emissions.

It is not necessary that a polluter monitor all emissions himself. A common model in my country is that the polluter monitors some parameter, which give information on how the process is operating, but use certified specialist companies for the chemical analysis needed. Specialist companies often do monitoring requiring a high level of expertise. An example on that is monitoring of fugitive emissions of dust. Specialist companies are also often used for calibrations of instruments used for emission monitoring. It is
hardly possible for an authority to have such detailed level of expertise in different areas even if there are examples where this is not true in my country. Nevertheless even if the authority has a high level of expertise in some areas it is not appropriate that authorities make the monitoring, or provide other services, for companies and are paid for it. Such scheme risks compromising the integrity of the authorities. The income might become more important then enforcement responsibilities.

What is totally appropriate, however, is that authorities now and then check the results reported from companies by their own monitoring on their own expenses. Monitoring paid by companies but on behalf of the authorities is also an option that is used in Sweden. For instance, is it quite common that consultants make compliance checks of new investments. Normally, the company selects the consultant, but the authority in charge needs to agree to the company or person selected. The consultants report to the authority.

Where the market mechanism has created a large market for compliance checks is for ISO 14000 certification. Sweden has at present (summer 2001) over 1 900 ISO 14000 certified companies and over 235 which follow the EU EMAS scheme. The ISO 14000 and the EMAS schemes have basically the same requirements for the companies. One major difference is however that an EMAS condition is that the result of an EMAS revision should be made public. The politicians in my country hope for voluntary schemes, as EMAS should be able to reduce at least part of the authority enforcement work. However so far SEPA has not found any signs of that.

I stop here. I have touched upon a lot of different issues. It has not been possible for me to get too deep in details but I hope that my presentation will trigger some questions and discussion during the seminar and I am fully prepared to give some more flesh on the bones later if you so wish.
GUARDIANS OF THE ENVIRONMENT

Bob Barker, Process Industries Regulation Manager,
Environment Agency of England and Wales, UK

My name is Bob Barker, and I am from the Environment Agency for England and Wales. I have worked in industry for 14 years before becoming an inspector and I’ve been inspector for last 10 years. Thank you very much for inviting me to this meeting, I go think it is important that regulators meet regularly and share the experiences, so that we can learn from each other. Today, I would like briefly to describe the work of the Environment Agency, in order than I can describe how it interacts with government, how it plans its enforcement activities, how it enforces those activities, and then how we measure our performance.

First of all, we have an overall vision – which is to have a better environment in England and Wales for present and future generations. So, we judge everything we do against whether it meets that vision. That is underlined by a main aim which is to protect and improve the environment, and make a contribution towards the delivery of sustainable development and integrated management of air, land and water.

VISION
• A better environment in England and Wales for present and future generations

PRIMARY AIM
• To protect and improve the environment & make a contribution towards the delivery of sustainable development through the integrated management of air, land and water

OBJECTIVES
• Integrated approach to environmental protection
• Working with others to deliver environmental requirements without imposing excessive costs
• Adopting clear & effective procedures for serving customers (including single point of contact)
• Operate to high professional standards
• Organise activities in ways reflecting good environmental and management practice
• Provide clear and readily accessible advice on its work
• Develop close relationships with public, local authorities, local communities and regulated bodies

We have a set of objectives underneath these, and this really sets our planning and our interactions with the government. We believe that an integrated approach to environmental protection is vital. We will work with others to deliver environmental requirements without imposing excessive cost. Much of our legislation is about achieving aims and objectives but ensuring that it is not an excessive cost. We will adopt clear and effective procedures for serving the customers, and that means customers being the operators as well as the people who live round processes, who live in the country in general, NGOs, everybody.

We will operate to high profession standards both managerially and technically, we will organise ourselves in a way, which minimise our own environmental impact. We will be clear and we ensure all of our advice in documents is readily accessible, in other words we have open system of regulation. And
lastly, we intend we have to and always try to develop close relationships with public, local authorities, local communities, and the people who live in the environment.

However, there are many other people in United Kingdom, who are involved in the regulation of the environment. First of all, I will describe some things that we do and then I will describe what some of the others do. The main kind of people that we regulate directly are industrial processes with the greatest pollution potential, we regulate disposal of radioactive substances, these are two areas that I specialise in. We also regulate the treatment, keeping, movement, and disposal of what we call controlled waste—it is the hazardous type of waste or a nearly hazardous waste—it is a category in UK law. We also regulate the remediation of contaminated land, if it is very contaminated, if it is only partly contaminated that is the local authority responsibility. We regulate to improve the qualities of rivers and coastal waters by regulating in the pollution which goes to them. We also regulate the abstraction of water—ground water and river water—to ensure that it is properly conserved, redistributed or augmented and is properly used. We also exercise supervision of all matters relating to flood defence on main rivers. We have rivers split into main rivers and other rivers. For main rivers, we ensure that the flood systems are in place. We maintain and improve and develop fisheries for specific types of fish: salmon, trout, freshwaters and eels. We conserve and enhance the water environment.

