

## **Charting a Course for NJDEP's Compliance & Enforcement Programs**

**December 13, 2010 Stakeholder Meeting (External Stakeholders)**

### **What roles or responsibilities should C&E have beyond ensuring compliance?**

- Participants felt that permit programs should be represented because a permit's effectiveness in reducing pollution is dependent upon the effectiveness of the permit conditions in it. They felt that flexibility should not just be pursued in enforcement of the permits. Program rules must be evaluated to change enforcement.
- C&E should address out-of-state sources and mobile sources to reduce pollution.
- DEP should put together an internal stakeholder group consisting of permit programs, enforcement, and municipal finance (because lower cost loans could go to good performers who go beyond compliance) to address these issues.
- Target groups/sectors for super compliance/
- There should be a statewide vision for non-point source mobile sources that encourages such solutions as mass transit.
- Target problems/risks. Nominal reductions may be a big overall environmental improvement.
- Aim high with goals that promote a high level of well being at minimal costs (e.g. per capita emission improvements, emissions per dollar of New Jersey's Gross Domestic Product, etc.). Decouple environmental problems from economic output.
- C&E should be "at both ends of the pipe". Regulate people in the system and people who avoid the system (e.g. dumpers, body shops dumping oil in storm drains, etc.)
- Criminal enforcement should be increased (it is currently reduced) since actions have a deterrent effect.
- The DEP, the Board of Public Utilities, and the Economic Development Authority should focus on job creation by providing pre-application assistance (including planning and funding resources) to encourage companies to come to New Jersey, promote the Energy Master Plan, and take advantage of the Chamber of Commerce outreach to small businesses. Another participant noted that they only wanted good corporate citizens to create jobs and the Governor's Office needed to provide dialog on this.
- Promoted environmental improvement through behavior modification such as the mobile source no-idling strategy.

- Inspectors should identify the best opportunities and best practices for improvement, educate facilities, and incentivize them towards environmental stewardship.
- Publicize why certain companies go beyond compliance.

***Note: The following were suggested by the Representative from the Builders Association.***

- DEP has a lack of Communication/Education and a focus on penalties vs. compliance.
- DEP should review and revise the Grace Period rule – specifically for paper violations.
- Permit conditions need to be consistent (e.g. Land Use deed restrictions)
- Inspectors should have more informal contacts with the regulated public. They are too quick to issue NOV's. They should try to achieve compliance without them.
- The AG's office should not advise on policy issues that affect settlements. *Note: Clarification was provided from the AG on this process – specifically that they provide a legal review of the settlement document.*
- Inspectors should be proactive and follow up on the recording of a land use deed restriction.
- For the last 20 years, the Builders Association has invited NJDEP representatives to attend its annual Builders Convention and participate in its seminars. DEP has never sent a representative from Enforcement.
- There should be mandatory Alternative Dispute Resolution in all C&E cases. It should not be left up to a supervisor to decide whether ADR should be allowed.
- Cases should be settled by C&E staff without the regulatory programs. Thought should be given to allowing C&E staff to settle cases without having to involve regulatory folks.
- DEP takes a narrow reading of the “Dragon” Case. *Note: Clarification was provided from Mr. Michael J. Gross that what he believed he said was that DEP takes too broad an interpretation of the “Dragon” case.*
- In regards to the \$10 million average in enforcement fines collected each year, DEP should provide a breakdown of actions that will tell stakeholders how the resources are deployed to enforce these fines.

***Note: These comments were from a Dry Cleaning Industry Representative***

- Provide a level playing field. Enforce against non-compliers and be flexible with compliers. There is a perception that inspectors inspect individuals who speak English because it is easier to do an inspection.
- Consider a small business self-reporting model such as the one in Massachusetts.
- Develop a place-based approach to environmental improvement at the community or watershed level by developing a conservation plan that can lead to a compliance assistance action plan.
- Environmental Commissions can assist in developing community based plans but would need a guiding framework for third party inspectors.

**How should C&E deploy resources to optimize environmental results?**

- Environmental Education - devote more resources to it
- Community policing by 3<sup>rd</sup> parties (e.g. environmental commissioner) is a possible way to increase resources for land use and water issues but there needs to be some way to address this without increasing complaints that do not lead to enforcement issues.
- Does DEP have the budget to legally redirect resources? Do EPA grants allow for this?
- C&E could take on a pollution prevention emphasis (e.g. like what was done at the Joint Military Base) where the objectives are not just to enforce but also to lower environmental impact.
- C&E should benchmark with other states to better define success and measures.
- C&E's name may be self limiting. Some ideas of ways to expand efforts include community education, performance enhancement, and continuous improvement.
- C&E should challenge their industry representatives to ask their stakeholders for ideas.
- Allow Supplemental Environmental Plans
- Establish a sustainability culture at problem polluters.

- Expand partnerships with the environmental community, EPA, counties, and use business mentorships.
- Educate your partners. For example, the State Police belittle littering permit issuance.
- Better define for companies, what new direction they should take, what's required by it, and how you model it as a company.
- Treat homeowner cases separately like Site Remediation treats underground heating oil tanks.
- De-brief and troubleshoot self-assessments with companies.
- Allow pre-construction assistance for new facilities (e.g. boiler permits at newly constructed office buildings).

**Considering the conceptual model presented, what directions and functions are appropriate and viable for C&E?**

- Models that were presented do not address Land Use. There is no "one approach".
- Missing from the model are incentives for businesses to look for potential problems and ways to address shutdown/startup problems at facilities.

**After reviewing current C&E program measures, how should any future strategy be measured to ensure environmental results?**

- DEP should be measuring enforcement's reductions in pollution.
- DEP should be measuring the success of permits in reducing pollution.
- Feedback on inconsistent inspectors (by trade associations or anonymously).
- All enforcement should be under C&E
- Measuring education efforts through the numbers of workshops, guidance documents, people trained. Partner with industry groups.
- C&E should benchmark with other states to better define success and measures.
- Remove the perception that facilities are blacklisted and targeted for enforcement.

- Evaluate what causes 20% non-compliance rates? Is non-compliance due to pollution or paper violations?
- Benchmark with the Nuclear Regulatory Commission to develop risk-based measures and strategies.
- Start with data (i.e. water/air impairments) when developing permits or doing enforcement and measure outcomes. TMDLs should be developed and implemented in a timely manner after impairments have been identified to address water quality problems. TMDLs development process should not be used to delay action.
- Monitor land use requirements
- Measure use of pollution prevention incentives.
- Count “Real Compliance Assistance” into the bean-counting workload for county inspections (i.e. boiler permits at new office buildings – assistance to owners.) Allow pre-construction assistance for new facilities.
- Quantify the “red measures” on the matrix.
- Reduce the permitted pollution load.
- Compliance rates should be increased.

**Which results or measures are of most importance or value? Which are feasible to pursue?**

- The relative value of these measures/results was not discussed due to lack of time.