

Moving Environmental Regulation In a New Direction

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When environmental laws were first developed, technology-based environmental standards were vital in addressing and correcting widespread and uncontrolled pollution. The long-standing pollution that demanded remedies across the United States included rivers that burned; smokestacks that bellowed thick dark smoke; and hazardous wastes that were buried in unlined pits or dumped in waters across this nation.

Some 30 years later, these same technology-based standards that once proved to be so valuable and so important hinder the ability of the regulated community to achieve greater environmental and public health results. Why, because no incentives exist for companies to achieve compliance, beyond what state and federal environmental laws currently mandate.

Fortunately, a growing number of companies are realizing that greater environmental, social and economic gains can be made by focusing on overall plant performance and on the impacts all regulated and non-regulated pollutants produce at a facility, including those affecting the air and water quality as well as hazardous and solid waste.

With companies keenly aware that time is money, innovative and proactive decisions should not impose a regulatory burden on facilities due to permit processing delays or be rejected because a business practice or technology is not “approved” under existing environmental laws. In short, the current regulatory process inhibits greater environmental and public health results from being realized in today’s world.

Like businesses, finding more efficient and effective ways to administer programs is a growing concern of governmental agencies.

In Colorado, the state's environmental agency, the Colorado Department of Public Health and Environment, is undertaking an environmental effort that is being carefully designed to achieve greater public health and environmental benefits while imposing less regulatory burden on the regulated community. If successful, Colorado will create a new way of regulating environmental polluters using a performance-based environmental management system that doubles as a facility's environmental permit.

Stepping outside of the box and thinking differently about the way environmental agencies regulate, inspect and enforce environmental laws can achieve a higher level of protection for the general public and for the environment. To realize these benefits, the U.S. Environmental Protection Agency and state regulatory agencies should expand the current regulatory scheme of prescriptive, technology-based standards to include performance-based systems designed to achieve continual environmental improvement.

The tool Colorado believes can move industry in this direction is a comprehensive, performance-based environmental management system.

An environmental management system is a formal set of procedures and policies that define how an organization will manage its environmental responsibilities. In general, it creates a systematic framework to continually identify, prioritize, mitigate and manage the environmental impacts a facility creates through all of its activities, products and services.

Environmental management systems are not new. But Colorado's approach is. Primarily, the environmental management system would be taken a step further and would also be used as a multi-media facility permit, covering all facility discharges. The benefits of an environmental management system permit approach would allow a company or facility to:

- Look across all plant discharges to address pollution on a cross-media basis versus medium by medium at the "end-of-the-pipe";

- Use the environmental management system as a comprehensive environmental permit, and individual permits for air, water and hazardous waste, would be dissolved;
- Make changes within the fence line of the facility without making permit modifications and incurring other administrative burdens;
- Provide a greater focus on pollution prevention practices and make commitments to continual environmental improvement; and,
- Interact with the community and other stakeholders to improve communication and the openness of the environmental management system permit approach.

Businesses understand well that companies that ignore economic, environmental and social issues fall behind their competitors. They know better than any one else that long permit processing delays and redundant administrative requirements can impact the ability of a company to be responsive to market needs. Such regulatory burdens can impact both short- and long-term economic performance.

An environmental management system speaks directly to the triple bottom line of a company - economics, environment and societal needs. Businesses that excel in the area of environmental excellence already value the cohesive nature of societal and financial considerations that are tied to environmental responsibility. Basically, most companies that implement a comprehensive environmental management system are “doing the right thing” and should be recognized and rewarded for this effort.

Colorado’s project, for example, would allow a company to self-police environmental compliance through annual third-party audits; documentation and record keeping requirements. Self-regulating companies would reduce the need for media-specific routine inspections and allow regulatory agencies to shift valuable resources to sources that need more frequent inspections or compliance assistance.

In addition to strengthening the bottom line, there are other benefits to businesses, such as enhancements to a company’s reputation; increased consumer demand for more sustainable products and practices; and top-level commitment for addressing environmental issues.

Also, environmental responsibility and risk management no longer reside with one individual or manager within a facility. Instead, the systems approach pushes environmental responsibility down through the ranks of the entire organization – everyone is responsible for regulatory compliance and for meeting continual environmental goals.

In summary, Colorado’s environmental management system permit project could permanently change state regulatory processes. The primary objective of the project is to develop an environmental management system that also acts as a multimedia permit that takes into account cross-media impacts.

This approach will neither relax current enforcement programs nor dismantle the current regulatory structure. The intent is to broaden the existing regulatory structure to allow for greater regulatory flexibility, less frequent inspections and increased permit flexibility (i.e., fewer permit modifications if performance-based standards are still being met) on a case specific basis that is contingent on source specific regulatory changes. In other words, fewer permit modifications would be required if performance-based standards are still being met.

Recognizing that there is great variability on how well-regulated entities manage environmental responsibilities, the Colorado Department of Public Health and Environment is working with project partners that already understand the benefits of an environmental management system and that the department views as trusted environmental leaders.

By working together, proactive companies and the State of Colorado can drive regulatory change at both the federal and state level that is highly efficient, lasting and provides greater benefits to the environment and to public health.