WHAT WE DO
• Regulate industrial processes with greatest pollution potential
• Regulate disposal of radioactive waste
• Regulate treatment, keeping and movement and disposal of controlled waste
• Regulate remediation of contaminated land designated as special sites
• Improve quality of rivers, estuaries and coastal waters through pollution control powers
• Conserve, redistribute, augment and secure proper use of water resources
• Exercise supervision over all matters relating to flood defence
• Maintain, improve and develop salmon, trout, freshwater and eel fisheries;
• Conserve and enhance the water environment

Some of the things we don’t do. We don’t actually collect and disposes of waste, we regulate others to ensure that it is properly carried out. We don’t deal with, what we call statute nuisance, which is like noise from domestic property on that kind of matter. We don’t have any responsibility for health and safety, it is a responsibility of a separate organisation in UK which is called Health and Safety (H&S) Executive. Even we are subject to the Health and Safety laws in the country. The H&S inspectors will come and inspect us, to make sure that health of the workers are safe. And emissions from less polluting possesses, from air pollution in general, from cars, commercial premises then the local authorities are the regulators. We are not responsible for coastal protection or the non-main river flooding.

WHAT WE DON’T DO
The Agency is not responsible for:
• Waste collection and disposal (LAs)
• Statutory nuisance (LAs)
• Health and Safety Legislation (HSE)
• Air pollution from household, commercial premises and less potentially polluting processes(LAs)
• Coastal protection/non main river flooding

Our agency is called a non-departmental public body. That means that it is not directly part of the government, it is not part of what we call the civil service. It interacts with government in England and Wales via two governmental departments - one for England and one for Wales. The one for England is called the Department for Environment, Food and Rural Affairs and in Wales - the National Assembly for Wales. They, in essence, act as the department which sets the broad policy for our agency, discusses
resources requirements for our agency, they decide how agency gets it money, set improvement targets for us, carries out regular reviews and agrees overall objectives. It does not, however, take part in any individual decision that we make. So, when we set the permit conditions on an industry, the government is taking no part in setting that. If the industry does not like these, it can appeal to the government. That way they have an appeal route.

In addition to the managerial line between ourselves and the government, we also receive advice from three governmental advisory committees. One advises us on environmental protection, another - on flood defence and the third - on fisheries, navigation, ecology and recreation. They are national advisory committees and then each region has its set of three committees as well, so that both the national and regional perspectives are taken into account.

ORGANISATION
- Agency is a non-departmental public body
- Sponsor is Department of Environment, Food and Rural Affairs in England and National Assembly for Wales in Wales
- Agency Board responsible to Ministers for organisation and performance
- Agency is advised by three statutory Committees:
  - Environment Protection: Flood Defence and Fisheries, Navigations, Ecology and Recreation

Currently, as many other organisations, we are restructuring. However, at the moment we have a three-tier structure. We have a head office, which is about setting policy, setting overall consistency matters, looking at performance and financial control. Regions take that policy and put it into the regional context to ensure consistency at the regional level, look at the regional budget and overall services. Then there are areas within regions who actually carry out the implementation of the policies and guidance.

We have a total staff of 10,300 employees. We were formed 5 years ago from 83 different organisations. We have learned a lot in the last five years about how to do things better. We were looking for a simpler system from headquarters down to areas. We are looking at specific processes, and by that I mean for example that there will be a group looking at integrated process control for major industry and how to do it better, in a more integrated way.

STRUCTURE
- 3 Tier organisation:
  - Head Office (Policy setting, consistency of approach, performance monitoring and financial control)
  - Regions (Policy co-ordination, control of Regional budget, corporate services)
  - Areas (Operational activities) 26 in total;
- Total staff - 10,300 employees
Just to give you a brief idea of England and Wales here is a map showing the 8 regions. Industry we regulate is mainly in the north, and the population and service industry is mainly in the south. The land to some extent is tilting and so along with rising sea levels there are significant flooding issues in the middle and southern part.

