



A N N U A L



R E P O R T

Annex I
North American
Report on Environmental Enforcement

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CEC 1995 Annual Report: Annex I Report on Environmental Enforcement

I. Introduction

This report is presented by the Parties in compliance with their common obligation under the North American Agreement for Environmental Cooperation (NAAEC) Article 12(2)(c) to report on the actions taken to effectively enforce their respective environmental laws and regulations through appropriate government action. This report provides information on the 1995 enforcement and compliance policies, programs and responses for each of the three countries. It also provides an overview of bilateral and trilateral initiatives by the Parties in furtherance of the NAAEC obligation for enforcement cooperation.

The main body of the report includes the country reports by each Party on their respective domestic environmental enforcement programs. As this is the first report to the public, the Parties decided it would be beneficial to provide an overview of the environmental enforcement and compliance policies, programs and strategies adopted by each country. Each country report outlines the legal and constitutional framework for environmental enforcement, enforcement and compliance powers, related roles and responsibilities, enforcement and compliance policies and strategies and compliance data management systems. The reports also provide a summary of processes for measuring compliance with environmental laws and regulations and provides representative samples of enforcement data for the 1995 year. For the purpose of this first report the focus is on enforcement of laws for pollution control and wildlife protection. It is the intention in future to expand the country reports to provide information on enforcement and compliance policies and programs for other related subject areas.

The report also provides information on bilateral and trilateral initiatives in North America toward improved cooperation in environmental enforcement and compliance. Emphasis is placed on programs initiated pursuant to the NAAEC and delivered through assistance by the CEC Secretariat. Finally, the report concludes with a presentation of cooperative initiatives proposed for 1996.



II. Common Obligations and Framework for Enforcement of Environmental Laws

The NAAEC provides a framework for effective enforcement of environmental laws and imposes the following obligations in common on the Parties.

Article 4 imposes the obligation to publish or distribute laws, regulations, procedures and administrative rulings, and to publish in advance any proposed measure and provide opportunity for comment.

With the aim of achieving high levels of environmental protection and compliance, Article 5 imposes the obligation on each Party to effectively enforce its environmental laws and regulations through appropriate government actions in its territory, such as monitoring compliance, promoting environmental audits, using permits, initiating proceedings to seek sanctions or remedies, and other appropriate actions. “Effectively enforce” is defined in part in Article 45, which allows a Party the reasonable exercise of discretion with respect to investigatory, prosecutorial, regulatory or compliance matters, and to make bona fide allocations of resources to enforcement with respect to other environmental matters determined to have higher priorities. Each Party must establish in law and make available judicial, quasi-judicial or administrative enforcement proceedings for the purpose of sanctioning or remedying violations of its environmental requirements. Sanctions and remedies shall – as appropriate – consider certain prescribed and other relevant factors and provide for an array of enforcement responses.

Article 6 requires private access to remedies for violations of environmental requirements. Obligations include the duty to ensure that persons with a legally recognized interest under domestic law in a particular matter have appropriate access to administrative, quasi-judicial or judicial proceedings for the enforcement of the Party’s environmental requirements. Article 7 prescribes certain procedural guarantees for such proceedings under Articles 5 and 6.

In the event of a submission on enforcement matters under Article 14, upon request of the Secretariat, a Party is obligated to provide a response indicating whether the matter is the subject of a pending judicial or administrative proceeding. If under Article 15 the Council chooses to create a factual record on matters raised by a submission, or if the Secretariat or the Council require information for a report, under Article 21 a Party is obliged to provide any information in its possession.

Under Article 20, a Party is obliged to notify another Party of any proposed or actual environmental measure that might materially affect the operation of NAAEC or otherwise substantially affect the other Party's interests under NAAEC, and to respond to questions from any Party about any such measure. Further, Article 20 requires a Party who is notified or otherwise provided with credible information regarding possible violations of its environmental laws, to take appropriate steps in accordance with its laws to inquire into the alleged violation and provide a response.

Article 21 requires the Parties, subject to their laws, to promptly make available to the Council or the Secretariat any information requested for the purpose of preparing a report or factual record, including compliance and enforcement data.

Finally, Part V, Consultation and Resolution of Disputes, establishes procedures for Party to Party notice, consultation and, where necessary, dispute resolution, where any Party alleges that there has been a persistent pattern of failure by another Party to effectively enforce its environmental laws.

III. Country Reports

The following country reports on enforcement were prepared by each Party respectively. The reports were prepared under the coordination of a working group of enforcement officials from each country.

This first annual report on enforcement presented in a common framework is intended to provide information on the Parties' laws, policies, strategies, practices and priorities for enforcing their environmental laws. The 1995 reports focus on two significant areas of environmental law: pollution control and wildlife enforcement.

CANADA COUNTRY REPORT





CANADA:

EXECUTIVE SUMMARY

Legislative Framework Relevant to Enforcement and Compliance Promotion

In Canada, the federal and provincial governments share legislative authority over the environment. This report focuses primarily on the enforcement of the *Canadian Environmental Protection Act (CEPA)*, the *Fisheries Act* and several wildlife laws such as the *Migratory Birds Convention Act* and the *Canada Wildlife Act*. Future reports will contain a broadened discussion of federal and provincial mandates and roles.

Enforcement Powers

Federal environmental and wildlife legislation authorizes a wide range of enforcement powers, including powers to inspect, search for and seize evidence, issue directions, prosecute and impose fines, jail sentences or court orders. In addition, proposed amendments to *CEPA* will further expand the government's enforcement tools, including possibly creating an administrative monetary penalty scheme to provide a quicker, more flexible and easier to administer means of penalizing violators in proportion to the seriousness of the offence.¹ The public also plays an important role. *CEPA* authorizes individuals to apply for investigations with respect to alleged offences. With certain exceptions, the Criminal Code authorizes anyone who believes that an offence has occurred, based, on reasonable grounds may commence a prosecution. This process applies to most federal laws with environmental provisions. Finally, individuals also have a range of common and civil law rights entitling them, for example, to apply for injunctions or to sue for damages for trespass, nuisance and negligence.

Compliance Strategies: "Compliance is the Goal"

Environment Canada uses two complementary tools to motivate compliance with environmental regulations. Promotion activities include providing information, education and persuasion. Enforcement is based on inspections and investigations carried out in accordance with National and Regional Inspection Plans, and in response to complaints by the public or other governments, departments and agencies and intelligence gathered on illegal activities.

Enforcement Policies

The *CEPA* Enforcement and Compliance Policy ensures that federal environmental laws are enforced in a fair, predictable and consistent way. The Policy spells out the criteria under which enforcement officials apply a graduated set of possible enforcement responses, ranging from oral and written warnings and directions to prosecutions. The Policy also promotes the use of self-initiated environmental audit reports by stating that officials will not request access to them except where there are reasonable grounds to believe that an offence has been committed, the audit's findings will be relevant, the information sought is not available from other sources, and is under the authority of a search warrant except in exigent circumstances.

¹ For more information on the government's proposed amendment to *CEPA*, see "Environmental Protection Legislation Designed for the Future - A Renewed *CEPA*: A Proposal" or contact the *CEPA* Office at Environment Canada at: (819)-953-0152



Administrative Framework

Approximately 125 Environment Canada enforcement staff operate out of five regions and headquarters. This is supported by other program specialists in all regions and headquarters. They also make extensive use of government and private laboratories across the country. Environment Canada is also assisted by officials in other government departments and by enforcement agencies in provinces and territories, the United States of America and other countries. Department of Justice Canada officials and its agents handle all environmental prosecutions. Customs Canada officials and the Royal Canadian Mounted Police (RCMP) provide ongoing and case specific assistance in a variety of situations, including border crossing inspections, remote enforcement situations and field checks of hunters.

Both *CEPA* and the *Department of Fisheries and Oceans Act* allow the federal government to negotiate administrative agreements with provincial enforcement agencies to share in local enforcement activities. *CEPA* also authorizes “equivalency agreements”, which suspend the application of a *CEPA* regulation in a province by recognizing equivalent provincial legislation. Currently, the federal government has in place a number of administrative agreements and one equivalency agreement, and is negotiating additional agreements designed to maximize the efficiency of enforcement activities by both orders of government and the regulated community.

Information System

Environment Canada is building a nationwide electronic system and database for all enforcement data related to environmental laws administered by Environment Canada. Enforcement officials use the Environmental Activity Tracking System (EATS) to record events, inspections, investigations and prosecutions. A wildlife component will be added to EATS in the near future. Environment Canada also publishes press releases about the laying of charges and other key enforcement actions on the Internet through its “GreenLane” home page.



CANADA:

REPORT ON ENVIRONMENTAL ENFORCEMENT

1. Legislative Framework Relevant to Enforcement and Compliance Promotion

Environmental Management and the Canadian Constitution

In Canada, two orders of government have the major legislative and regulatory authority over the environment, and wildlife and its habitat, as well as an important leadership role in integrating the environment and the economy. In the Canadian Constitution, the “environment” as such is not mentioned. However, in practice, each order of government has exercised its own jurisdictional powers, that are important for effective environmental management, including those related to the enforcement of their legislation.

Responsibilities are based on the allocation of powers related to the environment. Federal environmental responsibility has been derived from a number of powers, especially related to fisheries, migratory birds, interprovincial and international trade and commerce, criminal law, and peace, order and good government. Key provincial environmental responsibilities derive from, among other things, jurisdiction over the management of resources, property and civil rights, and local works and undertakings.

The shared nature of environmental jurisdiction makes close cooperation between the federal, provincial and territorial governments vital to the success of national environmental and wildlife management policies and objectives. Ministerial councils have been set up to facilitate this cooperation. The Canadian Council of Ministers of the Environment (CCME), for example, is composed of federal, provincial and territorial Ministers responsible for environmental protection. Acting as equal partners, Ministers use the Council to coordinate federal and provincial policies, to resolve interjurisdictional problems, to coordinate action on national issues and to exchange information. Similarly, the Wildlife Ministers Council of Canada (WMCC) does the same for wildlife issues.

The federal government recognizes that aboriginal peoples of Canada have an important role to play in environmental matters.

Definitions

Compliance for purposes of this and other Canadian reports on this subject means the state of conformity with the law.

Compliance with Canadian environmental laws is secured through two types of activity: promotion and enforcement.

Enforcement activities include:

- inspection and monitoring to verify compliance;
- investigations of violations;
- measures to compel compliance without resorting to formal court action, such as directions by inspectors and Ministerial orders; and
- measures to compel compliance through court action, such as injunctions, ticketing, prosecution, court orders upon conviction and civil suits for recovery of costs.



The International Environmental Regime

Environmental issues and solutions are becoming increasingly internationalized. Canada is party to a growing number of international agreements, treaties or conventions that influence its domestic legislation and policies. These arrangements cover a wide range of issues, including endangered species (Convention on International Trade in Endangered Species of Flora and Fauna – CITES), international trade in hazardous waste (the Basel Convention), ozone-depleting substances (the Montreal Protocol), biodiversity (the Biodiversity Convention), migratory birds (Migratory Birds Treaty), and various issues related to the law of the sea (the UN Convention of the Law of the Sea – UNCLOS).

The North American Agreement on Environmental Cooperation - The Canadian Context

The federal government and the provinces have negotiated the Canadian Intergovernmental Agreement Regarding the North American Agreement on Environmental Cooperation concerning their respective obligations under NAAEC. The NAAEC only applies to those provincial governments that have agreed to be bound by the Agreement. To date, the Province of Alberta has signed the Canadian Intergovernmental Agreement on Environmental Cooperation (CIA). Next year's Annual Enforcement Report will include information on Alberta's environmental enforcement program. Other provinces are developing their positions.

Federal Environmental and Wildlife Legislation

The federal government administers a wide range of laws containing environmental protection provisions designed expressly to protect the environment and to regulate specific activities or businesses.¹ As well it has responsibility for laws aimed at protecting wildlife and its habitat. Some statutes, such as the *CEPA*, are designed to prevent pollution of all media, including air, water and land, and regulate all phases of the life cycle of those products identified in *CEPA* from their import and manufacture to their ultimate disposal. Some, like the *Arctic Waters Pollution Prevention Act*, the *National Parks Act*, the *Canada Wildlife Act*, the *Migratory Birds Convention Act*, the *Fisheries Act* and the *Oil and Gas Production and Conservation Act*, protect specific natural resources. Some, like the *Canada Water Act*, are ecosystem planning tools. Some regulate specific hazardous products and activities, such as the manufacture of pesticides and radiation-emitting devices, the modification of weather, the installation of air pollution equipment on motor vehicles, the production of atomic energy, and the transportation of dangerous goods. Others regulate transportation in general or specific modes of transportation, such as railways, shipping or aeronautics. Collectively, these statutes and their regulations address thousands of situations, as varied as the subject matter of their respective statutes.

Among others, Environment Canada administers *CEPA*, the *Canada Wildlife Act*, the *Migratory Birds Convention Act*, and the soon-to-be-proclaimed *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*. Under an administrative agreement with the Department of Fisheries and Oceans, Environment Canada also has primary responsibility for the pollution prevention provisions of the *Fisheries Act*. These deal with deleterious substances that eventually find their way into waters frequented by fish.

This report focuses primarily on the enforcement by Environment Canada of *CEPA*, the pollution prevention provisions of the *Fisheries Act*, the *Migratory Birds Convention Act*, the *Canada Wildlife Act*, the *Game Export Act* and the *Export and Import Permit Act*.

¹ The Commission for Environmental Cooperation has compiled a comprehensive list of Canadian environmental laws. These can be accessed on the Internet via: <http://www.cec.org>



This focus is appropriate given that this is Canada's first report under the NAAEC. It is expected that future reports will contain a broadened discussion of federal and provincial mandates and roles. The relevant provisions of the Acts addressed in this report are summarized below.

The Canadian Environmental Protection Act


CEPA gives the federal government significant powers to protect Canadians and the natural environment from pollution, particularly pollution caused by toxic substances. The full title of the legislation is “*An Act respecting the protection of the environment and of human life and health.*”

The Parliamentary Committee on Environment and Sustainable Development recently reviewed and recommended changes to *CEPA*. On December 15, 1995, the Government issued its official response to the Committee's report. This response proposed a number of changes, and initiated a 90-day public consultation period, which will be followed by the development of revisions to the Act.²

The key elements of the current Act are:

- authority to control the introduction into Canadian commerce of substances that are new to Canada;
- authority to obtain information on, and to require testing of, both new substances and substances already existing in Canadian commerce;
- provisions to control all aspects of the life cycle of toxic substances from their development, manufacture or importation, transport, distribution, storage and use, their release into the environment as emissions at various phases of their life cycle, and their ultimate disposal as waste;
- authority to regulate fuels and components of fuels;
- authority to regulate emissions and effluents, as well as waste handling and disposal practices of federal departments, boards, agencies and Crown corporations;
- provisions to regulate federal works, undertakings and federal lands and waters, where existing legislation administered by the responsible federal department or agency does not provide for the making of regulations to protect the environment;
- provisions to create guidelines and codes for environmentally sound practices, as well as objectives, setting desirable levels of environmental quality;
- provisions to control sources of air pollution in Canada where a violation of an international agreement would otherwise result, or where the air pollution affects another country and reciprocal legislation to control the sources of the pollution exists;
- provisions to control nutrients, such as phosphates, in water conditioners or cleaning products, including detergents, which can interfere with the use of waters by humans, animals, fish or plants;
- provisions to issue permits to control dumping at sea from ships, barges, aircraft and manmade structures (excluding normal discharges from offshore facilities involved in exploration for, exploitation and processing of seabed mineral resources); and
- authority to sign agreements with provincial governments regarding administration of the Act.

² For more information on the government's proposed amendment to *CEPA*, see “Environmental Protection Legislation Designed for the Future - A Renewed *CEPA*: A Proposal” or contact the *CEPA* Office at Environment Canada at: (819)-953-0152



The proposed changes outlined in the government discussion paper include expanded opportunities and rights of the public to participate in the administration and enforcement of the Act, and an expanded set of “tools”, to improve the government's ability to prevent pollution and to respond to violations in the most appropriate way. Possible additions include, the use of economic instruments and voluntary measures to prevent pollution from toxic substances, and an administrative monetary penalty scheme to supplement the set of penalties based on criminal law to provide for quicker and more flexible methods for sanctioning polluters.

The Fisheries Act

The pollution prevention provisions of the *Fisheries Act* include subsection 36(3), which prohibits the direct or indirect deposit of substances deleterious to fish into water frequented by fish; subsection 36(4), which permits deposits authorized by regulations; and subsection 36(5), which describes the types of regulations that can be made.

Under subsection 36(5), regulations can be made specifying deleterious substances authorized for deposit, waters where they may be deposited, operations pertaining to authorized deposits, quantities or concentrations of deleterious substances authorized for deposit, people who may authorize deposits, and other conditions. Other sections provide powers to inspect, request plans and specifications for works and undertakings that affect or potentially affect fish and fish habitat, and develop orders to control the depositing of deleterious substances.

The Minister of Fisheries and Oceans is accountable to Parliament for the administration of the *Fisheries Act* and its regulations.

The Migratory Birds Convention Act

The *Migratory Birds Convention Act (MBCA)* aims to conserve the diversity of migratory birds in Canada, and to maintain safe population levels while preserving social, cultural and economic opportunities for the benefit of present and future generations. Unlike *CEPA* and the pollution prevention provisions of the *Fisheries Act*, the *MBCA* deals with the conservation of resources. It protects many species of migratory birds that are hunted across Canada. It also protects non game and insectivorous migratory birds. To meet the requirements of the Convention there are a number of regulations that protect all migratory birds and, in particular, ducks, geese and other game birds. These provisions deal with such things as bag limits, possession limits and requirements, baiting, retrieval of birds, hunting methods, hunting seasons, bird sanctuaries, and the sale of birds. The possession of migratory birds by aviculturists, taxidermists and scientific and educational organizations is also regulated.

2. Enforcement Powers

a) Government Enforcement Powers

Canadian Environmental Protection Act

Part VII of *CEPA* prescribes the various powers granted to government officials to enforce the Act. Part VII authorizes inspectors to conduct inspections for matters regulated under the Act and to search for and seize evidence where there are reasonable grounds to suspect that a violation of *CEPA* has occurred. Parts II and IV of *CEPA* authorize inspectors to issue directions for the taking of remedial measures. Part VI also gives inspectors powers to ensure compliance with the ocean-dumping provisions of the Act, including the right to make detention orders for ships.



CEPA also authorizes the Minister of the Environment to make orders prohibiting the manufacture or importation of a substance during a toxicity assessment, providing for the interim regulation of a substance, requiring a party to take remedial action or to provide plans, tests, etc. to help government officials assess the impact on the environment. *CEPA* offences are provided for in sections 67, 113, 114, 115 and 116. Court orders are provided for in section 130. Section 131 authorizes the court to order convicted offenders to pay compensation for loss of or damage to property. The Act authorizes courts to issue injunctions and a wide range of penalties, ranging from the forfeiture of ships or seized items to fines of up to \$1 million and three to five years in jail, and to require guilty parties to take remedial action. Life imprisonment is possible, under the Criminal Code, for offences involving criminal negligence causing death of a person. In addition, section 129 permits the court to impose an additional fine equal to the estimated amount of monetary benefit acquired by the convicted offenders as a result of committing the offence. The court may order convicted offenders to publish the facts related to the conviction. The Act also authorizes the Crown to sue for the recovery of its costs of emergency or remedial measures.

The Fisheries Act [subsection 36(3)]

Under an administrative agreement with the Department of Fisheries and Oceans, Environment Canada has primary responsibility for the pollution prevention provisions of the *Fisheries Act*. These deal with effluents that eventually find their way into water frequented by fish.

The Fisheries Act authorizes enforcement officials to take a range of enforcement actions to prevent harm to fish and fish habitat and to regulate the discharge of deleterious substances into water frequented by fish. The Act allows inspections, the issuance of authorizations and the imposition of conditions on works and undertakings that might threaten fish and fish habitat, search, seizure and detention, the issuance of orders requiring the provision of information, modifications or additions to existing works or undertakings and remedial activity. Like *CEPA*, the *Fisheries Act* provides for a wide range of penalties, including forfeiture, fines equal to profits, prohibitions, the cancellation of licences, requirements to conduct remedial actions, publication of the facts about offences, Crown compensation, community service, the posting of compliance bonds and reporting. Section 79.2 provides for discretionary court orders, in addition to any other punishment imposed.

Collectively, the following legislation in Canada is referred to as the federal Wildlife Legislation.


The Migratory Birds Convention Act (MCBA)

The Migratory Birds Convention Act 1994 (MBCA) is the enabling legislation in Canada for the Migratory Birds Convention that was signed in 1916 between Canada and the United States of America. The purpose of this Act was to prevent the indiscriminate slaughter of migratory birds and to maintain safe population levels of such birds. This Act protects migratory birds and, to a limited degree, habitat.

Environment Canada is responsible for the administration of this Act and has the lead enforcement role. Game officers, appointed by the Minister of the Environment have the powers of a “peace officer” and in addition the powers of inspection, stopping of conveyance, entering dwelling-houses, obtaining search warrants, searching without a warrant by reason of exigent circumstances, retaining custody of things seized under section 490 of the Criminal Code of Canada and the authority to carry restricted firearms under section 17 of the Restricted Weapons and Firearms Control Regulations.