**FINANCIAL SOURCES**

Income from:
- Charging Schemes
- Grant-in-Aid
- Flood Defence Levies on local authorities
- Financial control via Financial Memorandum

The first figure shows that most of our income is for flood defence as this involves the actually building of flood barrages etc.

Figure A: National Income 99/00
Figure B: Expenditure by Business Unit 99/00
Figure C: Operating costs 99/00

The Agency in essence receives its income from 3 sources, the balance between these sources is decided by Government. There are published charging schemes directly on industry, grants are given by government paid for by general taxation, and there is money from local authorities specifically for flood defence.
FIGURE A.

National income
Graph showing 1999/00 planned income

FIGURE B.

Expenditure by Business unit 1999/00

Total expenditure - £617M

FIGURE C.
PLANNING

- Environmental Vision and Frameworks - Long term environmental aims/objectives
- Corporate Strategy - 5 year objectives
- Corporate Plans - Plans to achieve strategy each year with forward look
- Local Plans/Strategies - Local level plans to achieve overall plan/strategy
- Web Site - www.environment-agency.gov.uk

How do we plan?

Overall we have our Vision and a series of Frameworks looking in more detail at air, industry etc. These are long term overviews.

We then have a Corporate Strategy with 5 year objectives. Then we produce Corporate Plans as to how these objectives are to be met – and please remember I said earlier there is a discussion with the Government and advice from our Advisory Committee in the development of these. Further down there are local Regional and Area Plans as to what is going to be achieved at the local level.

We are on “open Agency” and all the detail can be found on our Web Site.

PLANNING (cont’d)

- Example of overall target
  
  By 2002 deliver net class upgrades in water quality to 800km of rivers

- Example of local targets
  
  Contribute to the remediation of 2 seriously contaminated land sites
  Carry out ‘x’ reviews of IPC processes

Just for an example – an overall target might be by 2002 deliver net class upgrades in water quality to 800 kms of rivers.

Locally to an Area it might be:
- Contribute to remediation of two seriously contaminated land sites.
- A certain number of review of the major industry which comes under out integrated pollution control legislation.

**HOW DO WE ACHIEVE THE TARGETS**

- Regulation
- Persuasion
- Education
- Research
- Capital Works (Flood Defence)

We have several tools:

We pick the best one or mixture for the job between:
- Strict regulation.
- Persuasion.
- Education.
- Research.
- Some of the Grant-in-Aid money, described earlier is to advise government, industry,
- For flood defence construction.

**REGULATION OF ENFORCEMENT**

- Purpose:
  Ensure preventative or remedial action is taken to protect the environment
- Principles:
  Firm but fair regulation
  Proportionate
  Consistent
  Transparent
  Targeted

When regulation is the method used, ie laws have been set by our Parliaments, and Government has chosen us to be the enforcing body then we have a policy on how we will enforce the regulation.

To us the purpose of enforcing regulations is to ensure preventative or remedial action is taken to protect the environment.

**Principles:**

- Firm but fair to all.
- Proportionate to the risk.
- Consistent across industry/country so one operator does not have an unfair advantage commercially. This is not the same as every condition being the same – industry in a sensitive habitat could well have to do more.
- Transparent – all (including operator, surrounding population and others involved in the environment) are clear on aims/method of regulation.
- Targeted – we will put our resource to operators and places where the environmental gain will be greatest.

**REGULATION TOOLS**

Permits - sets out targets for operators
Inspection/Reviews - check targets are:
- Still relevant
- Being met

Non-compliance
- Variation of permits
- Letters/warnings
- Enforcement notices
- Formal cautions
- Prosecution

Illegal Activity
- How deliberate/scale
- Prosecution

Police
Court Warrants

We receive applications from operators and issue permits:

- These can range from telling them to operate as they have said they want to, to defining emission limit reductions, to preventing operation until certain matters are improved.
- If an operator believes the permit condition is too tight they can appeal to the Government.

We then inspect at a frequency determined by risk and resource requirements have formed part of the planning process, review at a frequency depending on the legislation, scale of the process etc. If we find something wrong, either reported to us, we see in the operator returns, or an inspection we have various options:

Variation of permits - Letters/warnings
  - Enforcement notices
  - Formal cautions
  - Prosecution

If it is an illegal activity – ie one which is banned or needed a permit and has not gone one, we consider:

- Deliberate/scale – and this also includes those operators who have not yet the right permit – was it a mistake and they are taking all steps to correct or not our decisions – might depend on how new the legislation is.
- Prosecution – we have prosecution guidelines for various levels of offence and can decide whether to prosecute companies or individuals in the business such as Directors.

If we suspect there is going to be physical resistance from operators to us inspecting them we have the ability to either ask the Police for help or to obtain court Warrants to ensure the law is upheld and the environment protected.

We can obtain permission to set up covert surveillance of businesses. Last year we issued 447 formal cautions, 387 enforcement and prohibition Notices, prosecuted 694 businesses and individuals (6 individuals received sentences between 2and 18 months, 1 on probation and 16 community service and 7 fined). Total fines just over £3M – we do not think it is enough.

PERFORMANCE
Examples
Environmental Measures
- Environmental improvements
- Releases from industry
- Number of incidents
- Risk reviews (OPAs)

Activity
- Number of inspections
- Number of permits
- Prosecutions (4,100 ‘99/00)

We have our strategies and objectives for the environment set in plans as described above – how do we judge our performance and improve.

- We can measure the environment – water quality, habitats.
- Measure releases from industry.
- Measure number of incidents.
- Carry out operator performance assessments and see if they are improving (that is also a performance measure on industry).

In terms of how efficient we have been we can measure:

- Inspection against type of process.
- Prosecute.

Over a number of years one can compare environment measurement and then judge how to become more effective, where to target etc. However, we have to bear in mind it is important to prevent accidents, some major accident can cause more damages than years of emission so in our planning and review, we need to take account of this. It is a difficult area to judge.

REMEMBER: OBJECTIVE IS TO IMPROVE THE ENVIRONMENT

I hope I have given you a brief insight as to the interaction between planning, enforcement and performance. We keep in mind at all times the objective … Improve the Environment.

Thank you for listening.
Annex 1. Meeting Agenda

**Monday, 17 September 2001**

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<td>9:00</td>
<td><strong>MEETING OPENING AND ADOPTION OF AGENDA</strong></td>
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<tr>
<td>9:00</td>
<td><strong>Opening and workshop objectives</strong>&lt;br&gt;Angela Bularga, NISECEN Task Manager</td>
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<td>9:00</td>
<td><strong>Welcome address from the Russian Ministry of Natural Resources</strong>&lt;br&gt;Svetlana Ryapolova, Deputy Head, Environmental Enforcement Department</td>
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<td>9:00</td>
<td><strong>Role and key directions of activity of the EAP Task Force</strong>&lt;br&gt;Brendan Gillespie, Head of the EAP Task Force Secretariat</td>
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<td>9:00</td>
<td><strong>Agenda and working methods</strong>&lt;br&gt;Valts Vilnitis, Facilitator</td>
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<td>9:45</td>
<td><strong>PLENARY SESSION 1.</strong></td>
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<td>9:45</td>
<td><strong>Trends and ways forward in the development of the New Independent States environmental inspectorates</strong>&lt;br&gt;Nino Chkobadze, Minister of Environment of Georgia, EAP Task Force Co-chair</td>
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<tr>
<td>10:30</td>
<td><em>Coffee/Tea Break</em></td>
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<td>10:45</td>
<td><strong>Views on efficient environmental control and enforcement of industry from a Swedish perspective</strong>&lt;br&gt;Mr. Hans-Roland Lindgren, Director, Swedish EPA</td>
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<td>10:45</td>
<td><strong>Polish Experience in Reforming Environmental Enforcement</strong>&lt;br&gt;Wieslaw Sobczyk, Vice-Director, Department of Environmental Inspection, Poland</td>
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<tr>
<td>13:15</td>
<td><em>Lunch</em></td>
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<td>14:15</td>
<td><strong>WORKING GROUP SESSION 1</strong></td>
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<tr>
<td>14:15</td>
<td><strong>Topic 1: Effective institutional setting and internal communication (decision making and information flows)</strong>&lt;br&gt;Facilitator: Angela Bularga</td>
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<td>14:15</td>
<td><strong>Topic 2: Role of enforcement agencies in the system of environment protection and development of partnership relations</strong>&lt;br&gt;Facilitator: Eugene Mazur</td>
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<td>14:15</td>
<td><strong>Topic 3: Authorities versus responsibilities: towards a balanced distribution</strong>&lt;br&gt;Facilitator: Valts Vilnitis</td>
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<td>16:15</td>
<td><em>Coffee / tea break</em></td>
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<tr>
<td>16:30</td>
<td>REPORTS FROM THE WORKING GROUPS AND PLENARY DISCUSSION</td>
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<td>16:45</td>
<td>Closed Day 1</td>
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<tr>
<td>18:00</td>
<td>Social event</td>
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**Tuesday, 18 September 2001**