The Canada Wildlife Act (CWA)

CWA is a federal statute that allows the Minister to support conservation, research and interpretation of wildlife. It also allows certain areas to be designated as National Wildlife



Areas. These areas are under the administration, management and control of the Canadian Government. Environment Canada is responsible for the administration and the enforcement of this Act. Enforcement officers also have the powers of a “peace officer” and the same additional powers of the Game officers under the *MBCA*.

The Export and Import Permits Act (EIPA)

EIPA is an act respecting the export and import of strategic and other goods. For wildlife, this Act is the enabling legislation to implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Environment Canada administers only the provisions of the Convention through the *EIPA*. The enforcement of this Act is the responsibility of Canada Customs and the RCMP. Authority for making regulations for this Act is held by the Minister of Foreign Affairs and International Trade.

Note: Environment Canada, will be responsible for the administration and enforcement of the *Wild Animal and Plants Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA)* once the new Act is proclaimed. This Act will enable Canada to control the export and import of endangered species listed by the CITES Convention and furthermore will control the inter-provincial transport of Canadian species. Once this Act is promulgated the wildlife portions of the *Export and Import Permits Act* and the *Game Export Act* will be repealed.

The Game Export Act (GEA)

Environment Canada is responsible for the administration of the *GEA* but the issuance of permits has been delegated to the provinces and its enforcement is the responsibility of the RCMP and provincial and territorial wildlife enforcement officers. This Act will also be repealed once *WAPPRIITA* is proclaimed. At present, the *GEA* prohibits the movement or transport of the carcasses, or parts thereof, of dead game and fur-bearing animals, beyond the limits of the province or territory within which such game was killed, without an export permit duly issued under the laws of that province or territory. It also prohibits possession, within Canada, beyond the limits of the province or territory within which such game was killed, any game not subject to an export permit issued under the laws of that province or territory. It does not cover live animals, nor the importation or exportation of wildlife into or out of Canada.

b) Private Enforcement Rights

Canadian federal laws provide a wide array of rights and opportunities for private action in environmental enforcement, in addition to extensive common law rights.

Statutory Rights³

i) Applications for Investigations. One guiding principle of *CEPA*'s Enforcement and Compliance Policy is to encourage people to report suspected violations to enforcement officials. Under section 108 of *CEPA*, any two residents of Canada (18 years of age or older) who believe that an offence has been committed under *CEPA* may ask the Minister of the Environment for an investigation of the alleged offence. The alleged offence must meet conditions set out in section 108 before an investigation can begin. If the alleged offence meets these conditions, section 109 requires the Minister to investigate to determine the facts relating to the alleged offence, and, within 90 days, to report to the applicants on the progress of the investigation and the proposed action.

ii) Notices of Objection and Boards of Review. *CEPA* also authorizes the public to file a “notice of objection” to a decision or proposed regulation. Because *CEPA* is organized by subject areas, guidelines or notices of objection appear in numerous sections of the Act. For

³ The government document summarizing proposed changes to *CEPA* discusses a number of changes to expand public rights with respect to the administration and enforcement of the Act: see “Environmental Protection Legislation Designed for the Future - A Renewed *CEPA*: A Proposal” or Contact the *CEPA* Office at Environment Canada at: (819)-953-0152



example, section 51(2) covers notices dealing with nutrients, while section 62(2) details notices related to controls on international air pollution, and section 74 addresses objections relating to ocean-dumping permits. Each subject area has its own administrative requirements for notices of objection. Under procedures set out in sections 89 to 97 of *CEPA*, the Minister shall establish a board of review to examine a notice of objection by the applicant or permit holder in response to ocean-dumping permit decisions, the failure to decide whether a substance on the priority substances list is toxic, and with respect to proposed regulations concerning international air pollution, nutrients, or federal entities. In other cases, the Act grants the Minister the discretion whether or not to establish a board of review in response to a notice of objection.

iii) Injunctions. Section 136(2) of *CEPA* authorizes any person suffering or about to suffer loss or damage because of conduct that is contrary to the Act to apply for an injunction ordering the person engaged in the conduct to refrain from doing any act causing loss or damage.

iv) Civil Suits. Many federal environmental laws authorize any person who has suffered loss or damage pursuant to a violation of the Act to bring a civil suit for compensation.

v) Penalties and Court Orders upon Conviction. Similarly, many federal environmental laws authorize courts to require offenders to compensate third parties for loss or damage to their property.

Criminal Code Private Prosecutions

Sections 504 and 788 of the Criminal Code authorize anyone who believes on reasonable and probable grounds that an offence has occurred to commence a prosecution. This process applies to many federal laws with environmental provisions. The federal *Interpretation Act* applies the procedural provisions of the Criminal Code, to other federal laws and, except where these laws or the Criminal Code explicitly exclude them.

Common Law Rights

The public in Canada also has a wide range of common law rights to ensure environmental protection. These include rights against:

- *Trespass*, (direct interference with another's property interests without lawful excuse or justification);
- *Private nuisance* (unreasonable interference with the use or enjoyment of private property);
- *Public nuisance* (interference, obstruction or damage of rights enjoyed by all members of the community or by a recognizable class of the community); and
- *Negligence* (an omission to do what a reasonable person would do, or doing something that a reasonable person would not do under the circumstances, which creates an unreasonable risk of harm resulting in loss or injury).

Finally, the common law doctrine of riparian rights gives owners of lands adjoining a natural waterway to make use of water flowing by the land and to the continued flow of the water without significant diminution in flow, character or quality. This doctrine gives land owners the right to remove obstructions interfering with access to their water, to apply for injunctions, and to sue for damages for actual monetary loss, for loss of natural beauty and for loss of amenities.

The Civil Code of Quebec provides for a number of remedies similar to the common law provisions summarized above. The Code gives property owners similar riparian rights, for example, and Article 976 combines elements of nuisance and negligence concepts.



3. Compliance Strategies

Environment Canada believes that promotion of compliance through information dissemination, education and consultation is an effective way of securing conformity with the law. The Department therefore has undertaken public education and awareness programs. Departmental officials also meet regularly with other federal and provincial agencies, members of aboriginal, industrial, environmental, and other interest groups and the general public to exchange information and share concerns about the legislation and associated compliance and enforcement practices.

Environment Canada uses two complementary approaches to motivate compliance with environmental regulations: promotion and enforcement.

Compliance Promotion

Promoting compliance is a necessary and effective way to achieve voluntary conformity with the law. Environment Canada does this by:

- providing educational programs;
- communicating and publishing information (such as pamphlets explaining regulations);
- promoting technology development and evaluation;
- encouraging technology transfer and sharing;
- providing technical assistance and technology development;
- consulting with the public about regulation development and review;
- publishing environmental guidelines and codes of practice; and
- promoting environmental audits.

Under the *MBCA*, Environment Canada makes regular efforts to increase awareness of the law among hunters. For example, it publishes information on an attachment to the Migratory Game Bird Hunting Permit that describes commonly committed offences. Every year Environment Canada publishes posters with season dates, and bag and possession limits, and distributes these to user groups in each province. The Department has produced an informational brochure answering many questions about the Act and regulations and has distributed these to organizations and individuals requesting such information. In addition, the Department issues news releases to keep the Canadian public informed on matters relating to migratory birds. Indeed, the Department actively seeks and uses the publicity generated by enforcement activities both to inform the public and to deter similar offences.

Enforcement

Inspection programs are designed to verify compliance with the laws and their regulations. Departmental officials conduct regular inspections under *CEPA* and the *Fisheries Act* according to annual National and Regional Inspection Plans that identify the quantity and types of inspections and monitoring activities to be carried out each year. Among other things, the Plans consider priorities, historical problems, operational factors and regional variability. Enforcement officials also conduct inspections in response to spills, tips and complaints.

Working with its wildlife law enforcement partners, Environment Canada officials verify compliance with wildlife legislation such as the *Migratory Birds Convention Act* and its regulations. Wildlife enforcement officers conduct inspections of documents and relevant places such as migratory bird sanctuaries, national wildlife areas, and ports of entry, and they obtain and inspect samples for species identification. The frequency of inspections depends on a variety of factors including the degree to which certain species are threatened, the harm that could be done to the Canadian ecosystem should specimens escape, and the compliance



record of individuals and companies. The Department sets standards of behavior, establishes strategic direction, monitors progress and participates in enforcement projects and operations. When violations warrant, officials undertake detailed investigations to gather evidence and information. Enforcement officials may then choose one or more of the following responses⁴ determined by guidance contained in the *CEPA* Enforcement and Compliance Policy:

- oral and written warnings;
- administrative directives or orders from the Minister;
- increased monitoring (e.g., more stringent reporting and inspection requirements);
- injunctions;
- civil suits by the Crown to recover costs; and
- prosecutions.

While there is no formal national plan for wildlife inspections carried out on a national basis, a functionally comparable informal plan is in a continual state of evolution. Among the factors influencing inspection priorities for wildlife legislation compliance monitoring are: markets (both national and international), intelligence, non-government organizations and the need for collaborative international enforcement efforts.

National Inspection Plan

The National Inspection Plan (NIP), an annual work plan, identifies the number and types of inspections to be carried out by Environment Canada officials under the *CEPA* and *Fisheries Act* regulations. A collaboration between staff at Environment Canada's headquarters and regional offices, the plan uses target-oriented approach to focus on national priorities and the most serious environmental risks in each region. In implementing the NIP, Environment Canada carries out inspections, verifies documents and data submitted by regulatees in compliance with regulatory requirements, and evaluates compliance testing results.

4. Enforcement Policies

The Goal is Compliance

Canadians expect all orders of government to work together in implementing and administering environmental laws that protect them and their natural environment. Environment Canada's approach to compliance ensures that the regulated community understands what is expected of it and that the laws are enforced in a fair, predictable and consistent way.

CEPA Enforcement and Compliance Policy

The *CEPA* Enforcement and Compliance Policy establishes the principles for fair, predictable and consistent enforcement. It informs all parties who share responsibility for protecting the environment—governments, industry, organized labor and individuals—about what is expected of them and what to expect from the officials who promote compliance and enforce regulations. The principles of the *CEPA* Enforcement and Compliance Policy are also used in the administration of the *Fisheries Act* and the wildlife legislation. (Note: A comprehensive enforcement and compliance policy for wildlife legislation is currently under development. The guiding principles in that policy will to a great extent mirror those in the *CEPA* policy.)

⁴ The government discussion paper outlining possible revisions to *CEPA* proposes the addition of a number of new enforcement "tools", including administrative monetary penalties. As used in the United States of America, AMPs could offer a quick, cheaper and more flexible way to impose penalties on violators in proportion to the seriousness of their offence.

CEPA's Enforcement and Compliance Policy Guiding Principles

- Compliance with the Act and its regulations is mandatory.
- Legislation will be applied in a fair, predictable and consistent manner.
- Administer laws with emphasis on preventing damage to the environment.
- Examine every suspected violation.
- Encourage reporting (to Environment Canada) of suspected violations.

The Policy spells out the range of enforcement responses to violations that might be taken by Environment Canada enforcement officials. These responses depend on:

- i) The nature of the violation, including consideration of the seriousness of the harm or potential harm; the intent of the alleged violator; whether this is a repeat occurrence; and whether there are attempts to conceal information or otherwise subvert the objectives and requirements of the Act.
- ii) Willingness of the violator to comply. Factors to be considered are the violator's history of compliance, willingness to cooperate, and evidence of corrective action already taken.

In June 1995, Environment Canada issued an administrative directive setting out the process for dealing with offenders of all legislation and regulations administered by Environment Canada. The directive is designed to supplement the *CEPA* Enforcement and Compliance Policy. The directive emphasizes that enforcement decisions are the responsibility of regional officials and must be consistent with the *CEPA* Policy. It states that:

- When a violation is encountered, inspectors at the conclusion of their inspection will orally inform the regulatees of any violations noted and of relevant legal obligations.
- Oral notification of the regulations may be withheld only, where, in the opinion of the inspector, the notification would result in the loss of evidence and where failure to notify will not result in further damage to the environment.
- The regional decision-making authority will apply the following factors when deciding what enforcement action to take:
 - nature of the violation;
 - effectiveness in achieving the desired result with the violator;
 - consistency in enforcement; and
 - the compliance history of the regulatees.
- Based on these factors, the regional decision maker may decide to authorize the issuance of warning letters, the giving of directions or the laying of charges.

5. Administrative Framework

Responsible Authorities

• Minister of Environment

The Minister of Environment has responsibility for the administration of *CEPA*, the pollution prevention provisions of the *Fisheries Act*, the *Migratory Birds Convention Act*, the *Canada Wildlife Act* and various other federal environmental and wildlife laws. The Minister must act in accordance with the appropriate legislation and administrative agreements and is accountable to Parliament for his or her actions.



- **Minister of Health**

Under *CEPA*, the Minister of Health provides advice in relation to human health aspects and jointly recommends regulatory actions, but has no direct enforcement responsibility.

- **Attorney General of Canada and Officials of the Department of Justice**

The Attorney General has responsibility for all federal litigation. While federal enforcement officials may lay charges for offences under the various environmental laws, the ultimate decision on whether to proceed with prosecution of the charges rests with the Attorney General or his agents. Similarly, enforcement officials may recommend civil actions to the Attorney General, who then has the power to proceed with an injunction or civil suit for recovery of damages.

- **Minister of Revenue**

The Minister of Revenue has responsibility for the *Customs Act* and the front-line enforcement of the *EIPA*.

- **Minister of Foreign Affairs**

The Minister of Foreign Affairs has responsibility for the *EIPA*. The wildlife section of the Act is administered by the Minister of Revenue and the Minister of the Environment.

- **Enforcement officials** for *CEPA* and the pollution prevention provisions of the *Fisheries Act*

Inspectors: have the most frequent and regular contact with those companies, individuals and government agencies affected by the legislation. Inspectors have four roles. They can:

- carry out inspections to verify compliance with the law;
- review options for preventive and corrective action, including warning of potential violations;
- direct that corrective measures be taken in an emergency, where there is danger to the environment, human life or health, caused when the unauthorized release of a regulated substance has occurred or is about to occur; and
- participate in investigations to obtain evidence of violations.

Investigation Specialists: have expertise in areas such as:

- investigative techniques;
- gathering of evidence and procedures to ensure continuity in the control and custody of evidence;
- taking statements and soliciting information from witnesses;
- procedures involving the securing and execution of search warrants;
- court procedures;
- preparation of court briefs for Crown prosecutors; and
- appearing as witnesses in court proceedings.

Investigation specialists maintain close communication and regularly exchange information with inspectors who are involved in routine inspections, spot checks and special inspections to ensure adherence to warnings, Ministerial orders, injunctions, and orders issued by the court upon conviction of an offender.

Enforcement Officers for Wildlife Legislation

To ensure compliance with the wildlife legislation, the Minister of the Environment designates federal, provincial and territorial employees as “enforcement officers”. Appointees include Environment Canada enforcement officers, members of the RCMP, fisheries officers, customs officers and conservation officers of provincial and territorial governments.



Of the various officials who administer the wildlife legislation, the enforcement officers have the most frequent and direct contact with individuals and companies affected by wildlife legislation and regulations. Enforcement officers have five principal duties:

- conducting information and awareness activities;
- conducting inspections to verify compliance with the law;
- reviewing options for preventive and corrective action and explaining legal requirements, (e.g., by warning individuals or companies of potential violations);
- conducting investigations for evidence of violations and responding to known violations, (e.g., by issuing tickets, seizing specimens or prosecuting); and
- providing assistance to a Crown prosecutor during the preparation and conduct of legal procedures.

The legislation empowers enforcement officers to, among other things, enter premises to inspect, search, seize and detain items related to the acts, require the production of records and issue tickets. Under certain circumstances, officers also have the power to arrest suspected violators.

Organization of Enforcement Officials

There are roughly 20 Environment Canada offices across Canada that carry out enforcement functions. Approximately 125 Environment Canada enforcement staff operate out of five regions and headquarters. This is supported by other program specialists in all regions and at headquarters. Extensive use of government and private laboratories is also made across the country. Regional offices are responsible for delivering the enforcement program in the regions. Regional responsibilities include:

- conducting inspections;
- responding to violations in a variety of ways including:
 - i) conducting investigations;
 - ii) issuing warnings;
 - iii) preparing court briefs; and
 - iv) recommending prosecutions.

Since May of 1995, the Enforcement Branch consists of the Office of Enforcement, the Reporting and Information Management Division and the Compliance Assurance Division.

The responsibilities of the Office of Enforcement include:

- providing overall national, functional direction for coordination of operations;
- developing and monitoring the annual National Inspection Plan;
- developing enforcement training courses;
- delivering the annual National Training Program to inspectors and investigators;
- reviewing new regulations and proposed changes to existing regulations;
- coordinating international operations; and
- developing enforcement manuals and guides.

The responsibilities of the Reporting and Information Management Division include:

- developing and maintaining a national enforcement information system;
- updating and developing products for the “GreenLane” on the Internet;
- preparing annual and specialized reports on enforcement and compliance;
- coordinating data/information on enforcement actions; and
- issuing press releases about enforcement activities.



The responsibilities of the Compliance Assurance Division include:

- developing and implementing innovative ways to motivate compliance at federal facilities;
- strengthening procedures and processes to support compliance in the federal government; and
- leading or coordinating selected activities relative to the federal greening of government initiative.

Courts

The courts decide the outcome of prosecutions, injunction applications and civil suits, including what penalty to impose or what remedy to order.

The judiciary is accorded broad discretion in sentencing and penalizing environmental offenders through such options as orders for clean up, reclamation, community service and publication of information about offences.

National Training Program

Training is a major focus for departmental staff because it is an essential component of Environment Canada's enhanced enforcement program. To ensure that enforcement officers and analysts are trained in duties ranging from basic inspection and investigation skills to very specialized regulation-specific enforcement activities, the National Training Program delivers a variety of courses both on specific regulations and on inspection and investigation procedures generally.


Environment Canada has also prepared a variety of educational material, including a health-and-safety reference book, a safety training program and a National Sampling Protocol for both inspectors and investigators. It also participates in a federal-provincial working group to study ways of combining training and resources. A catalogue of training courses offered by Environment Canada's Enforcement Branch is available on request.

Use of Scientific Labs

Environmental laboratories in Canada are of several different types. First, there are those directly owned and operated as government facilities by Environment Canada and other departments such as Fisheries and Oceans as well as by the provinces and municipalities. Generally, research, development and demonstration (such as investigation into environmental problems, experimentation with new testing methods and development of new prevention technologies) are carried out at the federal level, but some larger provinces also conduct research. The primary focus of the government labs is to provide test results for scientific investigation, compliance and enforcement. Another major activity has been long-term monitoring of environmental quality.

Environment Canada's laboratories work cooperatively through the Laboratory Manager's Committee (LMC). The LMC has worked very closely with the Canadian Association of Environmental Analytical Laboratories (CAEAL) and the Standards Council of Canada (SCC) to promote the use of quality systems in laboratories throughout Canada. In addition, the Environment Canada laboratories have staff designated under *CEPA* who can provide Certificates of Analysis and expert testimony for prosecution.

The federal and provincial governments' lab capacity has been reduced in recent years. As a



result, private sector laboratories now provide a growing proportion of work, especially in providing analyses and toxicological tests required by government for compliance requirements. Private sector labs are also extensively involved in testing for such work as hazardous site identification and remediation.

Coordinating Mechanisms Among Agencies

In 1916, Great Britain signed the Migratory Birds Convention with United States of America, on behalf of Canada. Since the beginning of the Convention and the establishment of the *MBCA* in 1917, the Government of Canada has been responsible for its enforcement. However, in 1932, as the result of an agreement with the RCMP, the primary enforcement of the legislation was delegated to the RCMP. Thereafter, as the federal government began to develop a body of federal game officers and as the provinces became more involved in migratory bird management, responsibility for enforcement evolved into the present-day concept of a tri-party system. Now, both orders of government, with assistance from the RCMP, ensure that the *MBCA* is applied throughout Canada.

Other departments also help Environment Canada officials enforce the other federal environmental legislation. In particular, the RCMP and Customs Canada officials provide ongoing and case specific assistance in a variety of situations, including border crossing inspections and remote enforcement situations. The arrangements between Environment Canada and these officials are spelled out in memoranda of understanding which provide for the designation of these officials as “enforcement officials” under *CEPA* and the *Fisheries Act*.

Inter-jurisdictional Harmonization Initiatives

Besides the CCME process, the federal government coordinates its activities under *CEPA* through the Federal-Provincial Advisory Committee (FPAC). The purpose of FPAC is to create a framework for national action, to take cooperative action in matters affecting the environment, and to avoid conflict between, and duplication in, federal and provincial regulatory activity. Consisting of representatives from Health Canada, Environment Canada, and each province and territory, FPAC has been involved in helping to coordinate efforts pertaining to several issues, including ozone-depleting substances, air quality, the development of regulations under *CEPA* and the process for selecting substances to be assessed under *CEPA*.

Both *CEPA* and the *Department of Fisheries and Oceans Act* allow the federal government to negotiate administrative agreements with provinces to share in local enforcement activities. In addition, *CEPA* authorizes “equivalency agreements,” which suspend the application of a *CEPA* regulation in a province by recognizing equivalent provincial laws.