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<tr>
<td>9:00</td>
<td>Introduction to the Day 2 Agenda</td>
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<tr>
<td>9:15</td>
<td>PLENARY SESSION 2. Planning and performance assessment: UK case study Mr. Bob Barker, Process Industries Regulation Manager Environment Agency, United Kingdom</td>
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<tr>
<td>10:30</td>
<td>PLENARY SESSION 3. Comparative analysis of models for an organisational structure of the enforcement agencies in the European Union’s member countries Terence Shears, DGXI, European Commission</td>
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<td>11:30</td>
<td>Coffee/Tea Break</td>
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<tr>
<td>11:45</td>
<td>Reform of Environmental Enforcement System in Russia Svetlana Ryapolova, Ministry of Natural Resources</td>
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<td>WORKING GROUP SESSION 2</td>
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<tr>
<td>14:00</td>
<td>Topic 4: Strategic planning and performance assessment Facilitator: Eugene Mazur</td>
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<tr>
<td>14:00</td>
<td>Topic 5: Organising enforcement as part of decentralisation process Facilitator: Valts Vilnitis</td>
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<td>14:00</td>
<td>Topic 6: Human resources management and facilities Facilitator: Angela Bularga</td>
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<tr>
<td>16:00</td>
<td>Coffee / tea break</td>
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<tr>
<td>16:15</td>
<td>REPORTS FROM THE WORKING GROUPS AND PLENARY DISCUSSION</td>
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<tr>
<td>17:15</td>
<td>Presentation of the Tacis NEAP Implementation Project Robert Gould, BCEOM, Team Leader</td>
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<tr>
<td>17:30</td>
<td>Closing Day 2</td>
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Wednesday, 19 September 2001

8:45 Introduction to the Day 2 Agenda

9:00 PLENARY SESSION 4.

**International dimensions of enforcement activity**
Krzysztof Michalak, Secretariat of the EAP Task Force

9:30 WORKING GROUP SESSION 4.

**Topic 7: Stake and role of enforcement authorities as part of international cooperation processes**
Facilitator: Krzysztof Michalak

**Topic 8: Challenges while enforcing international conventions and ways to meet those challenges**
Facilitator: Valts Vilnitis

**Topic 9: Mechanism of interaction between national enforcement agencies in the framework of bi- and multilateral agreement’s implementation**
Facilitator: Angela Bularga

11:15 Coffee/Tea Break

11:30 REPORTS FROM THE WORKING GROUPS AND PLENARY DISCUSSION.

12:30 PLENARY SESSION 5.

**Progress in implementing the NISECEN work programme for 2001-2003**
Angela Bularga, Network Co-ordinator

13:00 Lunch

14:00 Discussion of the Network management issues and work plan implementation
Angela Bularga, Network Co-ordinator

**Other matters: EURREPAS presentation**
Tatiana Talalayeva, EURREPAS co-ordinator in Russia

15:30 ADOPTION OF MEETING CONCLUSIONS AND RECOMMENDATIONS

16:00 Meeting evaluation

16:30 Press conference
Annex 2.

3rd Meeting of the Environmental Compliance and Enforcement Network of the New Independent States  
17 - 19 September 2001, St Petersburg, Russia

Третья встреча в рамках Сети ННГ по соблюдению и контролю за исполнением природоохранных законодательств  
17 - 19 сентября 2001 г., Санкт Петербург, Россия

List of Participants
Список участников

<table>
<thead>
<tr>
<th>Country</th>
<th>Name and Address</th>
<th>E-mail</th>
</tr>
</thead>
</table>
| ARmenIA     | Ms. Nazik AMIRYAN  
Г-жа Назик АМИРЯН  
Head, Republican State Environmental Inspectorate  
Ministry of Nature Protection, Republic of Armenia  
35, Moskovyan Street  
375002 Erevan  
Начальник республиканской природоохранной государственной инспекции  
Министерство охраны природы Республики Армения  
ул. Московян, 35  
375002 Ереван  
E-mail: rubina@nature.am |                      |
| ARmenIA     | Ms. Julietta H. GLICHYAN  
Г-жа Джульетта ГЛИЧАН  
Head of Department for Normative and Methodology Documentation  
Ministry of Nature Protection, Republic of Armenia  
35, Moskovyan Street  
375002 Erevan  
Начальник управления нормативно-методических документов  
Министерство охраны природы Республики Армения  
ул. Московян, 35  
375002 Ереван  
E-mail: rubina@nature.am |                      |
BELARUS

Ms. Marina PETROVA
Г-жа Марина ПЕТРОВА
Chief Expert, Ministry of Natural Resources and Environmental Protection
Главный специалист Министерства природных ресурсов и охраны окружающей среды
Kollectornaya Str., 10
220048 Minsk
Belarus

Ms. Lidia LEONOVA
Г-жа Лидия ЛЕОНОВА
Chief Expert, Ministry of Natural Resources and Environmental Protection
Главный специалист Министерства природных ресурсов и охраны окружающей среды
Kollectornaya Str., 10
220048 Minsk
Belarus

GEORGIA

Ms. Nino CHKOBADZE
Г-жа Нино ЧХОБАДЗЕ
Minister of Environment Protection and Natural Resources of Georgia
Министр охраны природы и природных ресурсов Грузии
68a, Kostava Street
380015 Tbilisi

Mr. Dimitri GLONTI
Дмитрий ГЛОНТИ
Chairman, Department for Management and Supervision of Environmental Activity
Ministry of Environment and Natural Resources
Председатель Департамента управления природоохранный деятельности и надзора, Министерство охраны природы и природных ресурсов Грузии
68a, Kostava Street
380015 Tbilisi

Mr. Givi NINIKASHVILI
Г-н Гиви НИНИКАШВИЛИ
Head of Division, Department for Management and Supervision of Environmental Activity
Ministry of Environment and Natural Resources
Начальник организационного управления Департамента по управлению природоохранный деятельности и надзора Министерство охраны природы и природных ресурсов Грузии
68a, Kostava Street
380015 Tbilisi

E-mail: lidal@mail.ru
E-mail: gmep@caucasus.net
E-mail: airdept@caucasus.net
Mr. Alexander BRAGIN
Deputy Director,
Department of Planning and Analysis
Ministry of Nature Resources and Environmental Protection, Republic of Kazakhstan

Mr. Victor EGOROV
Head of State Ecological Inspection
Ministry of Ecology, Construction and Territorial Development

Ms. Taisia NERONOVA
Head of the Division
Department of State Environmental Control over the Use of Natural Resources
Ministry of Environment and Emergency Situations, Kyrgyz Republic

Ms. Zarema KONGANTIEVA
Head of the Division
Department of State Environmental Control and Usage of Nature Resources
Ministry of Environment and Emergency Situations, Kyrgyz Republic

Mr. Ion SCHIOPU
Director
Territorial Environmental Agency Tighina

E-mail: depoos@koksh.kz
E-mail: ecoconv@elcat.kg
E-mail: ecoconv@elcat.kg
E-mail: ies@mediu.moldova.md
E-mail: ies@mediu.moldova.md
A. Mateevici, 9, Causeni

**RUSSIAN FEDERATION**

**Mr. Alexei FROLOV**  
Deputy chief  
Natural Resources Department of North-West  
Natural Resources Ministry of Russian Federation  
Заместитель начальника  
Департамент природных ресурсов Северо-Запада  
Министерство природных ресурсов Российской Федерации  
62, Suvorovsky pr., St. Petersburg  
Federal Building, 190000, Russia

Mr. Nikolai SOROKIN  
Г-н Николай СОРОКИН  
Deputy Chief  
Department of Environmental Protection  
St. Petersburg’s Administration  
Заместитель начальника  
Управления по охране окружающей среды  
Администрация Санкт-Петербурга  
Kamennoostrowskij pr., 5/3  
St. Petersburg 197046

Mr. Gennady GRIGORIEV  
Г-н Геннаадий ГРИГОРИЕВ  
Deputy Chief  
Department of Natural Resources on State Control  
Заместитель Руководителя Департамента природных ресурсов по госконтролю  
E-mail: geoinform@eltex.ru

Ms. Svetlana IVANOVA  
Г-жа Светлана ИВАНОВА  
Head of Coordination, Methodical and Information Support Division  
Natural Resources Department of North-West  
Natural Resources Ministry of Russian Federation  
Начальник отдела координации, методического и информационного обеспечения  
Департамент природных ресурсов Северо-Запада  
Министерство природных ресурсов Российской Федерации  
51, Bolshaya Morskaya Street, St. Petersburg  
Federal Building, 190000, Russia

Ms. Marina Korobeinikova  
Г-жа Марина КОРОБЕЙНИКОВА  
Leading Specialist  
International Projects Unit,  
Department for Environmental Protection of the City Administration of St. Petersburg  
Главный Специалист  
Отдел международных проектов  
Управление по охране окружающей среды, Администрация Санкт-Петербурга  
5, Kamennoostrovskii pr.,  
St. Petersburg 197046