Currently, the federal government has in place a number of administrative agreements and one equivalency agreement, and is negotiating additional agreements. One equivalency agreement has been signed with Alberta (covering the Vinyl Chloride Release Regulations, Secondary Lead Smelter Regulations, Pulp and Paper Effluent Chlorinated Dioxins and Furans Regulations and the Pulp and Paper Mill Defoamer and Wood Chip Regulations), and others are being negotiated. Administrative agreements exist with British Columbia (covering *CEPA* and the *Fisheries Act* Pulp and Paper Effluent Regulations), Alberta (covering the pollution prevention provisions of the *Fisheries Act* including Pulp and Paper Effluent Regulations), Saskatchewan (*CEPA* and the pollution prevention provisions of the *Fisheries Act* including Pulp and Paper Effluent Regulations), Quebec (pulp and paper), and the Yukon and the Northwest Territories (committing the parties to establish cooperative working arrangements for *CEPA* and *Fisheries Act* activities). In addition, the federal government has negotiated a number of statements of intent to collaborate on administration with Nova Scotia, Newfoundland, and a master agreement with the Atlantic Canada region



identifying five priority areas for negotiation of annexes: environmental assessment, laboratories, compliance, monitoring and water.

Federal enforcement officials are also assisted by enforcement agencies in the United States of America and other countries through an extensive formal and informal network of environmental and other enforcement officials.

Beyond the work of the WMCC, the federal government coordinates its activities under the mandated wildlife legislation through the federal-provincial Chiefs of Wildlife Enforcement Committee. The purpose of the committee is to create a framework for national action, to take cooperative action in matters affecting the environment, and to avoid conflict between, and duplication in, federal and provincial regulatory activity. Consisting of representatives from National Parks, RCMP, Environment Canada, and each province and territory, the committee has been involved in helping coordinate several issues, including training, special operations and development of a national action plan.

Wildlife issues transcend political boundaries. Therefore, close intergovernmental cooperation is essential for the protection of wildlife and its habitat. Environment Canada, on behalf of the government of Canada, implements a variety of international, national and regional agreements related to its responsibilities. The draft departmental compliance and enforcement policy for wildlife legislation accommodates these agreements and provides guidance for their implementation.

6. Information System

Environment Canada officials are currently building a nationwide electronic information network for capturing, storing and reporting enforcement data and information. This system is called the “Enforcement Activity Tracking System (EATS).”

It is a centralized data base for all enforcement data related to environmental laws other than wildlife administered by Environment Canada. It is currently being revised to include wildlife enforcement information. It is updated on a regular basis by enforcement officials when they finish an inspection, receive notifications of significant incidents, make progress on an investigation, perform a compliance promotion activity, etc. EATS, once fully operational, will have the capacity to provide:


- details from inspections, investigations and occurrences;
- relevant parties and locations;
- information about correspondence sent to a party or compliance promotion activities;
- permits issued;
- a summary of the regional inspection plans; and
- “Bring Forwards” (reminders for enforcement officials: e.g., seizure will expire in 10 days).

The information entered by enforcement officers can be used to generate reports including:

- detailed reports on one occurrence, inspection or investigation;
- a statistical summary of enforcement activities for a fiscal year; and
- a compliance history of a regulatee.

Members of the regulated community also provide to the Department considerable data and information under the self-reporting provisions in many of the regulations.

The Office of Enforcement is currently redeveloping a series of standardized national checklists and an accompanying inspection report that will be linked to EATS. These

A stylized map of Canada in shades of grey, positioned in the upper left corner of the page.

checklists will be linked to EATS, and will help provide national consistency in enforcement activity.

Environmental Audits

Environment Canada recognizes the value and effectiveness of environmental audits as a management tool for companies and government agencies and seeks to promote their use. Accordingly, the *CEPA* Enforcement and Compliance Policy states that “inspections and investigations will be conducted in a manner that will not inhibit the practice or quality of auditing.” The Policy limits access to audit reports only when inspectors or investigation specialists have reasonable grounds to believe that an offence has been committed, the audit’s findings will be relevant, and the information sought is not available from other sources. Inspectors and investigators must obtain a search warrant except in exigent circumstances where the delay necessary to obtain a warrant would likely result in danger to the environment or human life, or the loss or destruction of evidence.

Publication(s)

Environment Canada publishes information about the laying of charges, prosecution and convictions. The Department publicizes its enforcement actions in accordance with a policy designed to balance the deterrent value of publications with the need to ensure that accused persons’ rights to a fair trial are not prejudiced by premature or inappropriate disclosure of evidence. In addition to the traditional media, the Department publishes enforcement information on the Internet through its GreenLane home page.

Access to Information Policies

Public access to federal government information is governed by the *Access to Information Act*. This Act gives Canadians and other individuals and corporations present in Canada the right to apply for and obtain copies of federal government records, including letters, memos, reports, photographs, films, microforms, plans, drawings, diagrams, sound and video recordings, and machine readable or computer files. The Act establishes a limited number of exemptions to protect certain types of information that could cause harm if released, including, for example, national security, law enforcement and trade secrets. The Act also provides that the government must notify third parties about requests for information about them, and provide them with an opportunity to claim exemption of the information under one of the criteria listed in the Act. Each department and agency has an Access Coordinator to help identify the records requested. The government charges a nominal fee for each request to help defray the costs of operating the Act and to deter frivolous requests.



7. The Role of Citizens

As has been noted elsewhere in this report, citizens play a variety of important roles in enforcing environmental and wildlife laws in Canada. Inspectors and wildlife enforcement officers respond to citizen complaints and tips. *CEPA* provides protection to whistle blowers who provide information about environmental violations. The public has a variety of statutory and common law enforcement rights which are summarized in section 2 of this report.

Enforcement Activity Statistics

Compliance means the state of conformity with the law. To verify compliance a variety of mechanisms can be used including inspection, taking of samples, auditing of reports, responding to tips, self-reporting and investigations. Enforcement response is necessary in situations where there is noncompliance with the legislation.

When there are reasonable grounds to believe that non-compliance has occurred or is continuing to occur, investigations of violations are initiated. There are several response options to a violation that are used to compel compliance. Responses may include the involvement of the courts or less formal options such as warning letters. Court actions include the use of injunctions, prosecution, court orders upon conviction, civil suits, directions by inspectors and ministerial orders.

The data in Figure 1 illustrates some of the enforcement activities conducted by Environment Canada during the fiscal year 1994/1995.

FIGURE 1

Enforcement Activities

*Canadian Environmental Protection Act (CEPA) - Fisheries Act (FA)
Migratory Bird Convention Act (MBCA)*

Fiscal Year		Inspection	Investigation	Warning	Direction	Prosecution	* Conviction
CEPA	94 - 95	1 362	64	127	0	8	9
FA	94 - 95	585	25	27	1	6	8
MBCA	94 - 95	406	216	-	-	54	37

* Prosecutions leading to convictions are not always concluded during the fiscal year in which they were initiated.

MEXICO COUNTRY REPORT





MEXICO:

EXECUTIVE SUMMARY

Introduction

The object of this document is to briefly describe the legal and administrative framework within which environmental legislation in Mexico is implemented, and which has recently undergone significant legal and operating modifications to achieve a higher efficiency in the application of such laws. To this end, on December 1994, the Secretaría del Medio Ambiente, Recursos Naturales y Pesca (SEMARNAP) [Secretariat for the Environment, Natural Resources and Fisheries] was created under a presidential decree modifying the *Federal Public Administration Organic Act*, whereby the federal jurisdiction on environmental protection and on natural resources is combined. This agency is assisted by the Procuraduría Federal de Protección al Ambiente (PROFEPA) [Federal Solicitor for Environmental Protection] to exercise inspection and monitoring powers as regards to industrial pollution, wildlife flora and fauna, environmental territory structure and forests.

Legal Framework

In Mexico, the principles that provide the basis for legislative processes and assign jurisdictions to the Federation, the states and the municipalities to exercise their power in terms of environmental legislation are contained in Articles 25, 27, 73, and 115 of the *Political Constitution of Mexico*. The *Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA)* (*General Ecological Balance and Environmental Protection Act*) as well as the *Fisheries, Forestry, and Hunting Acts* all derive from the above provisions, which control the use of natural resources and protect the environment.

A number of regulations on environmental impact, hazardous waste and transportation, noise, pollution caused by motor vehicles and sea pollution derive from the *LGEEPA*.

Similarly, all states of the Republic have state laws governing ecological balance and environmental protection which regulate law enforcement in terms of local jurisdiction. Also, most state bodies have regulations covering environmental impact, air pollution, and hazardous waste matters.

Environmental Legislation Enforcement Mechanisms

In Mexico, environmental law enforcement is brought into effect by means of three types of liability, namely administrative, criminal and civil liabilities.

The mechanism used to enforce the law in administrative liabilities is exercised through inspection and monitoring visits, which are developed by the authorities to verify compliance with environmental laws and regulations. These inspection visits are deemed as authority acts subject to those formalities as set forth both in Constitutional provisions and statutes, establishing the penalties for violations to such provisions, and the corrective and safety measures to be adopted.

Another type of responsibility involved in environmental law enforcement is criminal liability, which is established when acts are carried out that may be construed as criminal offenses under various bodies of law. Types of offenses are set forth in the *LGEEPA*, in the



Criminal Code (for the Federal District under general jurisdiction and for the whole Republic under federal jurisdiction), in the *Ley Federal de Caza (Federal Hunting Act)*, and in the *Ley Forestal (Forestry Act)*. These laws establish fines and terms of imprisonment for individuals who contaminate the environment or damage natural resources. It is important to note that criminal proceedings are carried out by the judiciary in cooperation with administrative authorities.

On the other hand, civil liability translates into the obligation to answer for legal or illegal acts that cause damages but, strictly speaking, do not constitute criminal offenses and which may be subject to trial in order to determine the defendant's responsibility to repair the damage. Civil liability procedures establish measures to restore or mitigate the consequences of acts described in the Civil Code. Under the Mexican civil law system, said deeds consist in committing illegal acts, in carrying out actions that are contrary to the moral conventions of society, or in operating mechanisms, machines, or handling dangerous substances which are dangerous in themselves due to their speed, to their explosive or flammable nature, or to the voltage of the electrical power they transmit. In view of the above, and under the provisions of the Civil Code (for the Federal District under general jurisdiction and for the whole Republic under federal jurisdiction), it is lawful to require the damages to be repaired by restoring conditions to their original state, as they were prior to committing the harmful act in question, or through payment in compensation for damages caused to property. Court proceedings requiring this type of liability are heard by judges with ordinary jurisdiction.

Also, as an instrument to encourage compliance with environmental legislation, the Federal Government is promoting environmental audits in the industrial sector. Based on a consensus reached by authorities and private parties, audits prompt the latter to evaluate their facilities and to take the preventive and corrective measures ordered by the Federal Solicitor for Environmental Protection that may result from the evaluation process. This tool is designed to promote compliance, without the threat of a penalty being imposed.

Administrative Framework

SEMARNAP is a branch of the federal executive and has been granted authority in terms of protection, restoration, and conservation of the ecosystem, water, soil, forestry resources, land and marine wildlife, and as regards activities related to fishing and to the Mexican territorial seas. The Secretariat has also been entrusted with the duties of formulating and managing national policies regarding the subject, promoting ecological management, evaluating evidence of environmental impact, setting official Mexican standards, establishing an environmental information system, and organizing, administering, and monitoring protected natural areas within federal jurisdiction.

The organization has various administrative sections. Amongst them, PROFEPA is in charge of monitoring compliance with environmental legislation as regards contamination from fixed sources within federal jurisdiction that occur as a result of emissions released into the atmosphere, hazardous waste, noise, environmental impact, highly hazardous activities, and as regards fishing, wildlife, and Mexican territorial seas. Similarly, this decentralized body is in charge of developing the environmental audit program intended for public or private companies, in order to detect the areas in which the law is being contravened, and to take the respective preventive and corrective measures.

Environmental Policies

The Plan Nacional de Desarrollo (National Development Plan) – whose objectives include providing institutional and sectorial programs which are to be developed by the federal government to streamline and coordinate the actions of the federal executive, other powers of the Union, and state and municipal governments – establishes, amongst other aspects, a



strategy for environmental policy, stating that it is intended to integrate an environmental investment promotion and encouragement process, create markets and funding for a sustainable growth in order to align economic growth to environmental protection to: halt environmental deterioration processes; introduce environmental statutes for the national territory, provide that development is compatible with the environmental skills and capabilities of each region; make the best and sustainable use of natural resources as a fundamental condition to overcome poverty and protect the environment and natural resources based on a reorientation of consumption patterns, and effective compliance with laws.

To that effect, one of the most important goals of environmental planning is to improve environmental management through monitoring and encouraging strict compliance with environmental legislation, the strengthening of promotion and prevention tools over corrective measures, as well as a higher use of economic instruments.

Strategy

In order to enforce environmental policy, SEMARNAP, through PROFEPA, has brought into effect nine strategies, four of which are oriented to inspection and monitoring on matters within their competence; these strategies include activities to be performed in the short, medium and long term, involving the promotion of participation at the three government levels, as well as of the social and private sectors, with the main objective of ensuring compliance with environmental laws.

The other five strategies are geared to promote self-regulation through environmental audits, based on the voluntary participation of companies for the prevention and control of industrial pollution; develop and establish preventive and corrective measures to timely address potential environmental imbalances that might take place in facilities and productive processes, thereby affecting ecosystems and the human health; incorporate institutional strengthening activities by means of divesting and decentralizing functions, and coordinating activities with the different states and the private sector; establish the knowledge basis as regards social and institutional conditions that promote or inhibit compliance with environmental laws; promote the consolidation of a citizen environmental awareness and provide technical training in this issue; and strengthen Mexico's active international presence to fulfill its international obligations on environmental issues.

Information Systems

PROFEPA is currently developing information systems that will enable the establishment, development, monitoring, and evaluation of environmental law enforcement programs at national, regional, and local levels capable of storing both data that are easy to upgrade, use and analyze on statistical terms on pollution sources and their specific location, and the characteristics of the productive processes or activities that are developed.

Citizen Participation

Mexican environmental legislation provides various mechanisms through which concerned individuals, groups, and social organizations may participate in environmental law enforcement actions, including a procedure known as Denuncia popular (citizens' complaints), which can be exercised by any person having knowledge of deeds, acts, or omissions that may be contrary to environmental legislation; Consulting Boards, which are bodies formed by representatives of the social, private, academic and business community, having as main role the promotion of protecting, conserving and restoring ecosystems and natural resources to encourage a sustainable use thereof; and the negotiation of agreements with environmental authorities in order to achieve the active participation from the public.



MEXICO:

REPORT ON ENVIRONMENTAL ENFORCEMENT

The purpose of this document is to describe the legal and administrative framework within which environmental legislation is enforced in Mexico. Its aim is also to provide general information regarding the results obtained to that effect in 1995 by the Secretaría de Medio Ambiente, Recursos Naturales y Pesca (SEMARNAP) (Secretariat for the Environment, Natural Resources, and Fisheries) through the Procuraduría Federal de Protección al Ambiente (PROFEPA) (Federal Solicitor for Environmental Protection).

It should be noted that, for this report, the phrase “environmental law enforcement” refers to all activities by authorities to monitor compliance with legal provisions governing ecological balance and environmental protection matters. These activities are carried out through inspection and monitoring activities provided by the appropriate administrative legislation, as described below.

This report also includes general information regarding activities aimed at encouraging compliance with environmental legislation, mainly through procedures carried out in cooperation with those parties whose activities cause serious effects on the environment.

1. Legislative Framework

In recent years, Mexico’s legal and institutional framework governing the protection of the environment and the preservation of natural resources has strengthened considerably. In fact, although we may find legislation related to the above-mentioned subjects as early as the twenties, the process aimed at consolidating environmental management began in 1972, when the *Ley Federal Para Prevenir y Controlar la Contaminación Ambiental (Federal Environmental Pollution Prevention and Control Act)* was issued. The process acquired a special set of dynamics in 1988, when various constitutional precepts were modified to incorporate relevant principles in the highest level of legislation and when the *Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA) (General Ecological Balance and Environmental Protection Act)* was issued.

Between 1988 and 1993, environmental legislation was passed in every state and, in some cases, regulations derived from these laws were enacted at state and municipal levels.

Furthermore, the structures of federal and local public administrations have undergone important changes aimed at consolidating the main aspects of ecological balance, preservation and environmental protection.

The various laws that regulate these matters at a federal level are briefly described below. Also included is an overall analysis of the characteristics of local legislation.

Constitutional Framework

As it has already been pointed out, the Mexican Constitution provides various principles that guide the legislative processes and establishes the division of powers between the federal and local governments in environmental terms. These principles are entrenched in Articles 25, 27, 73 and 155, as briefly described below.



The first of the above-mentioned precepts introduces into the Mexican legal system the principle of sustainable development, granting the State control over the national economy to ensure its comprehensive development. It provides that economic development shall be planned, managed, coordinated and guided following criteria of social equality and productivity, encouraging companies in the public and private sectors of the economy. However, development is subject to the requirements of public interest and, therefore, productive resources are to be exploited while keeping the principles of conservation and environmental protection in mind at all times.

Article 27, paragraph 3, of the Constitution grants the Nation the right to impose the requirements prompted by public interest upon private property, and to regulate, for the benefit of society as a whole, the exploitation of natural elements that may be appropriated, in order to ensure the balanced development of the nation and the improvement of living conditions in rural and urban communities. Therefore, this Article provides for necessary measures to determine the status of lands, waters, and forests, through adequate precautions, use and purposes, to preserve and restore ecological balance. By virtue of this precept, the Constitution empowers the State to regulate the individuals' rights over property when said rights affect the environment or damage, to the detriment of society, property originally owned by the State.

As indicated above, Article 73, section XXIX-G, of the Constitution incorporates the participation of the federal, state and municipal governments, within their respective jurisdictions, with regards to matters related to the protection, conservation and restoration of ecological balance. This provision introduces the decentralization of environmental authority, conveying power to local governments to address matters that originate within their own territorial jurisdictions. Similarly, this constitutional Article establishes, amongst other powers, the authority of the federal Congress to legislate national waters, wildlife and forestry.

Also, this constitutional provision establishes the authority of the federal Congress to pass legislation for specific issues that are related to environmental concerns such as are, among other matters, the protection and exploitation of national waters, land and marine wildlife and forests.

Finally, Article 115 of the Constitution sets out the scope of municipal jurisdictions, precisely establishing the duties which, due to their strictly local nature, are the responsibilities of municipalities. Fundamentally, these powers involve, among other matters, issues related to fresh water, drainage, cleaning, markets (retail and wholesale) and land use, as well as to the creation of ecological reserves.

Federal and State Environmental Legislation

The *LGEEPA (General Ecological Balance and Environmental Protection Act)*, an Act derived from the above-mentioned constitutional provisions, is most important in the series of laws that regulate matters pertaining to natural resources and environmental protection. It is the legal instrument that comprehensively regulates all aspects of the issues of concern. Notwithstanding the above, the national waters, fisheries, and forestry acts not only contain provisions concerning the exploitation and development of natural resources, but also include regulations related to their protection and conservation.

Ley General del Equilibrio Ecológico y la Protección del Ambiente (General Ecology)

The *General Ecological Balance and Environmental Protection Act (LGEEPA)* was published in the *Diario Oficial de la Federación (Federal Official Bulletin)* on January 28, 1988. It is divided into six sections that may be described as follows: the distribution of jurisdictions amongst levels of government and environmental policy; the protection of natural resources; conservation; restoration; and improvement of the environment; and inspection and monitoring.



The first section establishes the jurisdiction of the Federation, the states and the municipalities with regards to the environment, as well as the principles in effect to formulate environmental policy and its instruments. The assignment of jurisdiction is based on three basic criteria: the first is related to the subject matter or nature of the object to be regulated; the second to the territory where the activity is to be carried out; and the last to the scope of the effects over the environment.

The Act provides the guidelines that are to be followed while developing environmental policies and instruments used to implement the provisions of the Plan Nacional de Desarrollo (National Development Plan) and of the Programa Nacional del Medio Ambiente (National Environment Program). These instruments refer to the following areas: ecological management of the national territory, development promotion, environmental regulation in human settlements, evaluation of the environmental impact, official Mexican standards, protected natural areas, ecological research and education and information and monitoring.

The protection of natural resources is implemented by establishing protected natural areas and by setting the criteria to exploit water, marine ecosystems, land and non-renewable resources in a rational manner.

For protected natural areas, the Act provides the manner in which they are to be established. This administrative act is seen as the imposition of a *modus operandi* on property which is subject to special protection and, therefore, to specific provisions regarding its administration, development and surveillance.

Since matters relative to water resources and ecosystems, land and non-renewable resources are subject to specific laws, the *LGEEPA* establishes the criteria governing the rational exploitation of each resource, as well as government actions to be carried out pursuant to these principles. Environmental protection, restoration and improvement are implemented through provisions related to the prevention and control of air, water, marine ecosystems and land contamination, as well as to the management of dangerous activities, hazardous materials and waste, nuclear energy and contamination, noise, vibrations, heat and light energy and odors.

Regarding the prevention of air pollution, the *LGEEPA* requires a series of permits, authorizations or licenses to control the sources of contamination; the measures taken are monitored in order to ensure due compliance with regulations. Also, the Act provides a series of obligations for the authorities and individuals, to control the effects over the environment caused by hazardous activities or while handling the hazardous materials and waste.