E-mail: exp@gpc.spb.ru

E-mail: ecatsp@spb.cityline.ru

manager@manager.ecolog.spb.ru
Mr. Sergey RUDAKOV  
Г-н Сергей РУДАКОВ  
Head  
State Ecological Control Division  
Department of Natural Resources  
Начальник отдела государственного экологического контроля  
Департамента природных ресурсов  
E-mail: geoinform@eltex.ru

Ms. Svetlana RYAPOLOVA  
Г-жа Светлана РЯПОЛОВА  
Deputy Chief  
Department of State Control  
Ministry of Nature Resources of Russian Federation  
Заместитель руководителя Департамента государственного контроля Министерству природных ресурсов Российской Федерации  
E-mail: ayesypov@mtu-net.ru

Ms. Alla SEDOVA  
Г-жа Алла СЕДОВА  
Deputy Head  
Division of Basin Agreements and Regional Programs  
Зам. Начальника отдела бассейновых соглашений и региональных программ  
E-mail: sedova@ns8057.spb.edu

Mr. Vladislav SHTUKIN  
Г-н Владислав ШТУКИН  
Acting Chief,  
Law Division, Department for Nature Use and Environmental Protection, Moscow City Government  
И.О Начальника Юридического отдела Департамента природопользования и охраны окружающей среды Правительства Москвы  
11, Novy Arbat, Moscow  
121019 GSP-2, Russia  
E-mail: vvshtukin@mail.ru

TAJIKISTAN  
ТАДЖИКИСТАН

Mr. Bashid SURIEV  
Г-н Башид СУРИЕВ  
Head of the Analytical Control Inspection  
Ministry of Nature Protection  
Начальник специализированной инспекции аналитического контроля Министерству охраны природы  
12, Bokhtar Street  
Dushanbe 734025  
E-mail: shokirov@tojikiston.com  
kodir@tojikiston.com
Mr. Munimdjon ABDUSAMATOV  
Head of Inspection  
State Control for Water Use and Protection, Ministry of Nature Protection  
Начальник специализированной инспекции государственного контроля за использованием и охраной вод  
Министерство охраны природы  
12, Bokhtar Street  
Dushanbe 734025  
E-mail: shokirov@tojikiston.com  
stihiva@tajnet.com

Mr. Viktor CHEREVKO  
First Deputy Chief of the State Ecological Inspection Ministry of Environment and Natural Resources of Ukraine  
Первый заместитель начальника Государственной экологической инспекции Министерство экологических и природных ресурсов Украины  
82-a Turgenevskaya Str., 04050 Kiev, Ukraine  
Email: goam@eco31.freenet.kiev.ua

Mr. Vasil KOVBA  
Head of the Analytical Department of the State Ecological Inspection Ministry of Environment and Natural Resources Resources of Ukraine  
Начальник отдела аналитического контроля Государственной экологической инспекции Министерство экологических и природных ресурсов Украины  
82-a Turgenevskaya Str., 04050 Kiev, Ukraine  
Email: goam@eco31.freenet.kiev.ua

Mr. Yusup RADJABOV  
Chairman, Tashkent City Committee for Nature Protection  
7, Prospekt A. Kodiriy, apt. 11  
Tashkent  
Email: halmat@ecoinf.org.uz

Mr. Timur TILLIAYEV  
Head Environmental Law Division State Committee for Nature Protection  
Начальник эколого-правового отдела Государственный комитет РУ по охране природы  
7, Prospekt A. Kodiriy, apt. 11  
Tashkent  
Email: halmat@ecoinf.org.uz
OECD AND CEE COUNTRIES

EC

Mr. Terence SHEARS
Г-н Теренс ШИРС
IMPEL Coordinator
Координатор IMPEL
DG Environment, D 2
BU-9 1/011
Rue de la Loi 200
1049 Brussels
Belgium

TACIS

Mr. Robert GOULD
Г-н Роберт ГУЛД
Team Leader,
TACIS Project “Support for implementation of environmental policies and NEAPs in the NIS
Глава группы,
Проект TACIS «Помощь по введению природоохранных политики и ПДООС в ННГ»
BCEOM French Engineering Consultants
Place des Fréres Montgolfier
78286 Guyanesant Cedex
France

LATVIA

Mr. Ilmars SEKACIS
Г-н Илмарс СЕКАЦИС
Director of Ventspils Environmental Regional Board
Директор Региональный совет по охране окружающей среды Вентспилс
2 Darza Street
Ventspils, LV-3600
Latvia