In terms of inspection and monitoring, the Act includes a section called *Medidas de Control y Seguridad y Sanciones* (Safety and Control Measures and Sanctions) which grants power to the authorities to carry out inspection visits and establishes the formalities to be observed during these administrative actions. It also provides for fines, closures or administrative arrests in the event of administrative offenses, as well as double fines or final closures should the offenses recur.

Various regulations derive from the *LGEEPA*. The purpose of these norms is to regulate specifically provisions on environmental impact, air pollution, hazardous waste, noise, motor vehicle emissions, sea contamination and land transport of hazardous materials and waste.

As for environmental impact, the respective regulations published in the Official Bulletin on June 7, 1988 require anybody carrying out work or activities that may cause ecological imbalance, or exceed the limits and conditions set by the Mexican official standards, to obtain an authorization from the SEMARNAP. This authorization is specifically required for federal public works; waterworks; public ways; coal, petroleum and gas pipelines; chemical,



petrochemical, steel, pulp and paper, sugar refining, soft drink, cement and automotive industries; power generators and power transmission; exploitation of mineral substances; federal tourism developments; treatment plants; storage or disposal of hazardous or radioactive waste; and the exploitation of lumber in rain forests and tropical jungles and of species that do not regenerate easily.

These regulations establish the procedures to evaluate the environmental impact. They are the device through which the authorization indicated above is obtained and include the procedures regarding public access to files and supplier registration information in terms of environmental impact.

The regulations covering prevention and control of air pollution were published on November 25, 1988. They regulate matters related to the emission of contaminants generated by fixed and mobile sources, establishing the specific obligations required from the parties responsible for operating said fixed sources and the provisions concerning emissions generated by federal public carriers. Prevention and control of contaminants produced by private carriers are responsibilities of local jurisdictions.

The obligations undertaken by the industrial sector include obtaining an operator's license from SEMARNAP and identifying the source's specific industrial branch, characteristics and type of emissions. These licenses require parties concerned to utilize equipment and systems to control said emissions.

For air pollution generated by motor vehicles, there are regulations that apply to the Federal District and surrounding municipalities. These regulations, which came into effect on November 25, 1988, require compulsory testing for gases, fumes, and contaminating particles generated by vehicles in the Mexico City area. They also provide for control measures to limit vehicle circulation, such as the Hoy no circula (No Circulation Today) program, whereby individual drivers are required not to operate their vehicles one day per week under normal air quality conditions and twice a week when contamination levels may affect public health.

Similarly, the Act includes regulations on hazardous materials, also in effect since November 25, 1988. This legal instrument covers three fundamental aspects, namely norms related to production, management, and import and export of hazardous materials.

These regulations contain the deeply entrenched principle known as "de la cuna a la tumba" (from cradle to grave). It determines the obligations of individuals that generate hazardous waste, holding them responsible for the waste until its final disposal. Notwithstanding the above, the regulations establish very specific stipulations regarding storage, transport and confinement of hazardous waste.

Also in effect for hazardous materials and waste, the Reglamento para el Transporte Terrestre de Materiales y Residuos Peligrosos (Regulations for Overland Transport of Hazardous Materials and Waste) provides detailed requirements concerning containers, packaging, safety conditions, marking and labeling, specifications of mobile units and training for personnel involved in transporting hazardous materials or waste via public ways. The Reglamento para la protección del Ambiente contra la Contaminación Generada por la Emisión de Ruido (Regulations for Environmental Protection Concerning Noise Pollution) (1982), in effect since 1982 and preceding the current environmental legislation, establish maximum allowable levels of noise emissions caused by fixed and mobile sources and provide educational and guidance measures.

The contamination of the sea is controlled through the Reglamento para Prevenir y Controlar la Contaminación del Mar por Vertimiento de Desechos y otras Materias (Regulations to



Prevent and Control the Contamination of the Sea due to Discharges of Waste and other Materials), published in the *Diario Oficial de la Federación* (Federal Official Bulletin) on January 23, 1979. The purpose of these regulations is to comply with the obligations undertaken by virtue of the International Agreement for the Prevention of Marine Pollution from Land-Based Sources. They regulate deliberate discharges of substances or waste in Mexican territorial seas, discharged by ships, aircraft, rigs, and other structures.

These regulations also require permits, in the event that there should be no alternative to discharging the above-mentioned materials or substances. In this case, the authorities take into account criteria related to the effects on fishing resources, human life, marine mineral resources and beaches.

Ley Forestal (Forestry Act)

The current *Forestry Act* and its regulations, published in the Official Bulletin on December 22, 1992 and February 21, 1994 respectively, regulate the use of forestry resources and encourage conservation, production, protection and restoration. This legislation contains provisions related to the administration and management of resources, and establishes guidelines regarding the creation of a national forestry inventory, forestry and reforestation, transport and storage of raw materials, creation, organization, and administration of forestry reserves, prevention and control of forest fires, forest health, and, finally, promotion of forestry activities.

Ley de Pesca (Fisheries Act)

The *Fisheries Act*, a regulatory accessory to Article 27 of the Constitution, and its regulations, have been in effect since June 25 and July 21, 1992. They are intended to control marine wildlife. The purpose of these provisions is to ensure conservation, preservation, and rational exploitation of fishing resources and to set forth the basis for adequate development and administration. To that effect, the Act regulates developmental and commercial fishing, fishing for home consumption and sports fishing. It also provides a broad system of permits, authorizations, and licenses in order to control the use of the resource.

Ley de Caza (Hunting Act)

Hunting practices have been regulated since January 5, 1952, when the *Hunting Act* was first published. Its stipulations are aimed at conserving, restoring and protecting wildlife in the national territory. This Act controls hunting practices by establishing requirements related to permits, hunting grounds, weapons, trapping and transport as well as to reserves, protected areas and hunting seasons. This legal instrument is the basis of the yearly hunting calendar and the calendar covering trapping, transportation and exploitation of migratory birds and exotic birds. These calendars, issued by the SEMARNAP, establish hunting and trapping seasons, areas where these activities are permitted, types of permits issued by the authorities, and the species that may be exploited.

Ley de Aguas Nacionales (National Water Act)

The use and exploitation of water is regulated by the *National Water Act*. This law has been in effect since December 1, 1992, and regulations under the Act were published on January 12, 1994. These two bodies of law establish the requirements related to use and exploitation of the national water resources as well as to their distribution, control, quality, and quantity. Specifically as regards contamination, the Act and regulations contain provisions aimed at controlling waste water discharges dumped into bodies of water deemed to be national property.

Ley Federal sobre Metrología y Normalización (Standards Act)

The current *Standards Act*, first published in the Official Bulletin on July 1, 1992, addresses matters relative to standards. This Act establishes the principles, devices and requirements to



be met by the organizations authorized to develop official Mexican standards that determine the specifications and characteristics of products, processes and services that may pose risks to the environment. These legal instruments establish the allowable contamination levels concerning all aspects of the environment, as well as the required activities, facilities or services necessary to protect it.

Finally, as for federal environmental regulations, it should be pointed out that there are currently 141 official Mexican environmental standards, 47 of which regulate the use of fishing resources, 24 establish maximum allowable levels of air pollution and measuring methods, 30 control matters related to hazardous waste and transport of the same, 6 address forestry exploitation and 44 determine the maximum allowable levels of contaminants in waste water discharges.

Local Legislation

From a local perspective, the states of the Mexican Republic began their legislative processes to promulgate state environmental laws in 1988. To date, 31 states have environmental laws and, in addition, most have regulations concerning environmental impact and air pollution. Also, municipalities have included in their police and government bylaws regulations related to domestic waste disposal, green areas, etc.

It is important to note that state environmental laws include provisions that mirror, at a state level, legislation contained in the *LGEEPA*. The subjects included by state congresses in their legislation refer to the distribution of jurisdictions, environmental education and information, rational exploitation of resources, social participation, air, water, and land contamination, noise pollution, harmful light and odors, and solid waste.

2. Mechanisms to Enforce Environmental Legislation

Environmental law enforcement is structured into three areas that establish mechanisms aimed at ensuring compliance with the law. These actions are implemented for administrative, criminal and civil liabilities.

Administrative law enforcement programs are carried out through inspection visits. These are founded upon Article 16 of the Constitution which empowers administrative authorities to carry out on-site visits. Because the inspections involving the legal standing of individuals, Mexico's Constitution establishes restrictions which guarantee due process and the right of hearing, i.e., administrative actions must be well founded and motivated, and provide the inspected parties with the possibility of a defense.

This guarantee is derived from environmental law, in the stipulations related to inspection procedures carried out to verify compliance with environmental regulations. The *Ley Federal de Procedimiento Administrativo (Federal Administrative Procedures Act)* was published on August 4, 1994 and came into effect on June 1, 1995. The Act regulates the actions, procedures and resolutions of the centralized public administration. It was passed to standardize the actions of the authorities, to offer greater certainty and security to individual parties and to increase efficiency.

The *Federal Administrative Procedures Act* defines acts of authority to include verification visits carried out to verify compliance with the respective legal provisions and regulations. The Act also establishes the formalities to be followed during visits, including matters related to warrants of inspection and to details of documents required to accredit the public servants authorized to carry out the audits.



This Act also requires a report containing the particulars of the party inspected, identification of the facility and the acts or circumstances that constitute an offense contrary to law.

It should be pointed out that the legislation referred to above grants the visited party two procedural devices through which it can raise any defence and offer evidence aimed at refuting the irregularities alleged in the warrant of inspection.

Once the inspection procedure has been substantiated, and if it is determined that the party concerned has committed an offense contrary to environmental law, the authorities may order corrective measures and impose applicable sanctions. Environmental authorities also have the power to impose safety measures in the event of an imminent risk of ecological imbalance or contamination that may have dangerous repercussions on the ecosystem and its components, or on public health. These measures may involve a temporary lien on materials, pollutant substances, products or by-products or the instruments used to carry out the offense, or may entail the temporary, partial or full closure of the pollutant sources.

It should be pointed out that section 6, chapter I, of the *LGEEPA* grants power to federal, state and municipal authorities to carry out inspection visits within their jurisdictions, to verify compliance with the Act. The power of state and municipal authorities is established in local legislation.

Sanctions are the legal consequences of illicit acts as established by law to enforce compliance. In environmental terms, administrative sanctions may be pecuniary (fines), may take the form of total, partial, temporary or final closure of the contaminating sources, or may entail the loss of products or by-products that were illegally obtained or of instruments used in the illicit act. Sanctions also include administrative arrests, interruption of work or activities, or revocation of permits and authorizations.

Also, another process the State may resort to ensure law enforcement is criminal liability. Criminal laws prohibit actions that damage natural resources and generate contamination, and provide for penalties.

In the Mexican legal system, penal action as a means to establish the criminal liability of an individual is the exclusive responsibility of a federal authority in charge of initiating criminal action against an individual before the competent courts of the judiciary. To that effect, the Ministerio Público must substantiate prior findings and must do so while respecting the right of the individual to be heard and to offer proof. Once the required procedures have been carried out, the authorities have the option of initiating criminal action, reserving a decision until new evidence is furnished or filing the case as a closed matter.

Following criminal action before a competent court, a process is carried out to finally determine the responsibility of the party charged, granting it the right to a hearing at various stages during said process.

Offenses result from acts or omissions found to constitute criminal offenses as established in the *LGEEPA* and in the Criminal Code, under general jurisdiction for the Federal District and federal jurisdiction for the entire Republic, as well as under the *Hunting Act* and the *Forestry Act*. The *LGEEPA* establishes five types of criminal offenses for hazardous activities, namely actions involving hazardous materials or waste; emission of gas, fumes, or dust; discharges of waste water, waste, or contaminants in federal waters; and emission of noise, vibrations, and heat or light energy.

To determine if any actions constitute an offense, the Act provides that actions must have been carried out without due authorization or in violation of the respective regulations and



official Mexican standards. Similarly, for allegations to constitute a criminal offense it is a prerequisite that the actions involved cause or may cause damage to public health, wildlife or ecosystems.

Penalties provided by law vary, according to the offense, from 100 to 20,000 minimum-salary per-day fines and from one month to six years in prison.

The *Hunting Act* also establishes indictable offenses. Allegations are found to constitute offenses when hunting permanently protected animals, when using forbidden weapons or unauthorized hunting methods, when hunting female mammals or litters considered to be harmless, and when destroying nests or trapping chicks.

Persons found guilty of committing these offenses are liable to terms of imprisonment of up to three years and fines of 100 to 10,000 pesos. Offenders are ineligible for other hunting permits for a period of five years.

Under the *Forestry Act* offenses are created for the transport, commerce or transformation of wood from forestry developments without authorized management programs.

This type of offense carries a penalty of three months to five years in prison and a fine equivalent to 10 to 10,000 minimum-salary-days.

Finally, the Criminal Code mentioned in previous paragraphs provides for the protection of marine species and forestry resources.

For marine species, the Criminal Code establishes that trapping or causing serious damage or death to marine mammals or chelonians is an offense, as is gathering or marketing their products without obtaining a permit from the competent authority. Also, the law provides that trapping protected marine species shall be punished with the same penalties.

The sanctions provided for the above offenses range from six months to three years in prison.

Another environmental offense is constituted by actions that cause the destruction of trees or spread diseases amongst plants and animals, thereby endangering the forestry economy or the zoological wealth of the nation.

Offenders are punished with terms of imprisonment ranging from two to nine years and fines of 10,000 to 250,000 pesos.

Civil liability is the third environmental law enforcement instrument and is applied in the case of legal or illegal actions that cause damages but are not considered to be criminal offenses. However, they may be subject to trial, to determine the defendant's obligation to make reparations.

This action may be carried out by two separate methods: a criminal process before a competent court, in which case the Ministerio Público shall ask for reparations for the damage caused; or through direct civil court action initiated by the person affected against the person responsible for the legal or illegal act.

Civil liability is another instrument used to protect the environment. It translates into the obligation of accounting for legal or illegal acts that cause damage but do not constitute offenses, strictly speaking, and that may be subject to trial in order to determine the obligation of the defendant to make reparations. Civil liability may establish measures to restore or mitigate the effects of activities, as provided by the Civil Code.



Under the Mexican Civil Code, such actions include illegal acts, acts contrary to the moral conventions of society, the use of mechanisms, machines or substances that are intrinsically dangerous due to their speed, their explosive or flammable nature, or to the voltage level they transmit. In view of the above, and according to the provisions of the Civil Code, general jurisdiction for the Federal District and federal jurisdiction for the rest of the Republic, it is lawful to require reparations due to damages to restore conditions to their original state, or to require payment for damages caused to the assets of the plaintiff. The legal procedures through which this kind of remedy may be sought are carried out before judges of first instance.

In the context of environmental protection, these civil actions not only function as devices to secure compensation for damages but also as instruments to discourage illegal acts.

Finally, there is another administrative device to encourage compliance with environmental legislation. This device is called environmental audit. Through it, parties concerned receive the incentive to dovetail their activities with environmental legislation without the threat of sanctions, by means of a schedule agreed upon together with the authorities.

Environmental audits are defined as voluntary procedures to examine the operation of an industry or activity in terms of pollution and risks, as well as the degree of compliance with environmental legislation, international parameters, and sound engineering practices, to determine preventive and corrective measures necessary to protect the environment.

Environmental audits are instruments of consensus reached by the authorities and private parties, by means of which the latter are encouraged to accept evaluations of their facilities carried out either by the PROFEPA [Federal Solicitor for Environmental Protection] or by designated companies. Environmental audits may be carried out by private companies only under the guidelines issued by PROFEPA for each specific case. Audits are carried out under the supervision of PROFEPA or of the specialized company hired to that effect.

Once the environmental audit has been completed, the audited party legally undertakes the obligation to implement the corrective or preventive measures that may result from the evaluation process, as ordered by PROFEPA. The legal document formalizing the agreement specifically establishes measures to be taken and a schedule.

3. Administrative Framework

In 1994, a decree amending the *Ley Orgánica de la Administración Pública Federal (Federal Public Administration Act)* was published in the Official Bulletin. It established the creation of the SEMARNAP, a branch of the federal executive vested, but for a few exceptions, with the majority of powers regarding the environment.

The powers granted to this Secretariat summarize the Mexican government's policies regarding the preservation of natural resources and environmental protection, as seen through the concept of sustainable development. The Secretariat's mandate is to protect, restore and conserve ecosystems which include water, soil, forestry resources, and land and marine wildlife. Its mandate involves activities related to fishing and to Mexican territorial seas. As mentioned above, there are exceptions: non-renewable resources such as petroleum and mining.

In terms of national policy instruments, it is SEMARNAP's responsibility to formulate and manage national environmental policies, promote ecological management, evaluate the scope of environmental impact, issue official Mexican standards and establish an environmental information system.



This branch of the federal executive is also responsible for establishing, organizing, administering and monitoring federal protected natural areas. Its mandate also includes the duties of regulating and managing the protection, conservation and exploitation of water and wildlife species, including hunting and fishing activities.

SEMARNAP also develops and promotes methods and procedures to evaluate the economic worth of natural assets, and of the environmental goods and services it provides. Its duties include developing an integrated environmental and financial accounting system. The Secretariat also participates in determining and establishing tax and financial incentives aimed at the sustainable development of natural resources and at environmental protection.

This Secretariat has various administrative units, two of which are responsible for law enforcement: PROFEPA and the Comisión Nacional del Agua (National Water Commission). Both are decentralized organizations.

Procuraduría Federal de Protección al Ambiente (PROFEPA)

This decentralized organization is administratively independent. To carry out its substantive duties it has three administrative units called subprocuradurías.

The Subprocuraduría de Verificación Normativa Industrial y Urbana (Industrial and Urban Law Enforcement Office) is in charge of enforcing compliance with environmental legislation in terms of pollution from fixed sources within the federal jurisdiction, caused by emissions into the atmosphere, hazardous waste and noise. It also controls law enforcement in the areas of environmental impact and high risk activities. To carry out its duties, this office has different administrative units in charge of the following matters:

Industrial Technical Assistance

This area operates an information system that contains current data regarding the technical, legal and administrative status of the cases being evaluated. It also provides technical support to carry out inspection visits.

Industrial Inspection

This unit is in charge of formulating and managing general inspection and environmental law enforcement policies. It is also responsible for determining the commission of offenses.

Laboratories

The main activities include operating PROFEPA's nation-wide network of environmental testing laboratories and formulating policies, guidelines, strategies and procedures to develop and operate the laboratory infrastructure.

The Subprocuraduría de Verificación de los Recursos Naturales (Natural Resources Monitoring Office) is in charge of inspecting activities related to the general management of the national territory, fishing, wildlife and Mexican territorial waters. To exercise its authority, this office has the following administrative units:

Monitoring of Ecological Management

The duties in this area include monitoring compliance with environmental regulations in ecological management and environmental impact, insofar as they affect the use and conservation of renewable resources, marine and land wildlife, or some areas or natural resources within federal jurisdiction.

Inspection and Monitoring of Forests and Wildlife

This office is in charge of monitoring compliance with legislation applicable to the



protection, conservation, use and exploitation of protected natural areas. It also verifies compliance with hunting and trapping calendars, with transport and exploitation of song birds and exotic birds, as well as compliance with forestry, hunting, and wildlife protection and conservation programs. Inspection and Monitoring of Fishing Resources: One of the main duties of this office is to manage general monitoring policies for fishing, use and exploitation of Mexican territorial waters and reclaimed land, as well as conservation and protection of marine wildlife.

The Subprocuraduría de Auditoría Ambiental (Environmental Audits Office) is in charge of developing this self-control program in the industrial sector. Its main objective is to promote environmental audits among public or private business groups to be carried out at company facilities. The audits are aimed at detecting the areas in which legal requirements are not rigorously met and at establishing preventive and corrective measures. It is interesting to note that the environmental audit program encourages companies to exceed the established environmental standards. This office is divided into areas in charge of the following:

Planning and Coordination

This section is in charge of formulating policies and strategies to carry out environmental audits.

Operations

The main activities include carrying out and coordinating environmental audits and technical tests in companies, as well as in public and private organizations. It also determines the necessary preventive and corrective measures to reduce and prevent environmental risks and emergencies.

Environmental Emergencies

This unit implements rapid reaction plans for emergencies and contingencies involving hazardous chemical substances which may cause harm to communities or to the environment.

To be effectively decentralized, SEMARNAP has state offices that independently, though under guidelines issued by the central office, attend to various environmental problems that fall within federal jurisdiction. Also, PROFEPA has offices in every state, in charge of enforcing legislation applicable to the protection and restoration of the environment and of natural resources, and of promoting environmental audits and technical testing within their respective jurisdictions.

4. Environmental Policy

In Mexico, the federal executive power is in charge of drafting and submitting the Plan Nacional de Desarrollo (National Development Plan), an instrument formulated to regulate institutional and sectoral programs and to coordinate tasks with the other powers of the Federation as well as with state and municipal governments. This document is published after careful examination of the development of the country to acknowledge its progress. It points out problems, areas where the country is falling behind and inadequacies to pinpoint the main challenges and to offer guidelines to formulate general plans of action.

Based on the above, the 1995-2000 development plan, published in the Official Bulletin on May 31, 1995, has as its main objective, promoting vigorous and sustainable economic growth that will strengthen national sovereignty and improve the social welfare of Mexicans. To that effect, national policies are implemented to improve environmental conditions and to promote the rational use of natural resources.



In this sense, the planning instrument mentioned above introduces environmental policy as one of the five strategy lines to propel a permanent and sustainable economic growth.

Environmental policy is not only geared towards purely regulatory ends. It also constitutes a process of encouragement and persuasion regarding investment in environmental infrastructure, creation of markets, and financing for sustainable development, to make economic growth compatible with environmental protection, thereby halting environmental deterioration. Environmental policy is also aimed at inducing sound environmental management of the national territory and ensuring that development is compatible with the aptitudes and abilities of each region. The purpose is also to benefit fully from natural resources in a sustainable manner, as a basic premise to overcome poverty. The environment and the natural resources shall be protected on the basis of a re-evaluation of consumption patterns and of effective compliance with the law.

In accordance with the above, the National Development Plan points out that, for environmental legislation, strategies shall focus on consolidating and integrating legislation and on promoting compliance. The encouragement factor in environmental legislation shall take the shape of incentives which, through regulations and financial instruments, encourage producers and consumers to make decisions in support of environmental protection and sustainable development.

As for ecological systematization, the hope is that each state and each specific region develops its own management system. Joint programs will be implemented in protected natural areas to diversify financing sources and mechanisms, incorporate eco-tourism services, develop new ecologically certified natural goods markets and manage the environment to encourage the reproduction of some wildlife species.

Also, the National Development Plan provides for the establishment of a policy regulating the status of drinking water users and waste water discharges from urban and industrial areas, to enforce effective compliance with the law, with the support of an adequate system of sanctions, prices and incentives.

As for forestry, it is necessary to redefine the plans to manage and exploit forests, to intensify protection, maintenance and conservation programs, and to develop inspection and monitoring systems which incorporate tax and financial plans that provide incentives for a sustainable development of natural resources.

In terms of soil protection, policy consists of inducing changes in the productive systems, combining optimized income and performance with conservation, and updating the legal and regulatory frameworks.

In relation to fishing, environmental policy shall focus comprehensively on research and evaluation of resources, basic infrastructure, fishing fleet, processing, transport and marketing. Also to be encouraged are diversification and development of new fisheries and resources previously not exploited, as well as rural and industrial aquaculture. Job creation, an increase in the supply of fish products aimed at improving nutrition among the majority of the population, and securing foreign currency through an increase in exports of the more competitive species, are all to be strongly encouraged.

It should be noted that the National Development Plan provides that the plans and courses of action mentioned above shall be characterized by a strategy of decentralization in terms of environmental management and natural resources. The purpose is to strengthen the abilities of local management, particularly of the municipalities and to broaden the possibility of social participation. The induction of new forms of regional planning for the use of forestry resources is an essential component of this decentralization.



Under this generic framework, Mexico's objective is to improve the management of the environment and of natural resources through enforcement and encouragement of compliance with legislation, strengthening the means of encouragement and prevention in relation to corrective measures, and promoting greater use of economic instruments by:

- expanding the monitoring of industrial activities, and the monitoring, surveillance and protection of natural resources; and
- encouraging and supporting voluntary compliance with legislation, regulations and environmental programs;

5. Strategies

To achieve the foregoing environmental policy objectives, the Secretariat for the Environment, Natural Resources and Fisheries, through the Federal Solicitor for Environmental Protection, has put nine strategies into practice:

- Verification and monitoring of forestry and fisheries development;
- Protection and control of wildlife, protected natural areas, and Mexican territorial seas;
- Monitoring of environmental management and environmental impact;
- Industrial verification;
- Encouragement to comply with environmental legislation through environmental audits;
- Attention to environmental emergencies and contingencies;
- Institution development and citizen participation
- Research, outreach and training; and
- Strengthening an active international presence.

These strategies are the Federal Government's principal thrusts, involving day-to-day activities that target short-, medium- and long-term goals. They apply to the nation as a whole. They establish processes, not isolated events, and are adaptable so as to effectively respond to specific conditions and changing situations. In addition, they call for the involvement of all three levels of government, the community and private sectors, as well as the productive social actors concerned.

Verification and Supervision of Forest and Fisheries

This strategy is intended to monitor and supervise the processes of forestry, fisheries and aquaculture management, as well as the products, subproducts and transport thereof, to ensure they comply with the standards in force and the conditions under which they were authorized. This strategy encompasses the Programa de Verificación del Aprovechamiento Forestal (Forest Use Auditing Program) and the Verificación de Pesquerías y Acuicultura (Fisheries and Aquaculture Auditing Program).

Verification of Forestry Exploitation

As part of the protection of forest resources, activities included more effective inspection and monitoring activities at strategic points in the cutting, marketing, transport and sale of forest resources, principle among which were 56 operations in the 31 Mexican states, with priority given to Chiapas, Chihuahua, Durango, Jalisco, Michoacán, Oaxaca, Quintana Roo and Puebla, the eight states with the highest timber exploitation.

The annual special inspection and monitoring program for Christmas trees took place in December 1995. It consists of an operation covering a total of 40,000 hectares of forested land in the southern part of the Federal District, in which products lacking proper authorization were confiscated and violators were penalized. Similar measures were taken by the state governments.



As to forestry and wildlife, 1,192 operations were carried out at a national level. Out of these, 612 took place in wooded areas, 838 involved products in transit and 138 involved industries. These figures do not include 17 operations carried out in cooperation with the Procuraduría General de la República (Federal Solicitor General) and the Secretaría de Comunicaciones y Transporte (Communications and Transport Secretariat).

As we have already pointed out, the emphasis focused on critical zones and protected natural areas. Monitoring was mainly carried out in forestry operations in the States of Chihuahua, Durango, Jalisco, Guerrero, Oaxaca, Michoacán, Chiapas, Quintana Roo, Puebla and the State of Mexico. Similarly, camedor palm, cassava palm and catkin operations have been monitored.

Also, a special project to monitor and inspect Monarch butterflies has been initiated. Another project to control Christmas tree production is being prepared.

To promote and encourage coordination among institutions and social participation, three committees have been formed to inspect and monitor forestry and wildlife in the states of Colima, Guerrero and Oaxaca. The committees comprise federal executive agencies, state governments, and organizations representing producers, communal lands and forestry communities, research centers, academic institutions and other organizations related to relevant activities.

Seventeen special operations have been carried out in ten state bodies to fight the illegal use of lumber in critical areas and protected natural areas. PROFEPA personnel from the respective states participated in these actions, with the cooperation of the Federal Solicitor General (Fiscalía Especial para Delitos Contra la Ecología) (Special Solicitor for Environmental Crimes), the Policía Federal de Caminos y Puertos (Federal Highways and Ports Police), the Seguridad Pública Municipal (Municipal Public Security), and the Instituto Nacional de Ecología (National Ecology Institute).

The Subprocuraduría de Recursos Naturales (Office of the Solicitor for Natural Resources) has made it a priority to attend to the problems in the region of Marqués de Comillas where, as a result of authorizations granted to exploit dead wood, large scale mahogany contraband was generated. The Federal Solicitor for Environmental Protection has been able to virtually fence in this region to prevent the illegal exit of wood toward the Republic of Guatemala. The navy, the Federal Highways and Ports Police, the PROFEPA branches in Chiapas, Oaxaca, and Tabasco and the Lacandón native community all participated in the operations.

At the same time, links have been established with the Government of Guatemala in order to find mechanisms to coordinate surveillance actions in border areas. As a result, Guatemalan authorities have initiated surveillance programs.

Although illegal transport of mahogany has been halted, clandestine felling has not. As a result, the Office of the Solicitor for Natural Resources, in conjunction with the Environment Secretariat has initiated a work program with peasant organizations in the communal lands of Marqués de Comillas. The work has been extended to form community surveillance groups in border towns, including Guatemalan communities where work is being carried out in cooperation with the Consejo Nacional de Áreas Protegidas (CONAP).

For community surveillance, agreements have been reached with the Lacandón native community of Chiapas and with the Seri community in Sonora, to operate inspection and surveillance organizations. A national program to ensure social participation, at least in the critical areas, is being developed simultaneously.



Fishery Exploitation

The fishery exploitation verification activities included 24 actions in 13 states, including those related to shrimp farms, sea turtle nesting areas and falsification of accounts by a fishing cooperative. Through the intervention of the Federal Public Prosecutor, 4387 sea turtle eggs and 40 skins were seized; 214 kilos of sea cucumbers and 616 lobsters were confiscated and 5 persons were cited for violations. Likewise, shrimp farm inspection and monitoring operations, as well as boat and fishing ground inspections were stepped up. Sanctions provided in the *Fisheries Act* were imposed. These operations serve to regularize compliance with environmental impact legislation on the part of the companies visited. The appropriate government departments were notified of alleged illegal activities, promoting national fisheries management.

To support the fisheries monitoring activities, twelve joint inspection and monitoring committees have been set up on fisheries, marine resources and aquaculture matters for the same number of states.

The main strategies regarding fisheries are:

- to promote the joint responsibility of all jurisdictions within the executive, legislative, and judicial powers, at federal, state and municipal levels, to manage, administer and preserve natural resources within their respective jurisdictions and to promote the institutional capacity and ability to carry out work that has already been assigned to all of them;
- to promote honesty, efficiency and full consistency in the actions carried out by the official jurisdictions that are responsible for administering, managing, and monitoring the fishery resources;
- to promote through permanent and continuous outreach, the awareness of legislation and knowledge and techniques regarding the protection, safeguard, exploitation and regeneration of natural resources;
- to actively integrate the tasks of monitoring and protecting our natural resources and the efforts, abilities, and concerns of society and its non-governmental organizations, whether national, regional, state or local, and to incorporate into these tasks the experience, knowledge, and ability of scientific and higher education institutions throughout the country in terms of their research and their findings;
- to promote and to procure the concerned and informed participation of productive organizations and associations that focus on the development of natural resources;
- to procure the direct and involved support of communities and individuals whose lifestyle and livelihood depend on the resources – communities on the coast, in the jungle, in forests and on the great plains of the nation;
- to incorporate highly qualified personnel, from ethical, professional, and technical perspective, with experience, qualifications and knowledge in their fields, to carry out the duties of supervising, monitoring and protecting natural resources, and to encourage joint actions on the part of societies and authorities who have the most adequate and efficient technology, equipment and tools to reach that common goal;
- to prioritize and program the application, jurisdiction and distribution of efforts in accordance with the characteristics, situation of risk, need for protection, potential for conservation, optimal strategies and development of the various components of the nation's natural heritage, paying special attention to jungles, to lumber and fishery exploitation, to natural areas protected by law and to wildlife;



- to avoid unjustified investments to purchase or install highly specialized scientific or laboratory equipment, and to maximize the resources already installed in the nation's public and private institutions through the necessary cooperative and co-participation agreement;
- to request the Ministry of Finance, to assign the funds collected from fines and penalties imposed for offenses or obtained through taxes from the development of natural resources, to monitoring, supervising and controlling the management and exploitation of natural resources;
- to implement the mechanisms necessary to penalize violations of legislation governing the development and protection of natural resources and the environment, and to examine the means to enforce fisheries management.

The programs in operation during 1995 were:

- Commercial Fishing Verification
- Monitoring and Protection of Natural Areas and Endangered Species
- Tortoise and Marine Mammal Protection
- Aquaculture Inspection and Monitoring
- Sport Fishery Verification
- Attention to Fishery and Marine Resources Contingencies and Emergencies
- Training and Updating of Inspection and Monitoring of Fisheries and Mexican Territorial Seas

Active and interested participation in the proposed amendments to legislation governing the rational conservation, protection, regeneration and development of our renewable resources, as well as in the evaluation and simplification of the processes required in these matters.

Protection of Wildlife, Protected Natural Areas and Mexican Territorial Seas

This strategy encompasses the country's lake and littoral systems, wildlife species considered rare, endemic, threatened and endangered, and protected natural areas. The strategy is composed of three programs: monitoring and protection of wildlife species; monitoring of protected natural areas; and monitoring and control of the littoral and Mexican territorial seas (Zona Federal Marítimo Terrestre). The first is designed to protect wildlife, particularly species classified as rare, endemic, threatened or endangered, through rigorous mechanisms for detecting and identifying persons or groups engaging in their capture, transport or sale in rural or urban areas. The other two programs are aimed at safeguarding the protected natural area system and Mexican territorial seas.

There are several special programs for the protection of marine mammals. Noteworthy for their international scope is the monitoring of whales in the Laguna de San Ignacio Biosphere Reserve; of sea turtles in Veracruz, Campeche, Yucatán, Quintana Roo, Nayarit, Jalisco, Colima, Michoacán, Guerrero, Oaxaca and Chiapas; of monarch butterflies in the special biosphere reserve in the states of Mexico and Michoacán, and of bighorn sheep in Baja California, Baja California Sur and Sonora.

In addition to monitoring the protected natural area created for the Monarch butterfly, two committees have been formed to monitor the forests in that area.

As well, operations were conducted at the country's principal points of concentration and sale, one of which has been identified as the Sonora market in the Federal District, where a total of 1500 wildlife species were seized with the support of the offices of the Secretaría de



Ecología (Department of Environment), the Secretaría de Seguridad Pública (Department of Public Security), Federal District, and the Procuraduría General de la República (Attorney General's Office).

Work aimed at protecting the Mexican territorial seas includes a training and skill improvement program to support inspection and monitoring for the area.

Monitoring of Environmental Management and Environmental Impact

This strategy comprises the development of coordination programs for monitoring environmental management provisions; coordination to verify environmental impact resolutions; and coordination of monitoring of proper environmental infrastructure, equipment and services. The activities contained in these programs are designed to enforce compliance with the national environmental management scheme and the environmental management programs of priority regions. The emphasis is on applying to the competent federal or local authorities for the restriction or suspension of facilities or productive activities that are inconsistent with the established land use and environmental criteria contained in these programs; to strengthen monitoring of compliance with the terms and conditions established in the environmental impact resolutions; and to ensure that the environmental infrastructure, equipment and services such as water treatment plants, drainage systems, sanitary landfills, incinerators and hazardous waste containment sites are consistent with the laws, official Mexican standards and environmental programs in force.

A program was developed to verify and monitor compliance with the policies and criteria of environmental management in areas such as coastal regions, hydrological basins, areas critical to the protection of biodiversity and in depressed regions that are a priority in terms of social development.

The groundwork has been laid for coordination with the states and municipalities to audit compliance with the policies and criteria they have established. A procedures manual for environmental management verification and monitoring and a training plan were developed. Environmental management breakthroughs were achieved for the Nichupté lake system, Colima, and the Cancún-Tulum corridor, Quintana Roo, by means of a model coordination agreement to be signed by state and municipal governments regarding compliance with environmental management criteria. Coordination with states and municipalities for environmental management is in the process for Banderas Bay, Nayarit, as well as the states of Sonora and Baja California.

Also formulated were advisory and training programs for PROFEPA state delegations, for the application of the respective verification and monitoring procedures.

In auditing environmental impact, efforts have been doubled to reach 550 inspections nationally. Of these, the inspections of projects in the tourism, communications and electrical industries in the states of Quintana Roo, Guerrero, Morelos, México, Baja California and Baja California Sur are notable for their scope.

A diagnosis was drawn up to evaluate the nation's legal and enforcement situations in environmental management. Also prepared were guidelines for the course on auditing and monitoring environmental management given to border area natural resource inspectors.

As for environmental impact, in 1995, a work program was carried out to verify compliance with environmental impact resolutions or findings involving work or activities that may affect natural resources. The program also addressed complaints made as a result of work or activities that may cause ecological imbalance.



To that effect, the following activities were carried out:

- Update of procedures to carry out inspections and audits at a national level;
- Coordination with PROFEPA state delegations to apply inspection and auditing procedures systematically;
- 198 inspections and audits of projects that have been granted environmental impact authorization in 31 states;
- Of 161 inspections and audits of projects that showed irregular circumstances, detected through the Instituto Nacional de Ecología or through citizens' complaints;
- Support to PROFEPA state delegations with technical assistance; and
- 18 closures involving work or activities, as a result of serious offenses contrary to environmental legislation.

Industrial Verification

This strategy includes inspection and monitoring activities and, where applicable, the enforcement of corrective, urgently required measures and the appropriate sanctions for non-compliance with environmental legislation. In some cases, the PROFEPA performs industrial audits in coordination with the National Water Commission which has responsibility for monitoring discharges into federal bodies of water.

To provide an incentive to comply with environmental legislation, an attempt is being made to decrease the number of sanctions imposed on violators who comply with the corrective measures ordered within a specified period. In contrast, repeat offenders are to be sanctioned more severely as allowed by law. Monitoring of compliance with environmental standards is achieved through national programs, one for industrial environmental auditing and the other for in-plant auditing of new vehicles.

These programs consider the authorization of the census of industrial establishments; the optimization of parameters for evaluating polluting potential, from the standpoint of both type and quantity of emissions; and the establishment of an order of priority for dynamic inspection, as well as each industrial establishment's background of compliance with standards.

Additionally, work is advancing on development and implementation of an information system that will facilitate specific follow-up to each inspection visit made to the companies. It will be possible at a glance to identify the seriousness of the irregularities detected, safety and technical measures ordered to correct them, sanctions imposed, deadlines for compliance and extensions, measures taken, equipment to be installed, and the required reduction of pollutant emissions.

The implementation of special programs in metropolitan Mexico City is ongoing, especially in winter. One program addresses environmental contingencies, calling for sources of industrial pollutants to decrease their operating levels and emissions when a state of environmental contingency is declared. An aerial monitoring program allows the authorities to identify clear sources of pollution. A third program involves seizure of ostensibly polluting vehicles in conjunction with the government of the Federal District, the state of Mexico and the Secretariat of Communications and Transportation.

Notable results of the industrial audits performed by the PROFEPA are those obtained in the program for inspection and monitoring of pollution sources. During the period from August



1992 to December 1995, approximately 16,098 visits were made to audit compliance of companies with environmental law. There was partial or total closure of 1,263 enterprises and economic sanctions were imposed.

Clandestine hazardous waste dump sites were also located. The offending companies were identified and sanctioned. During the cleanup process of the contaminated sites it was noted that the offending companies had removed and deposited waste in the amount of 29,300 tons, which have since been deposited in controlled confinement sites.

Regarding the in-plant auditing program for new vehicles, approximately 79 of the 160 types of engines produced in the country's 19 assembly plants were audited during 1995 to certify the new engines' emission levels. The number of audits represented a 58% increase over the previous year.

In the winter of 1994-1995, environmental contingencies lasting a combined total of 12 days were responded to in metropolitan Mexico City. An average of 30 brigades performed 1537 visits to audit the operating levels of the companies covered by the program. In this same period, 20,776 ostensibly polluting vehicles were seized and 11,785 were sanctioned. These actions were carried out in coordination with the governments of the Federal District and the State of Mexico and with the Department of Communications and Transportation.

Complementing the winter programs was the aerial monitoring program, whereby 146 industries with ostensible emissions were identified and subsequently visited by inspectors. These results led to approximately a 5% reduction with respect to the winter 1993-1994 in the number of establishments detected to be ostensible polluters.

Finally, efforts were intensified to decrease the backlog of administrative procedures and to lay the groundwork and set out guidelines to be observed in environmental inspection and monitoring proceedings with the entry into force of the new Law of Administrative Procedure.

Voluntary Environmental Auditing Strategy

The cornerstone of this strategy is voluntary participation by businesses in preventing and controlling industrial pollution and environmental contingencies. It targets the country's largest and highest-risk industries. The strategy encompasses all industries including para-governmental ones, and particularly those partially or wholly devoted to production for export.

The environmental auditing strategy includes the Programa de Auditoría Ambiental Industrial (Environmental Auditing Program for Industry), which seeks to strengthen environmental auditing as a voluntary instrument of industrial pollution prevention and control. This is to be achieved by reaching agreements with companies and attempting to make their effects felt throughout all productive sectors.

To promote environmental audits, meetings were held with various industrial sectors, the most notable of which were those held in the states of Puebla, Nuevo León, Federal District, and Chihuahua. Furthermore, a radio advertising campaign was carried out on environmental audits, and permanent contact was maintained with industrial groups and Chambers of Commerce in order to convey the guidelines established by environmental authorities to carry out the respective environmental audits.

During the period from June 1992 to October 1995, 555 environmental audits of companies and establishments were initiated. At that date, this represented an investment of 1179 million



pesos by the responsible authorities. During 1995, various environmental auditing tasks were performed in relation to 225 companies, which, by virtue of their activities, represent high levels of pollution and risk. As a result of these activities, plans of action for 72 of these companies were signed, entailing an investment of 191.3 million pesos by the companies to acquire and install anti-pollution devices and to modify their productive processes.

Among the principal companies with which plans of action were worked out based on environmental audits are Petróleos Mexicanos, Ferrocarriles Nacionales de México, General Motors, Grupo Cementos Mexicanos and Grupo Peñoles.

As for the management of hazardous waste and materials, work was begun on inventorying and classifying contaminated sites, studying methodology for treatment of hazardous waste sites and rehabilitation technologies for these areas, with the goal of evaluating and/or cleaning up contaminated and abandoned waste sites.

In addition, actions were initiated to implement the Centro Nacional de Orientación para la Atención de Contingencias y Emergencias Ambientales (National Environmental Emergency Response Center), which will operate 24 hours a day, 365 days a year. It is designed to guide the responsible authorities and the general public as to the activities required to control emergencies to prevent harm to people and environment.

As regards environmental risks, efforts were doubled to enforce compliance with standards to follow up on the recommendations in the reports.

As for the high-risk business system, work is ongoing to upgrade the information relating to recycling plants and controlled hazardous waste containment sites on a national level, to analyze the recycling, treatment and final disposal capacity for hazardous waste in Mexico.