POLAND

Mr. Wieslaw SOBCZYK
Г-н Виеслав СОБЧИК
Deputy Director of the Department
Инспекция охраны окружающей среды
52 Vavelskaya Str.,
Warsaw, Poland

ШВЕЦИЯ

Mr. Hans-Roland LINDGREN
Ханс-Роланд ЛИНДГРЕН
Director
Swedish Environmental Protection Agency
Директор Шведского агентства по охране окружающей среды
SE-10648 Stockholm
Sweden
UNITED KINGDOM

Mr. Robert BARKER
Г-н Роберт БАРКЕР
Process Industries Regulation Manager
The Environment Agency
Менеджер Регулирования Перерабатывающих отраслей промышленности
Агентство Окружающей среды
E-mail: bob.barker@environment-agency.gov.uk

NGOs / НПО

Mr. Vladimir GARABA
Владимир ГАРАБА
Chairman, Chisinau Branch
Environmental Movement of Moldova
Председатель территориальной организации Кишинэу Экологического движения Молдовы
1, M. Eminescu Str.
MD-2009 Chisinau
Moldova
E-mail: chbemm@moldnet.md

Ms. Larisa MAKAROVA
Г-жа Лариса МАКАРОВА
Principal Officer
Regional Public Organization “Ecology and Business”
Главный Специалист
Региональной общественной организации «Экология и бизнес»
12-1-21, Lermontova Street
St. Petersburg
Russian Federation
E-mail: korovinl@sovintel.spb.ru

Mr. Andrei NEDRE
Г-н Андрей НЕДРЕ
Director
Center of Ecological Control
Директор
Центра обеспечения экологического контроля
193029 St. Petersburg
B. Smolenskiy proyezd 6
E-mail: coek@ecoinfo.spb.ru

Ms. Anna PANKRATOVA
Г-жа Анна ПАНКРАТОВА
Specialist
Center of Ecological Control
Специалист
Центра обеспечения экологического контроля
193029 St. Petersburg
B. Smolenskiy proyezd 6
E-mail: coek@ecoinfo.spb.ru

EXPERTS / ЭКСПЕРТЫ

EURREPAS

Ms. Tatiana TALALAeva
Г-жа Татьяна ТАЛАЛАЕВА
DCMR Environmental Protection Agency, International Office
DCMR Агентство по охране окружающей среды, Международный офис
19926 St. Petersburg, P.O. Box 352

E-mail: dcmrspb@online.ru or Tantal@shor.ru
Mr. Valts VILNITIS  
Г-н Валтс ВИЛНИТИС  
Estonian, Latvian & Lithuanian Environment (ELLE)  
Консалтинговая фирма ELLE – Окружающая среда Латвии, Литвы и Эстонии  
P.O.Box 1109; LV-1050 Riga; Latvia  
E-mail: valts@environment.lv
INTERPRETERS/
ПЕРЕВОДЧИКИ
Ms. Evgenia LOUNTCHENKOVA
Г-жа Евгения ЛУНЧЕНКОВА
E-mail: elum@spb.cityline.ru
Ms. Natalia MURINA
Г-жа Наталья МУРИНА
E-mail: comp1@online.ru
Mr. Stanislaw KULD
Г-н Станислав КУЛЬД
E-mail: kuld@online.ru

EAP TASK FORCE
SECRETARIAT /
СЕКРЕТАРИАТ СРГ ПО ПДООС
Mr. Brendan GILLESPIE
Г-н Брендан ГИЛЛЕСПИ
Non-Member Countries Division
Environment Directorate OECD
2, rue André Pascal
75775 Paris Cedex 16, France
E-mail: brendan.gillespie@oecd.org
Ms. Angela BULARGA
Г-жа Ангела БУЛАРГА
Non-Member Countries Division
Environment Directorate, OECD
2, rue André Pascal
75775 Paris Cedex 16, France
E-mail: angela.bularga@oecd.org
Mr. Eugene MAZUR
Г-н Евгений МАЗУР
Non-Member Countries Division
Environment Directorate, OECD
2, rue André Pascal
75775 Paris Cedex 16, France
E-mail: eugene.mazur@oecd.org
Mr. Krzysztof MICHALAK
Г-н Кшиштоф МИХАЛАК
Non-Member Countries Division
Environment Directorate, OECD
2, rue André Pascal
75775 Paris Cedex 16, France
E-mail: krzysztof.michalak@oecd.org
Ms. Shirin BUKHARI
Г-жа Ширин БУХАРИ
Non-Member Countries Division
Environment Directorate, OECD
2, rue André Pascal
75775 Paris Cedex 16, France
E-mail: shirin.bukhari@oecd.org