Response to Environmental Emergencies and Contingencies

This strategy is aimed at developing and establishing preventive measures, or responding in a timely fashion to the environmental contingencies and emergencies that originate in productive facilities and processes and have potential effects on the communities and the environment in which they occur.

The Sistema Nacional para la Atención de Emergencias de los Recursos Naturales (Natural Resource Emergency Response System) is designed to respond to environmental emergencies. Those dealt with in a satisfactory fashion under this system include those involving marine mammals and water birds in the Gulf of California; prevention of Taura's syndrome in the states of Chiapas, Oaxaca, Tabasco and Guerrero; mortality of migratory waterbirds in the Silva Reservoir, Guanajuato; fish mortality in the Pílon River, Nuevo León, in Centla, Tabasco and in Bahía de la Paz, Baja California Sur; red tide in Guerrero, Michoacán, Oaxaca and Chiapas; and manatee mortality in Chiapas.

Regarding environmental contingencies, the existing environmental laboratories in the country are engaged in extremely important activities. They have increased their capacity for analyzing air pollution and environmental contamination by hazardous waste, wastewater and toxic substances. Also of note is the increase in the number of private laboratories satisfying the demands of those in charge of operations for the pollution sources. These laboratories normally specialize in analyzing atmospheric emissions, wastewater discharges and hazardous wastes.



Institutional Development and Citizen Participation

This strategy is designed to counter some of the main causes of non-compliance with environmental law, and is an indispensable concomitant to the remaining strategies. It works in conjunction with programs on institutional development, deconcentration and decentralization, technical assistance to local governments and individuals, promotion of citizen participation and facilitation and follow-up of complaints.

Where strengthening of institutions is concerned, progress is at an advanced stage on an information system to support the establishment, development and evaluation of environmental law compliance programs at the national, regional, local or pollution source levels. Initially, the information system is to operate in a centralized fashion and will be called the Sistema de Seguimiento de la Aplicación de la Normatividad Ambiental (SSANA) (Environmental Law Enforcement Monitoring System).

One special program of particular importance involving citizen participation on natural resource matters is the “Marqués de Comillas” project. This involves major actions for the Lacandón forest in cooperation with the Lacandón community, as well as the establishment of 11 natural resource inspection and monitoring stations. Another special program is community-based monitoring, which led to five participatory monitoring committees being organized in the Federal District and regionally for purposes of forest and wildlife monitoring.

As part of the citizen complaint program, the Sistema Nacional de Atención a la Denuncia Popular (National Citizen Complaint System) is coordinated among the three levels of government for the purpose of providing more expeditious and functional service to the population. Conciliation and conflict resolution have been stepped up. As part of this program, 16,041 complaints were heard nationally in the 1992-1995 period.

Currently, hearings of citizen complaints and program-based control and monitoring activities, as well as evaluation and complete information concerning concurrence and interinstitutional coordination among public consultation bodies, is in the process of being concentrated and decentralized to the state offices of the Procuraduría and the state governments.

Research, Outreach and Training

This strategy comprises three investigative programs on compliance with the law. Its purpose is to develop a knowledge base concerning social and institutional conditions that promote or inhibit compliance with environmental laws, regulations and other legal provisions. The information program consists of a strategic data base system that manages information added as a result of decisions made, plus various specific systems for the operation of the various activities of PROFEPA integrated into the information systems. The third program is for outreach and training, to promote compliance with the environmental laws, standards and programs and to promote the consolidation of public environmental consciousness, as well as technical training in related subjects.

In the personnel training program, 13 training courses were given in coordination with the United States EPA. Five hundred and forty-four inspection and monitoring professionals, as well as laboratory technicians, middle and upper managers of government agencies and public servants were trained.

Also worthy of mention are continuing education courses on legislation given in the state-level offices of the Federal Solicitor for Environmental Protection, in order to train personnel in the enforcement of the new *Federal Administrative Procedures Act*.



Training was provided for technical personnel in charge of environmental audits on behalf of the Federal Government and other public and private institutions. Courses dealt with environmental auditing and hazardous waste management in the chemical and maquiladora industries as well as emergency response planning and environmental damage assessment.

Strengthening an Active International Presence

This strategy encompasses two programs designed to develop active international participation focusing on Mexico's international environmental commitments. Priority attention was given to commitments arising from the Basel Convention, CITES, the North American Free Trade Agreement with the United States and Canada as well as Mexico's participation in the Organization for Economic Co-operation and Development and the agreements contained in Agenda XXI, among other covenants. The second program coming under this strategy is the international cooperation program, which is designed to promote technical and financial cooperation and to publicize abroad the organization of national activities around monitoring and incentives for compliance with environmental law.

Mexico's active participation in international forums has made possible a number of activities intended to consolidate environmental cooperation structures, including the work of the Commission for Environmental Cooperation (CEC), in which Mexico collaborates with the United States and Canada; as well as the Comisión de Cooperación Ecológica Fronteriza (COCEF) (Border Environment Cooperation Commission) whose programs aid in identifying actions and promoting compliance with environmental standards designed to support sustainable development.

In addition, 108 urban environmental infrastructure projects were developed for the border area and presented for certification by the COCEF. These projects will receive financial support from various sources, mainly the Inter-American Development Bank.

Lastly, among miscellaneous international activities, Mexico's participation in UNEP and the UN Conference on Environment and Development (Earth Summit) deserve mention.

6. Information Systems

The various administrative units of the Federal Solicitor for Environmental Protection are developing information systems designed to help establish, develop, monitor and evaluate environmental law enforcement programs at the national, regional and local levels.

Regarding industrial inspection, the Subprocuraduría de Verificación Normativa (Assistant Public Prosecutor for Statutory Auditing) is classifying pollution prevention and control information on each pollution source. The centralized system will be called the Sistema de Seguimiento de la Aplicación de la Normatividad Ambiental (SSANA) (Follow-up System for the Enforcement of Environmental Regulations).

This system will allow storage of data in a manner that makes it easy to update, use and analyze statistically. Data will include not only the names and specific locations of pollution sources, but also the characteristics of their production processes or activities, raw materials, subproducts and wastes, emission control devices or actions, the relative importance of the sources' polluting potential, inspection visits made, irregularities identified, control measures ordered and deadlines for compliance.



The information system will be designed to produce a wide variety of reports such as:

- The number of inspection visits made in a given period and the results obtained;
- Inspection visits to be made;
- Complaints originating from the community and follow-up;
- Progress or deterioration in compliance with the law by a source, all sources of a given type or all sources located in a given region; and
- The legal/administrative procedures carried out with respect to an inspection visit and those to be carried out, indicating the corresponding deadlines.

Environmental audit information is processed on spreadsheets to compile the information to be published in biennial reports by the Secretariat for the Environment, Natural Resources, and Fisheries.

7. Citizen Participation

In Mexico, systems allowing for citizen participation in environmental issues have undergone considerable evolution in recent years, and have developed in a number of directions, spurred on by both the authorities and non-governmental organizations.

The *LGEEPA* includes a variety of mechanisms for citizen participation, including citizen complaints, advisory councils and consensus-building.

A complaint procedure has been established as a means of citizen participation in the defense and conservation of ecological balance and the protection of the environment. This mechanism can be set in motion by any person having knowledge of any fact, act or omission that gives rise or could give rise to ecological imbalance or environmental damage, in violation of the legal provisions governing matters relating to environmental protection and natural resources.

The complaint procedure is set in motion when a citizen provides the authority, which may be federal, state or municipal, the information necessary to pinpoint the source, along with the complainant's name and address. When a complaint is received by the competent authority (complaints addressing matters under federal jurisdiction are handled by the PROFEPA or one of its state offices), the complainant is identified and the respondent or respondents are advised of the alleged facts concerning them.

The chapter on citizen participation in the aforementioned legislation obliges the federal government to encourage society to participate in and assume responsibility for formulating environmental policies and applying the instruments thereof through information and monitoring activities, and in general, through the environmental actions taken.

To achieve the active participation of society in environment and natural resource related matters, the SEMARNAP, through the agency of the PROFEPA, signs cooperation agreements with organizations of workers, peasants, rural communities, business associations, educational, academic and civic institutions, non-profit educational institutions and in general, anyone interested in environmental conservation. The agreements are signed to promote the ecological actions taken by the federal government to protect the environment and conserve and protect natural resources.

In order to strengthen ecological awareness, joint action is carried out with the community to preserve and improve environmental quality, to foster the rational development of natural resources, and to promote correct waste management. Provision has been made for the



acknowledgment of the most outstanding efforts of the sectors of society that actively collaborate with the federal government.

Another form of citizen participation takes place on the Consejo Consultivo Nacional (National Advisory Council) and the four Consejos Consultivos Regionales (Regional Advisory Councils). The chief function of these bodies, which are made up of representatives of different sectors of society, is to promote the protection, rehabilitation and conservation of ecosystems and natural resources, as well as environmental goods and services, in the interests of sustainable use and development. The participation and interaction of various community, private, academic and business sectors and non-governmental organizations is promoted.

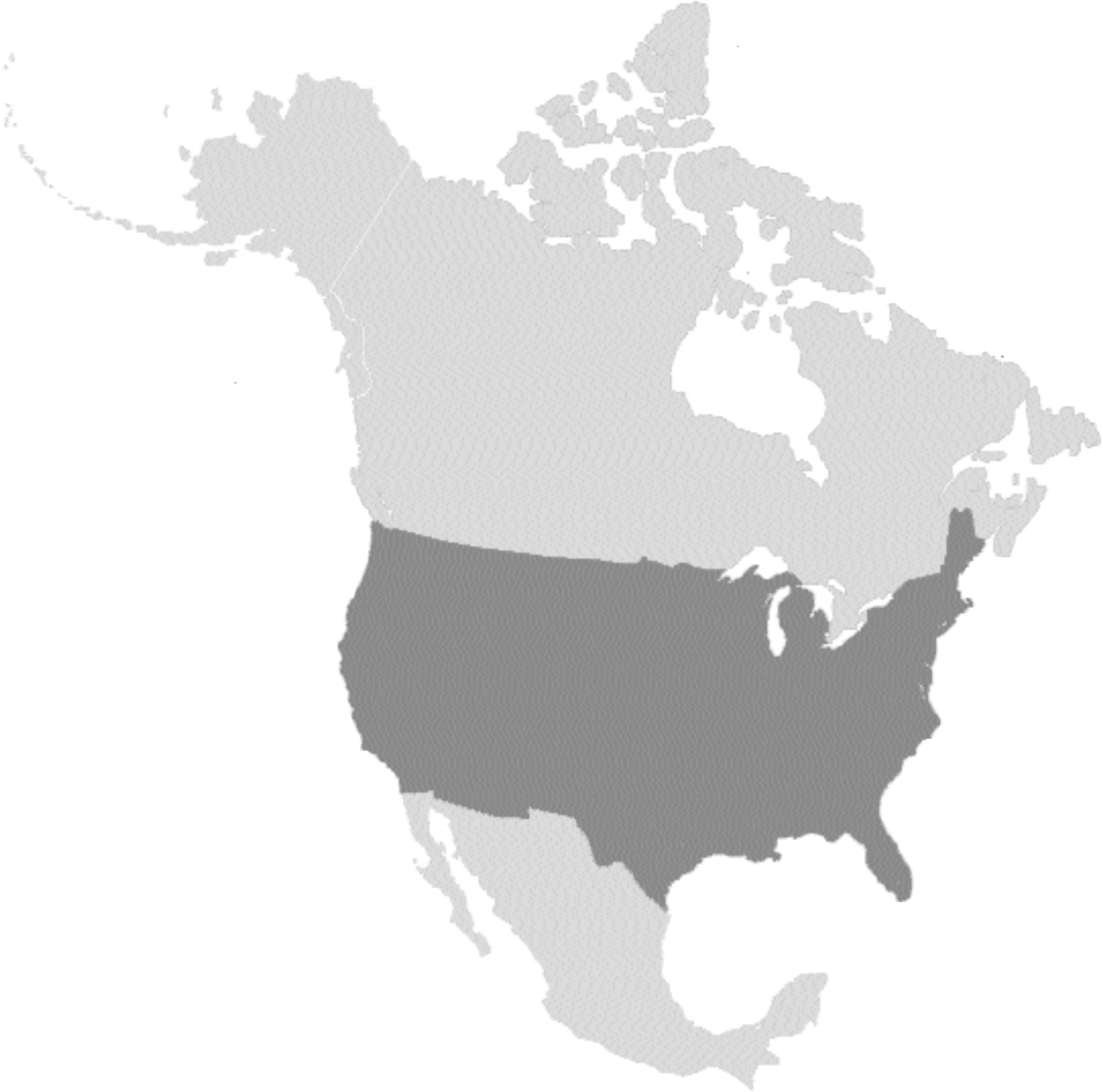
The National Advisory Council is made up of a president, twenty regional advisors, twenty national advisors and a technical secretary. Each Regional Advisory Council is made up of representatives of community organizations, non-governmental groups, advanced teaching and research institutions, business organizations and one representative from each state government.

The functions of the National Advisory Council and Regional Advisory Council are:

- I. To advise the SEMARNAP on the formulation, enforcement and monitoring of national strategies on environmental protection and natural resource use, taking into account the regional and national situation and needs and in accordance with international commitments;
- II. To recommend specific policies, programs, studies and actions for sustainable natural resource use, these recommendations to be presented in the form of program-based projects;
- III. To analyze and issue recommendations in cases referred by SEMARNAP;
- IV. To draw up recommendations for improving laws, regulations and procedures concerning environmental protection and sustainable natural resource use.
- V. To coordinate its activities with its international counterparts in order to share experiences.
- VI. To comment on guidelines governing the participation of the SEMARNAP in international forums.

The National Advisory Council has set up a task force to meet commitments stemming from the COCEF, whose programs aid in identifying activities and promoting compliance with environmental standards targeting sustainable development. Another task force was set up to address matters relating to environmental and natural resource protection relating to the North American Free Trade Agreement. This task force is made up of fifteen members, including a representative of the COCEF.

UNITED STATES COUNTRY REPORT





UNITED STATES:

EXECUTIVE SUMMARY

In the area of pollution control, the Environmental Protection Agency's (EPA) current and projected programs represent a significant change in strategic direction, shifting from the traditional focus on media-specific formal enforcement activities, to a balanced program of compliance assistance and enforcement. Its objectives are: to achieve compliance and environmental improvement by using the full range of enforcement and compliance tools available; to organize enforcement and compliance strategies around multimedia, whole facility, industry-based sectors, communities and ecosystems; to build constructive partnerships with state, tribal and local governments and increase involvement of public and environmental justice groups; to measure the results and impact of activities, not just count the activities; and to maintain a strong core program which includes cross-cutting compliance monitoring, inspections, accurate data systems and state/tribal capacity building. EPA is working to ensure equal access to environmental protection for all groups, regardless of socioeconomic or minority status.

The primary mission of the United States Fish and Wildlife Service is the management of and protection of America's fish, wildlife and plant resources and the conservation of these resources throughout the world. Fish and wildlife enforcement activity stresses those species, both domestic and foreign, which are subject to intense illegal commercial trade or illegal hunting activity. Attention is also given to those protected species of fish and wildlife threatened by illegal polluting activity.

Some of the most important national pollution-control and wildlife-protection laws are the *Clean Air Act (CAA)*, the *Clean Water Act (CWA)*, the *Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)*, the *Endangered Species Act (ESA)*, the *Lacey Act*, the *Migratory Bird Treaty Act*, the *National Environmental Policy Act (NEPA)*, the *Resource Conservation and Recovery Act (RCRA)*, and the *Toxic Substances Control Act (TSCA)*.

Altogether, more than 18 separate national agencies administer more than 80 different environmental statutes. This report focuses on two agencies in the Executive Branch of the national government: EPA and the United States Fish and Wildlife Service of the Department of the Interior (DOI). EPA is organized into a headquarters office in Washington, D.C. and ten regional offices located in major cities around the nation. DOI has a similar headquarters-regional organizational structure.

Each of the 50 states of the United States share concurrent jurisdiction over its environment with the national government. However, this is a conditional jurisdiction in that state laws and regulations cannot be less restrictive than national laws and regulations. Where the national laws are silent, the states are unrestricted in their jurisdiction.

In the United States, the states and their local authorities handle the largest number of enforcement cases. Most cases are resolved administratively by state and national agencies using warning letters and notices of violation that result in civil administrative settlements (consent orders) or, if necessary, in administrative hearings before a national or federal administrative law judge. While national court cases are brought by the United States Attorney General in federal or national court, state and local (district) attorneys may also initiate environmental cases in state courts.



States may be authorized (by delegation or program approval) by EPA to issue permits and take enforcement actions under national pollution control programs. States with authorized programs issue the majority of all permits granted pursuant to these laws, conduct the largest number of facility inspections and initiate most enforcement actions against violators. States also have their own independent instruments and authorities for regulating pollution. Generally, these authorities are not preempted by national law, unless they are inconsistent with, or less stringent than, the national programs. In states with authorized pollution control programs, the national government's role is limited to supporting the state programs and monitoring the state programs to ensure that their actions are appropriate and consistent with nationally established policies and standards.

The annual EPA Headquarters/Regional Memorandum of Agreement is the vehicle EPA uses to establish its enforcement program and initiatives for each fiscal year. Memoranda of Understanding also enable EPA to enter into agreements with other national departments or agencies. State and local enforcement agencies have formed regional enforcement associations to coordinate enforcement efforts, exchange information and share experiences for educational and training purposes. EPA maintains a close partnership with numerous environmental associations and the four regional environmental enforcement associations to ensure coordination and communication of enforcement and compliance policies.

United States Fish and Wildlife Service establishes its priorities for investigative activity and then negotiates cooperative enforcement agreements with state wildlife law enforcement agencies, Indian tribes and other national agencies to fulfill the goals of the Service's law enforcement program. The cooperating agency may then delegate that national or federal authority to its full-time law enforcement officers.



UNITED STATES :

REPORT ON ENVIRONMENTAL ENFORCEMENT

The United States country report provides a description of the framework for many of the environmental enforcement and compliance programs of the United States, as well as a discussion of key aspects of those programs. This discussion is limited to pollution control and certain aspects of wildlife protection because the parties to the NAAEC agreed to limit their initial trilateral cooperation on enforcement issues to those areas. Much of the discussion focuses on the inter-relationships between state governments and the national agency responsible for pollution control, the EPA. The report also describes fish and wildlife protection programs administered under the DOI by the United States Fish and Wildlife Service. In future annual reports, the United States plans to address other environmental enforcement and compliance programs not addressed here, many of which have been very important to the protection of environmental and wildlife resources in the United States.

1. Definitions

In the United States, the words “enforcement” and “compliance” are used as follows*:

“Enforcement”

“Enforcement” refers to the use of legal tools to assist in and to compel compliance with environmental requirements, and in some contexts to establish liability or responsibility for harm to the public or environment from polluting activities. For simplicity, “environmental enforcement” has sometimes been used as a shorthand for the term “compliance and enforcement programs”. Used this way, the term encompasses the full range of approaches to gain compliance including inspections and other forms of compliance monitoring (e.g., to find information needed to determine compliance status and to identify violations), legal actions to impose some consequences for violating the law, and compliance promotion activities such as technical assistance and subsidies. Some may prefer to speak in terms of “compliance and enforcement programs” to ensure that this broader meaning is clear.

“Compliance”

“Compliance” is a state in which environmental requirements are met and maintained. Environmental management decisions to address environmental problems include many different choices, ranging from voluntary programs to traditional regulatory approaches, and from economic approaches to liability schemes where individuals or groups are accountable for consequences of their actions, or involving combinations of these approaches. Compliance is a concern only where requirements are a part of a management scheme to achieve environmental goals, whether it involves traditional regulatory approaches or economic-based requirements, such as the payment of fees.

* The definitions are drawn from the Proceedings of the Third International Conference on Environmental Enforcement (Oaxaca, Mexico, April 25-28, 1994, Volume 1, pp. 15-16). Although these definitions represent an emerging international consensus, they apply only to the United States country report portion of the 1995 Annual Report unless specifically noted.



2. Legislative Framework

Brief Summary of Constitutional Framework of the United States

In the legal system of the United States, the overarching source of authority for environmental law is the national Constitution. The Constitution establishes and demarcates the powers of the three branches of the federal government, the legislature (Congress), the executive branch (the President and the federal agencies) and the judiciary. It also provides the foundation for the relationship between the federal and state governments. The separation of powers among the three federal branches, and the relationship between the federal government and the states, provide the framework through which the federal and state governments enact, implement and enforce the environmental protection laws. In this report the terms “national” and “federal” are used interchangeably to refer to the national United States government.

Federal authority over public and private parties in the field of the environment is premised primarily on the Commerce Clause in Section 8 of the Constitution. The Commerce Clause, which provides the United States Congress with authority to regulate interstate and foreign commerce and commerce with Indian tribes, has been broadly interpreted by the federal courts to empower Congress to enact environmental statutes applicable to states, municipalities and private enterprise. Before joining together under the Constitution, the states had general sovereign powers which included broad authority to regulate the environment and manage natural resources. Amendment X of the Constitution reserves for the states those powers not delegated to the United States nor prohibited to the states.

A number of constitutional provisions safeguard rights to participatory democracy. The United States legal system offers many opportunities for public participation in the formulation of environmental laws, the review of proposed rules and regulations for implementing them and their enforcement through the judicial process.

National and State Environmental Laws of the United States

i) National Laws

Following the explosion of environmental consciousness signaled by Earth Day, April 22, 1970, the national government in the 1970s and 1980s enacted numerous laws to protect the environment. Some were general environmental assessment laws. Others were specific statutes to protect natural resources (such as coastal resources, fisheries, marine mammals and endangered species), environmental media (such as air, surface water and ground water) or to control specific types of pollution (such as hazardous waste and toxic substances). The new statutes provided mechanisms for administrative, civil and criminal enforcement. By Executive Order of the President (#12088, “Federal Compliance with Pollution Control Standards” October 13, 1978), federal facilities are required to comply with applicable environmental standards.

Of United States national pollution control and wildlife protection statutes, the most important are the following:

- The *Clean Air Act* provides for the adoption of federal standards for specified air pollutants;
- The *Clean Water Act* imposes technology-based and water-quality-based effluent standards;



- The *Comprehensive Environmental Response, Compensation and Liability Act* (the “Superfund Law”) mandates cleanup of abandoned hazardous waste sites. A related statute, the *Emergency Planning and Community-Right-To-Know Act (EPCRA)*, gives the public access to information on the magnitude of toxic emissions;
- The *Endangered Species Act* prohibits the taking of and trade in species of fish, wildlife and plants that are listed as threatened or endangered. The Act implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- The *Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)* provides for the registration of pesticides with EPA before they may be sold or distributed in commerce and provides for enforcement actions against unauthorized sale and distribution of pesticides;
- The *Lacey Act* prohibits shipment of illegally taken wildlife or plants and controls wildlife and plant imports/exports;
- The *Migratory Bird Treaty Act* prohibits the unauthorized taking of or trade in any migratory bird covered by an international convention for its protection;
- The *National Environmental Policy Act (NEPA)* requires federal agencies to consider in advance the environmental impacts of planned major federal actions, and to disclose these impacts to decision makers and the public;
- The *Resource Conservation and Recovery Act (RCRA)* provides for the adoption of federal standards to control hazardous wastes;
- The *Toxic Substances Control Act (TSCA)* establishes federal authority for comprehensive testing and monitoring of potentially toxic chemical substances and mixtures of chemical substances.

ii) State Laws

Because of the size of the nation, the complexity of its environmental programs and the sheer number of facilities to be regulated, environmental programs in the United States rely on shared authority and cooperative arrangements between the national government and the 50 state governments to implement and enforce environmental laws. The states share with the national government, concurrent jurisdiction over the environment. For matters regulated by national law, state laws must be consistent with, or the equivalent to, the national laws, and not less restrictive or protective. Many states had strong environmental programs in place long before national statutes were adopted. Generally, state laws may exceed national standards and may regulate areas that the federal government does not, such as the management of non-hazardous solid “municipal” waste that most, if not all, states regulate. Several states have environmental laws that are more stringent than, or different from, federal laws, or have developed innovative environmental programs that serve as models for other states and for the federal government as well. Those authorities are preempted by national law only to the extent that they are inconsistent or less stringent than the national programs. Conversely, other states have adopted legal provisions which prescribe that state requirements may not exceed national standards. Examples of some state laws follow:

- *Ground Water Permit Act* (Nebraska) and *Ground Water Exploration and Protection Act* (Kansas). Although the federal government has not yet adopted comprehensive groundwater protection legislation, many, if not most states, have detailed permit programs.



- *Massachusetts Toxics Use Reduction Act* imposes mandatory waste reduction objectives on companies which use or generate toxic or hazardous wastes.
- *California Safe Drinking Water and Toxic Enforcement Act* (adopted as Proposition 65 in 1986) requires extraordinary efforts to make the public aware of health risks associated with products or environments to which they are exposed.
- *Environmental Cleanup Responsibility Act* (New Jersey) requires extensive investigation and cleanup of contaminated sites before they are sold or transferred.
- South Dakota Codified Laws Ann. 1992 prohibits state rules that have been promulgated pursuant to various national environmental statutes from being more stringent than any corresponding national law, rule or regulation governing an essentially similar subject or issue.
- Kentucky, New Mexico and North Carolina prohibit state clean air rules from exceeding the minimum national requirements.

Most national pollution control statutes specifically encourage and provide incentives for state governments to adjust their laws so that they parallel minimum national requirements, and most states have done so. States may be authorized or delegated the authority to issue permits and take enforcement actions under national programs if their programs are approved by the national EPA. Many states have developed their own departments of environmental protection and like institutions. States with nationally approved programs issue the majority of all permits granted pursuant to national laws, conduct the largest number of facility inspections and initiate most enforcement actions against violators.

In states with nationally approved pollution control programs, the national government's role is limited to establishing national policy, developing national pollution standards, supporting the state program, and monitoring the state programs to ensure that their actions are appropriate and consistent with national policies and standards. This cooperative regulatory arrangement ensures the key role for states in environmental enforcement, while reserving the national government's authority to determine whether the state programs meet the national requirements in delegated or approved programs. The national government has the authority to step in and take over where a state fails to perform.

With regard to the protection of fish and wildlife, enforcement is essentially criminal. For the criminal investigation of violations of fish and wildlife laws and pollution control laws, the states and national government share concurrent jurisdiction. For all criminal law enforcement, there is no procedure for national or federal delegation to states of program authority. Within their respective states, state law enforcement officers have independent and parallel authority with national law enforcement officers. Depending on the coverage of the laws, either national or state law may control, and sometimes both are applicable. In such cases, federal-state collaboration is especially appropriate. Officers traditionally work together closely and are encouraged to cooperate.

Legislative Actions that Directly Affect Enforcement in the United States

Budget bills and other pending legislation which may affect enforcement were unresolved at the time of this report. Major developments will be included in later reports.



3. Enforcement Powers

Enforcement Powers Exercised by Government

i) National and State Pollution Control

National pollution control statutes of the 1970s and 1980s were written with specific provisions to ensure enforceability. These include (1) clearly written (and thus enforceable) behavioral prohibitions required of the regulated community, (2) governmental power to monitor compliance, (3) mechanisms to respond appropriately to violations and (4) provision for imposing sanctions upon violators. Those sanctions are designed to motivate environmentally responsible behavior. Punishment of violators is intended to stimulate voluntary compliance by the law-abiding members of the regulated community and to remove unfair competitive advantage which might be gained by disregarding environmental requirements.

Enforcement begins with clear definitions of prohibited behavior either in the law or in regulations linked to sanctions for violations. Environmental laws typically define a number of prohibited behaviors (such as discharging a regulated pollutant without a permit, or tampering with a discharge monitoring device to cause it to produce false measurements). Monetary penalties, such as \$25,000 for each violation, are authorized, and in addition, prison time (perhaps up to five years) is authorized upon a criminal conviction. Where a violation continues, each day is a separate violation, so that the potential penalties and the deterrent effect may soon become very large.

Enforcement of pollution control laws relies upon the authority to gather information to monitor behavior for compliance or non-compliance (for violations). National and state statutes typically require the regulated community itself to self-monitor, to keep self-monitoring records available for inspection, and to report results periodically to EPA or the state regulatory agency. The failure to do any of these activities in a thorough and accurate manner is itself a violation, and may be a criminal offence if done knowingly or intentionally.

Furthermore, EPA and states are authorized to gather compliance information themselves. Tools available range from a simple letter that must be answered, to a full criminal search warrant under which officers, if justified, may search at any time. Most information gathering is done between these extremes under authority to conduct non-criminal, or civil inspections. These inspections are conducted during ordinary business hours, may or may not be announced in advance, and may not be resisted if the inspectors have a search warrant. Government inspectors typically have the authority to copy all records relating to the regulated matter and to take samples of regulated substances for laboratory analysis.

Such compliance-monitoring information is combined with any complaints, tips or leads from citizens or disgruntled employees of the regulated facility or business competitors, and with any ambient monitoring data that, although not source-specific, may indicate that there is an environmental problem within the area where the facility is located. All collected facts are analyzed, violations of law are noted and enforcement responses are considered.

The national government and most state governments are empowered to conduct a wide range of enforcement responses. They may obtain injunctions against polluters and recover damages. They may collect administrative, civil court and criminal penalties, and they may put criminal violators of environmental laws in jail. A significant feature of the national pollution control statutes is their provision of authority for the government to impose high monetary penalties on violators, and thus to implement the polluter pays principle by removing the economic benefit of non-compliance. Many of these statutes also enable private citizens, in certain circumstances, to enforce laws against polluters.



Each year, the state and national governments use enforcement remedies to require hundreds of millions of dollars worth of cleanups and installation of pollution control equipment, and to impose tens of millions of dollars in civil penalties. Violators of environmental laws are also learning that willful non-compliance will be criminally prosecuted. Where disregard causes significant harm and there is clear evidence that the violator knew such harm was a likely result from its conduct, stiff criminal penalties, including substantial fines and actual jail time, can be imposed. As a result of potentially large penalties, most companies are concluding that they cannot afford to ignore or discount the environmental consequences of their actions.

Enforcement of pollution control laws is the primary responsibility of various state authorities in those states with approved or delegated programs. Environmental or health agencies frequently have the authority to issue administrative penalty orders for violations. States also use judicially enforced civil penalties in the enforcement programs. Civil penalty cases are prepared and filed by the offices of state attorneys general in most jurisdictions. Finally, states are increasingly using criminal sanctions to enforce environmental laws. In most states that pursue environmental crimes cases, the state attorney general plays a role in either prosecuting or investigating the criminal activity. In many jurisdictions, local district attorneys are also involved in criminal prosecution.

ii) Fish and Wildlife

The Division of Law Enforcement of the United States Fish and Wildlife Service relies primarily on the *ESA* and the *Lacey Act* to control imports and exports of wildlife and plants. Additional enforcement powers derive from implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) through the *ESA*. In the United States, CITES is the major international agreement for the control of trade in wildlife and plants. For primary protection of both domestic and foreign species of plants and wildlife, enforcement is delegated to criminal investigators throughout the United States and wildlife inspectors at United States ports of entry. Both criminal and civil sanctions are utilized in the protection of fish, wildlife and plants.

Description of Citizen Enforcement Powers and Rights

An important feature of the national statutes and the laws of many states is the strong emphasis on public participation. They provide for public involvement in the administrative development of regulations and standards, and they create rights of action that enable private parties to obtain judicial review of rules, to challenge their application, to enforce them against private parties and, in specified circumstances, against the government. Many statutes contain reporting requirements, such as those requiring firms to report the amount of certain substances emitted into the environment. In many cases, these reports are publicly available. Increased public access to information and opportunities for participation have led to an increase in the number of non-governmental environmental organizations that have become actively involved in monitoring polluters and assisting government enforcement efforts.

State and national enforcement programs are supplemented by actions brought by private citizens to directly enforce environmental statutes against private or public entities whose violations of those statutes have injured them or are contrary to the public interest. Many environmental statutes extend private litigants' rights and remedies far beyond the tort liability that exists in common law. Federal environmental laws allow private citizen enforcement against the government itself to a greater degree than nearly any other body of American law. Some states also have general statutory provisions designed to ensure that the environment is protected; one example is the *Minnesota Environmental Rights Act*, which allows any person in the state to sue any other person to prevent pollution,



impairment or destruction of the environment. While the money recovered must still be paid to the public treasury, the traditional United States rule that each party bears its own costs of litigation has been altered so that successful private litigants usually recover their litigation costs.

For purely private suits based on common law tort liability, the process of filing civil environmental cases in either the federal or the state court system is generally the same as for other types of civil actions. Any private person may file a complaint alleging an environmental grievance. The plaintiff must allege that the matters complained of fall within the court's jurisdiction. The matter then proceeds to litigation in the normal way, and money recovered is paid, not to the public treasury, but as compensation to the successful litigant.

4. Administrative Framework

State and National Arrangements for Enforcing Environmental Laws in the United States

In the United States, state and local authorities handle the majority of enforcement cases, and most cases are handled administratively, outside of the traditional system of courts. Judicial enforcement is used when enforcement authorities determine that administrative enforcement mechanisms are likely to be inappropriate or ineffective. Most cases are resolved by state and federal agencies using warning letters and notices of violation that result in administrative settlements ("consent orders") or, if necessary, in administrative hearings. Most state agencies and the national EPA can order measures to achieve compliance, permit revocation, permit the assessment of monetary penalties, and sometimes allow other corrective action to be taken.

i) State Systems

The administrative law system regarding environmental violations varies from state to state. In most states, administrative hearings are held before administrative law judges and follow written procedures much like courts of law. However, in most cases, various procedural and evidentiary requirements found in a court of law are not strictly followed in an administrative hearing. For example, in many states the rule of evidence regarding hearsay evidence is relaxed to permit a wider latitude of hearsay evidence to be introduced. In most states, administrative orders issued after hearing carry the same weight as a court order after trial. In some states, the administrative decision after hearing can only be appealed to a court of law on a limited number of issues. In other states, the administrative decision may be considered only an advisory position that the court of law has the option to follow or not.

The state court systems are usually divided into trial courts and appellate courts; and into civil trial courts and criminal trial courts. The jurisdiction of trial courts will vary from state to state. For example, some states will determine jurisdiction by geography, others by monetary amounts, some by a combination of factors. State courts generally handle environmental matters as part of their overall jurisdiction as a civil court or a criminal court. Most states can trace their basis for jurisdiction over environmental issues back to the common law issue of public nuisance. Some states confer jurisdiction for the protection of the environment to their state constitutions. In other states, the legal mechanisms for the protection of the environment are found strictly in the state's statutory scheme. There are few states that have created courts which deal with the environment exclusively. In general, trial courts are where the factual and legal issues of an environmental dispute are initially determined. Under certain circumstances after a trial court has rendered a decision, the



matter may be appealed to an appellate court. Usually, the appellate court determines only legal issues and does not receive or determine factual issues. Depending upon the state, there may be several tiers of appellate courts within a state. In a few cases where the legal right involved may also be a national statutory or constitutional provision, after the highest state appellate court has rendered a decision, the matter may be appealed to the highest national court, the Supreme Court of the United States.

ii) National System

Some highly significant or complex environmental cases are litigated in the national court system established under provisions in the national Constitution, which coexists with the system of state and local courts established under the constitutions and laws of each of the states. The national court system is essentially a three-tiered system. Cases usually enter the system at the district court level, and appeals are usually first heard at the appellate (circuit) court level. The United States Supreme Court is the final appellate level. The nine justices of the Supreme Court, and all of the judges of the national or federal district and appellate courts, are appointed by the President, with life tenure, upon the advice and consent of the United States Senate.

National administrative law judges handle administrative matters arising from determinations made by national agencies. (Unlike national judges, administrative law judges are employees of the agency for which they work.) Several national agencies handling environmental matters, including EPA, rely on administrative law judges to resolve most disputes at the administrative level. Because appeals from those administrative determinations may proceed directly to the national appellate courts, a portion of the appellate courts' caseload involves environmental matters.

National district court judges handle criminal cases and those civil cases that are not handled administratively. The United States Department of Justice (DOJ), headed by the Attorney General of the United States, provides to EPA and the United States Fish and Wildlife Service legal representation in all cases in the national district courts and the appellate courts. Agencies like EPA and the United States Fish and Wildlife Service do field investigations and then refer appropriate cases to DOJ for further development and filing in district court. DOJ can use civil discovery procedures or criminal grand juries to complete the development of the facts as fully as possible before trial. DOJ appellate specialists handle all appeals.

Over 90 per cent of all national civil cases, including environmental cases, are settled by mutual agreement or otherwise disposed of without proceeding to a trial. If, however, a case proceeds to trial, then the trial can be held before a jury, or before the judge. To prevail in civil environmental cases involving disputes over factual matters, the government must meet a "preponderance of the evidence" standard; that is, the plaintiff must show that it is more probable than not that events occurred as the government alleges. Sanctions and relief in civil cases may include monetary penalties, awards of damages, and injunctive and declaratory relief. In some cases, litigants may settle on an agreement that a defendant will undertake projects beneficial to the environment.

An environmental criminal investigation can lead to an arrest or the filing of criminal charges (an indictment). National criminal cases must be brought by the United States Attorney General. In cases of environmental crimes, the government must prove the defendant guilty beyond a reasonable doubt. Criminal sanctions in environmental cases include fines and imprisonment.

With regard to the protection of fish and wildlife, cases are prosecuted through the respective court systems: when investigated by the United States Fish and Wildlife Service,



a case is prosecuted nationally; when a state natural resources police or fish or game agency investigates, prosecution is in the state court. Over the past decade, as investigations have become more complex to combat organized criminal syndicates involved in activities such as international wildlife smuggling, there has been increased cooperation between national, state and foreign law enforcement agencies.

Enforcement and Compliance Personnel for EPA and United States Fish and Wildlife

EPA - During fiscal year 1995, personnel figures in workyears for EPA headquarters and the 10 regional offices were as follows. The enforcement number includes compliance monitoring activities such as inspections.

<u>EPA</u>	<u>Enforcement</u>	<u>Compliance Monitoring</u>
Workyears:	3,556.7	299.9

Fish and Wildlife Service - During fiscal year 1995, personnel figures in Full Time Equivalents (FTE) were as follows. This includes approximately 250 special agents who are criminal investigators with full law enforcement authority and 90 wildlife inspectors at ports of entry to examine shipments.

<u>Fish and Wildlife</u>	<u>Enforcement</u>
FTE:	463

Note: Data on state resources are not available.

Enforcement and Compliance Budget for EPA and United States Fish and Wildlife

<u>EPA</u>	<u>Enforcement</u>	<u>Compliance</u>
Total Dollars:	\$383,040,100	\$25,566,900

<u>Fish and Wildlife</u>	
Total Dollars	\$35,525,000

Note: Data on state resources are not available.

Laboratory Capability

Most criminal analysis in national cases is carried out by the National Enforcement Investigations Center (NEIC) in Denver, Colorado and EPA regional labs. NEIC's staff of 126 has expertise in a wide spectrum of enforcement – criminal, multi-media, civil and Superfund cases and projects. They conduct complex on-site investigations at the request of regions, headquarters and in some cases for states; provide sophisticated laboratory analysis (e.g., scanning electron microscopy and inductively coupled argon plasma mass spectroscopy); develop methods for forensic chemistry; serve as expert witnesses for testimony; contribute to settlement negotiations; conduct financial analysis to support investigations, trials, and settlements and lend legal expertise in investigations.

Private contract laboratories conduct the majority of routine analyses related to national or federal civil cases. Other selected analyses are performed by EPA regional and NEIC laboratories. Due to shrinking budgets for enforcement, there is currently an excess of



private laboratory capability in the United States for routine environmental and hazardous waste analyses. Estimates of the relative share of work done by the type of lab are:

80 per cent	- Private labs
20 per cent	- United States EPA Regional labs
5 per cent	- United States EPA, NEIC

In 1989, the United States Fish and Wildlife Service opened the Clark R. Bavin National Fish and Wildlife Forensic Laboratory. This facility is believed to be unique in the world in its capability to apply police crime lab techniques to link the human suspect, wildlife victim and crime scene through the examination and comparison of physical evidence. The laboratory supports investigations by national, state and foreign law enforcement agencies, and also conducts extensive research to generate identification methods for the new field of wildlife forensics.

Distribution of Authorities

In the national government, the Council on Environmental Quality (CEQ) was established in 1970 to review, appraise and make recommendations to the President regarding the programs and activities of the national agencies as they affected the quality of the human environment. The United States Environmental Protection Agency controls pollution. The National Oceanic and Atmospheric Administration (NOAA) manages programs relating to coastal and marine fisheries and atmospheric sciences and forecasting. The Fish and Wildlife Service of the DOI protects wildlife and plants protected by national laws and international treaties. Altogether, more than 18 separate national agencies administer more than 80 different environmental statutes. The DOJ is responsible for conducting civil and criminal environmental litigation in the federal courts.

EPA is a regulatory agency in the Executive Branch of the United States Government. The United States Fish and Wildlife Service is a part of the DOI. Both EPA and DOI are controlled by the President, who appoints their principal executives, subject to Congressional confirmation. EPA has organized into a headquarters in Washington, D.C., and 10 regional offices located in major cities around the nation. DOI has a similar headquarters-regional organizational structure; DOI deploys its investigators throughout the nation and its wildlife inspectors at ports of entry to the United States. Each EPA Regional Office is responsible for working in partnership with the states located within the particular region. Although DOI (because it manages national or federal lands) generally operates with greater independence from the states, Fish and Wildlife Service investigators are not restricted to national lands and thus operate everywhere and in close cooperation with their state fish-and-game counterparts.

The 50 states all differ, but in general are organized and operate with more similarities than differences between themselves and the national government. Some states have reorganized to consolidate environmental programs under one agency. For example, in the state of New York, the Department of Environmental Conservation combines conservation, wildlife management and forest, marine and mineral resource programs with responsibilities for water and air pollution control and solid and hazardous waste management. In California, the state's EPA oversees and coordinates the activities of the Air Resources Board, the Water Resources Control Board and the Waste Management Board, while the separate Resources Agency, contains the Departments of Conservation, Fish and Game and Parks and Recreation, among other units. When state judicial enforcement is needed, a state environmental regulatory agency usually must coordinate with other state or local authorities such as the state or local police and the state attorney general or local district attorney.



Because many environmental violators are mobile, state and local agencies, in cooperation with EPA, have formed four regional associations that cooperate in sharing information, coordinating joint enforcement efforts and providing training (the Northeast Environmental Enforcement Project, the Southern Environmental Enforcement Network, the Midwest Environmental Enforcement Association and the Western States Hazardous Waste Project). In addition, there are environmental law units within the National Association of Attorneys General (NAAG) and the National District Attorneys Association (NDAA) that also share information and develop policy. National authorities provide support to and maintain close continuing relationships with all of these state organizations. When needed to address large or complex environmental violations, national, state and local authorities will pool their resources to form task forces to most effectively investigate and prosecute offenders.

An expanded role for local government authorities in environmental protection is receiving increasing consideration in the United States. In recent years, the number of facilities subject to environmental control has grown dramatically with tighter regulation of toxic substances frequently used or discharged by smaller facilities. The enforcement workload generated by these changes is enormous and, in many cases, beyond the resources available at the state level. For example, a recent audit of Minnesota's environmental program estimated that dry-cleaning facilities generating hazardous waste could be inspected, given current state staffing levels, only once in every 100 to 300 years. The rapid increase in workload has resulted in a new look at the role local governmental officials could and should play in issuing permits and enforcing environmental laws.

5. Enforcement Policies

Environmental Protection Agency

In EPA's first 23 years, the government relied predominately on a deterrence approach based on the imposition of substantial fines and penalties to ensure compliance. With the 1994 reorganization of EPA and the creation of the Office of Enforcement and Compliance Assurance, the current focus is on combining traditional enforcement actions with compliance activities to foster environmental accountability between industry and the public.

Although relatively high rates of compliance were achieved, EPA concluded that relying predominately on a deterrence-based enforcement program has several limitations. First, the definition of program success often consists of counting activities (the number of enforcement actions taken or penalty dollars collected). This measure reveals little about the actual state of compliance or the impact of enforcement actions. Second, the problem of defining success leads to focusing on means instead of ends. In reality, enforcement actions are a means to achieving the larger ends of compliance and environmental protection. Third, deterrence is largely reactive, identifying violations after they occur and preventing them only as a by-product rather than through proactive efforts to prevent them from occurring in the first place. Fourth, deterrence focuses largely on punishing violators and not on enhancing or rewarding voluntary compliance. The deterrence approach has come under increasing strain as the number of environmental regulated entities continue to grow, while the resources available to assure compliance through enforcement actions continue to shrink.

The traditional enforcement elements, while still an important part of the program, are now being integrated into a broader approach. The emerging new approach to compliance within the EPA has six distinct elements.



A broader mission. The new approach advances a broader mission of maximizing compliance and promoting environmental accountability. The advantage of this broader mission is that it frees government compliance organizations to develop and use a wider range of tools (not just enforcement actions) to enhance accountability. Enforcement actions become one of several tools used to achieve the larger goal of environmental protection.

A set of new relationships. Under the new approach, both industry and the public become resources that can serve the broadened mission of environmental accountability. In particular, agencies are realizing the potential power of enlisting the public and appropriate segments of the regulated community in ensuring compliance and promoting behavior that goes beyond meeting prescribed regulations.

Shifts in strategic assumptions. The new approach places greater emphasis on setting priorities and directing government's compliance resources toward problems of greatest concern. It moves toward a problem-oriented view of compliance work and a de-emphasis of incident-by-incident, case-by-case processing. As a result of this, environmental compliance organizations attempt to identify environmental or human health risks, analyze the underlying causes of non-compliance, and apply the appropriate tools to the problem. The new approach also moves from single pollutant medium (e.g., air, water, land) or single pollutant (e.g., asbestos) to targets that are increasingly multi-media and multi-pollutant. For example, instead of targeting violations of a particular law, the new approach would target industry sectors, communities or geographic areas, and seek compliance with the full range of environmental requirements that apply to those entities.

A more diverse mix of tactics. The new approach uses a broad range of tools. While enforcement actions will remain a primary tool under the new approach, other tools will also be used to promote environmental accountability. These include compliance assistance to prevent violations, compliance incentive programs to encourage and facilitate responsible behavior, programs to recognize excellence in environmental management, and affirmative use of compliance data to inform the public about environmental performance of companies or facilities. This means that a significant new task of the Agency will be matching the appropriate tool or combination of tools to each problem being addressed.

Multi-media approach. EPA has adopted a multi-media, whole-facility approach to enforcement and seeks to incorporate this perspective in targeting, developing and delivering compliance assistance, conducting inspections and taking enforcement actions.

More sophisticated measures of effectiveness. The final element of the new approach is the development of more sophisticated and meaningful measures of effectiveness. Under the deterrence approach, counting enforcement actions taken and penalty dollars collected became the measure of success. Under the new approach, environmental compliance organizations are working to find measures which reflect the level of compliance among sectors of the regulated universe and characterize the environmental improvements and benefits resulting from environmental compliance. EPA and other environmental compliance organizations at the national, state and local levels are beginning to put in practice many of these elements.

Several major policies were issued during 1995, that implement EPA's new thrust towards delivering compliance assistance and encouraging compliance promotion in the regulated community and the public. They are:

- **Environmental Leadership Program.** The 10 companies and two federal facilities participating in the pilot project will pioneer new, common-sense, cost-effective ways to comply with environmental laws – and to go beyond compliance and define the



excellence threshold for environmental management. The participants will receive public recognition and be granted a period to correct violations.

- **Self-Disclosure Incentives Policy.** EPA originally published its *Environmental Audit Policy* in 1986. *The Self-Disclosure Incentives Policy*, an update of the 1986 Policy, provides substantial incentives for facilities to voluntarily identify, disclose and correct environmental violations. The incentives for self-disclosure are provided for companies that conduct internal self-evaluations, and then act on the findings by voluntarily disclosing and promptly correcting violations. Where violations are discovered using either audits or other methods that meet the EPA's 'due diligence' criteria, EPA will eliminate the gravity, or punitive, element of the penalty for companies that disclose and fix the violations. Where violations are discovered by the regulated entity using other means, and all other conditions are met, EPA will reduce the gravity-based penalty by 75 per cent. EPA will also not recommend criminal prosecution where specified conditions are met. However, EPA reserves the right to collect the economic benefit of non-compliance, i.e., the amount gained as a result of non-compliance, to preserve a level playing field in which violators do not gain a competitive advantage over others that did comply with the law.
- **Supplemental Environmental Projects (SEPs).** SEPs are environmentally beneficial projects which a defendant agrees to undertake in settlement of an environmental enforcement action, but which the defendant is otherwise not legally required to do.

“Environmentally beneficial” means that the SEP must improve, protect or reduce risks to public health or the environment at large. The cost of a SEP is a factor in establishing an appropriate settlement penalty to be paid by the defendant. SEPs enable EPA’s administrative and civil judicial settlements to provide extra environmental benefits to the public, while also assuring that violators continue to pay penalties that both reflect the seriousness of the violation and eliminate the economic advantage of non-compliance.

- **Compliance Incentives for Small Business.** A new policy states that EPA will exercise its discretion to refrain from initiating an enforcement action seeking civil penalties whenever a small business makes a good faith effort to comply with environmental requirements by receiving compliance assistance (where there is no criminal behavior and no significant environmental or health threat). Discretion may also be considered when a small business corrects such a violation within a specified correction period.

United States Fish and Wildlife

Law enforcement is one of the basic tools that the United States Fish and Wildlife Service uses to achieve its wildlife management goals. The primary objective of the Service’s law enforcement program is to support the achievement of other Service program goals. This is accomplished through the control of human interaction with wildlife resources by enforcing existing laws and regulations; by promoting and encouraging voluntary compliance with national wildlife laws through public education; and by fulfilling Service law enforcement obligations as contained with treaties, international agreements and other international forums.



6. Enforcement Strategies

Strategies Used

The yearly EPA Headquarters/Regional Memorandum of Agreement (MOA) is the vehicle EPA uses to establish its enforcement program and initiatives for the next fiscal year. EPA's projected program shifts from the traditional focus on media-specific formal enforcement activities to a balanced program of compliance assistance and enforcement with the following strategic objectives:

- Achieve compliance and environmental improvement by using the full range of tools available and selecting the tool or combination of tools most appropriate for the problem. In formulating the appropriate strategies to address these problems, such factors as the nature and extent of risk to human health and the environment, the compliance profile of a particular violator or sector, and the level of community interest should be examined.
- Organize enforcement and compliance strategies around multi-media, whole facility, industry-based sectors, communities, ecosystems and other entities that reflect the multi-media nature of environmental problems. Whenever appropriate, regions, states, tribes and local partners should employ a multimedia perspective in targeting, developing and delivering compliance assistance, conducting inspections and taking enforcement actions.
- Impose the polluter pays principle on violators. EPA's interpretation of pollution control laws requires polluters to internalize the environmental costs of their discharges that were being passed on, or externalized, to the environment. Calculating the economic benefit a company gained by breaking the law is an important part of the penalty computation.
- Build constructive partnerships with state, tribal and local governments and increase public involvement. EPA is working to increase the involvement of our partners in setting priorities and developing strategies to address environmental and non-compliance problems. The partnership between EPA headquarters, EPA regions, states and local governments must include consensus on a clear assignment of roles and responsibilities.

These roles should use the inherent strengths that each party brings to the relationship. EPA will also enlist the public in its efforts to increase compliance by ensuring the public has access to data about environmental conditions, and improved access to data regarding non-compliance patterns.

- Measure the results and impact of activities, not just count the activities themselves. An increasing emphasis is being given to improving the Agency's capacity to measure changes in compliance rates and environmental improvements that result from Agency enforcement and compliance assistance initiatives and activities.
- Maintain a robust enforcement and compliance assurance program. While the Memorandum of Agreement describes some new elements in the enforcement and compliance assurance program, regions and states are encouraged to maintain a strong core program of cross-cutting functions such as compliance monitoring and inspections, complete and accurate data systems, case development and management, state/tribal capacity building, enforcement actions and compliance assistance. Headquarters and regional managers and staff will work cooperatively to balance and blend national priorities, core program activities and regional and state needs.



Balance Between Enforcement and Compliance Promotion

With reduced budget allocations, the agencies must carefully analyze what mix of enforcement and compliance promotion activities produce the best overall environmental results. In some situations, the effective mix of enforcement tools employed for the resolution of one problem or group of related problems may require outreach and compliance assistance or promotion activities combined with compliance monitoring through inspections and self-audits. The new approach to ensuring compliance with environmental laws strives to foster accountability toward environmental obligations from the regulated community and the public. Underpinning the enforcement program is the continued vigorous, timely and quality enforcement of violations of environmental or health risks or patterns of non-compliance. Traditional enforcement and compliance monitoring are still activities performed by the majority of EPA personnel.

Targeting Enforcement Resources

i) EPA

While the Memorandum of Agreement describes the national strategic objectives for assuring compliance, it also allows the regional offices flexibility in meeting these objectives. Regions may request adjustments to previously identified headquarters, priorities and propose alternative priorities or implementation strategies for specific problem (e.g., the use of compliance assistance in place of compliance monitoring inspections for a particular initiative, greater use of multi-media cases and reduced production of certain single-media cases). The FY 96/97 priorities are organized around: community-based protection, industry sectors and media-specific issues.

The Agency has committed to direct at least 20 per cent of regional resources toward community-based efforts in FY 96. Nomination of high priority communities or places would be done primarily by regions working with states. Community-based priorities will focus on environmental or non-compliance problems associated with a particular community or place, including ecosystems (e.g., watersheds, airsheds) or other natural resource areas of local or regional concern. Community-based approaches also provide opportunities to address environmental justice concerns and provide people living in these communities with an involvement in environmental decision-making.

The Agency has identified the following three industry sectors as national priority sectors: dry cleaners, petroleum refining and primary nonferrous metals. Not only do these three sectors have non-compliance and large Toxic Release Inventory emissions, but they have a significant trans-regional impact and require sector-based institutional expertise. Ten additional sectors have been identified as significant sectors: agricultural practices, auto service/repair shops, coal-fired power plants, industrial organic chemicals, iron and basic steel products, mining, municipal combined sewer and sanitary sewer overflows, plastic materials and synthetics, printers and pulp mills.

ii) United States Fish and Wildlife

In order to effectively use the limited number of Service Special Agents, a prioritization of investigative activity was developed. This prioritization of law enforcement activities was established to classify investigations within a hierarchical framework of a high to low priority. This mechanism provided a method that served as a general guide for Special Agents in determining the priority status for a planned investigation. A majority of Service investigative efforts are directed towards High and Medium Priority enforcement activities. These priorities are described as follows:

High Priority. Violations that involve wild populations of nationally protected species, including species listed on Appendix 1 to CITES, with emphasis on commercial exploitation and/or habitat destruction/modification.



Medium Priority. Violations that involve wild populations of species protected by state or foreign laws, with emphasis on interstate commercial exploitation and support of refuge enforcement activities on Service lands, as well as assistance to other national agencies on their lands.

Low Priority. Violations that involve permit compliance inspections, non-wildlife related activities off-Service lands and captive-bred wildlife violations.

To monitor and assist in halting the illegal wildlife trade, the Service employs 85 uniformed Wildlife Inspectors who work primarily in import/export control. In addition to scrutinizing the legality of accompanying documents, Wildlife Inspectors conduct physical inspections of shipments, targeting repeat offenders and checking shipments on a random basis.

The total estimated number of wildlife shipments imported to or exported from the United States has risen from around 45,000 (with a declared value of approximately \$500 million) in 1980 to around 64,000 (with a declared value of approximately \$798 million) in 1994. Wildlife commonly imported and exported includes reptile skins and leather goods, corals and seashells, medicinals made from wildlife and live wildlife of all types. Seizures of illegal wildlife and wildlife products include elephant ivory, cat skins, sea turtle shells and products and medicinals made from tiger bone, rhinoceros horn and bear gall bladders.

The majority of wildlife inspection efforts are directed towards High and Medium Priority enforcement activities. In addition, Directorate priorities were set that established physical inspection rates of at least 25 per cent of import/export shipments presented at designated ports of entry and at least 50 per cent of import/export shipments presents at non-designated ports of entry.

The Service has a broad range of programs to enforce the provisions of the *ESA*, the *Lacey Act* and *CITES* involving the import and export of wildlife. These include the designation of specific ports of entry for wildlife, the staffing of these ports with Wildlife Inspectors to monitor shipments, the licensing of commercial wildlife importers and exporters, and the development of a national computer system to analyze import and export data. The Service uses intelligence information from both domestic and international sources to monitor the wildlife trade and cooperates with other national and international agencies in the interdiction of the illegal wildlife trade.

Enforcement Responses

Given the very broad range of enforcement powers available to governmental authorities in pollution control cases, it has been important to define the circumstances under which each available response is appropriate, and in each case to avoid duplication between different EPA offices and between the state and EPA. To achieve the correct results, EPA relies on internal agency policies and on inter-governmental understandings that define the national-state partnership.

Where regulatory requirements are new and highly complex, where there is no obvious environmental harm from improper behavior, or where the regulated community consists of many small and unsophisticated pollution sources, it may be most appropriate to exercise enforcement deference for a short period of time while assisting the regulated community to learn about the new requirements and to achieve compliance. Site visits, warning letters and education or advice regarding achieving compliance may be the only response necessary.

A notice of violation is the typical enforcement response that begins the formal enforcement process by which most violations are resolved. Usually this response will cause the violator



to negotiate with the environmental agency and to enter into a consent agreement to comply and if appropriate to pay a monetary civil penalty. Recently, EPA has issued a number of policies to promote good environmental management practices. These policies encourage corrective action by violators that are small businesses, companies willing to conduct internal self-evaluations called environmental audits, and companies prepared to clean up the environment or prevent pollution beyond what EPA can require.

If a consent agreement cannot be negotiated, adversarial administrative action will ensue. This will involve a full hearing before an administrative law judge, who may order the payment of a monetary civil penalty. During the late 1980s and until 1993, Congress began expanding some of EPA's laws to authorize administrative orders for corrective action and penalties comparable to those that could be obtained from a national or federal court judge through civil judicial enforcement. Where it appears that an administrative order will not be complied with, or where an injunction will be needed, EPA will request that the Department of Justice file a civil action in national court seeking judicial enforcement.

The most onerous enforcement response is a criminal investigation and prosecution, which may result in prison time, as well as the imposition of heavy monetary penalties. EPA has issued policies that limit criminal investigations to cases where the misconduct is clearly intentional and where there is serious environmental harm (or other aggravating factors are present). Also by policy, a case screening process has been instituted so that key enforcement officials confer as to what is the most appropriate enforcement response to the facts of each potential case. Another parallel proceedings policy addresses those few cases in which the environmental risk is so great that a civil suit for an injunction cannot wait but must proceed concurrently with a criminal case.

Finally, to avoid punishing the same violation, twice in a system where there is often overlapping enforcement authority held by both the national and the state governments, EPA has in place policies and understandings with states. EPA will almost always defer to a state enforcement response that is timely and appropriate and that does not leave unaddressed an issue of compelling national interest or importance. This is particularly true where the state has been authorized by EPA and possesses the primary responsibility to enforce the national program.

Roles of Lawyers, Inspectors and Other Officials

For pollution control, the inspector serves as the front line for monitoring compliance and provides valuable input on what mix of enforcement tools might be most appropriate in a situation. The periodic meetings of inspector associations with EPA personnel are important channels for directly reporting regional concerns. Building and maintaining cooperative partnerships with state departments of environmental quality and state attorneys general is also a crucial component in the consolidation. To find the best mix of enforcement tools to achieve compliance, a variety of viewpoints from lawyers and technical personnel are considered to develop a clear understanding of a problem situation.

Coordinating Mechanisms Among Officials and Agencies

Memoranda of Understanding (MOUs) enable agencies to enter into agreements with other national departments or agencies, (e.g., EPA, the DOJ, United States Customs, and United States Fish and Wildlife) to pursue enforcement programs and activities. United States Customs exercises a close partnership with EPA to monitor shipments of pesticides and other regulated materials and with United States Fish and wildlife to monitor trade in items such as exotic animals and animal hides. United States Fish and Wildlife Service is both a customer and a partner of EPA, having many mutual interests and enforcement activities.



The Service may negotiate cooperative law enforcement agreements with state wildlife law enforcement agencies, Indian tribes and other national agencies. Before negotiating such an agreement, the Service must determine that the agreement benefits the Service's law enforcement program. Under the provisions of a cooperative law enforcement agreement, the Service delegates national or federal law enforcement authority to the cooperating agency. The cooperating agency may then delegate that national authority to its full-time enforcement officers. To ensure uniformity and conformance with established legal procedure, the cooperative agreement must meet certain basic requirements. This includes, but is not limited to, a specific description of the national laws being delegated; certification of firearms competency and qualification; specific approval authority prior to initiating investigations into those activities that are solely violations of national law, and specific reporting requirements. Delegated national enforcement authority extends to the cooperating agency's normal jurisdictional boundaries adjacent to the jurisdictional boundaries if compelling circumstances exist; or, anywhere within the jurisdiction of the United States if an officer with delegated national authority is accompanied by a Service Special Agent or under the direct supervision of the Service.

Associations such as the State/EPA Capacity Steering Committee, Senior Environmental Enforcement and Compliance Forum (Forum), Interagency Working Group on Environmental Justice, Northeast Environmental Enforcement Project, Southern Environmental Enforcement Network, Midwest Environmental Enforcement Association, Western States Hazardous Waste Project, National Association of Attorneys General, NDAA, State and Local Air Pollution Control Officials/Association of Local Air Pollution Control Officers (STAPPA/ALAPO), Association of State and Territorial Solid Waste Management Officials (ASTSWMO), Association of State and Interstate Water Pollution Control Administrators (ASWIPCA) all play roles in coordinating and communicating enforcement policies.

Also essential to maintaining the U.S. role in the international enforcement community and implementing the U.S. obligations to international agreements is EPA's continued participation in such organizations as the Commission on Environmental Cooperation, Organization for Economic Co-operation and Development (OECD), the World Trade Organization (WTO), the International Association of Chiefs of Police (IACP), and the International Police Organization (INTERPOL). The Agency's participation in various international meetings and international conferences on environmental enforcement and compliance (e.g., the Pollution Prevention Program for the Western Hemisphere and the biannual International Conference on Environmental Enforcement) provides valuable opportunities to exchange views on enforcement policies and to foster coordination of international enforcement activities.

7. Data Collection and Tracking Systems

EPA programmatic databases were designed, developed and operated around the legislative and regulatory requirements of particular statutes. Given the large number of environmental statutes, many different systems have emerged over the past 20 years to handle permitting, facility reporting, inspection, compliance and enforcement activities. In some instances, there may be several systems related to one environmental law, each designed to handle a particular aspect or section of the statute. Because the statutes are administered by individual program offices to meet specific requirements, there has been little incentive to develop integrated systems or to conduct multi-media activities until recent years.



EPA Databases

Integrated Data for Enforcement Analysis (IDEA). EPA is making progress toward more effective data integration. The database, IDEA, demonstrates the Agency's increased capability to integrate information across systems. IDEA can integrate data such as PCS, AIRS, RCRIS, CERCLIS, TRIS, and others. Consequently, IDEA has become an excellent tool for conducting case screening and supporting enforcement targeting efforts.

AIRS Facility Subsystem (AFS). AFS is a component of the Aerometric Information Retrieval System (AIRS). AIRS is a computerized database management system for airborne pollution in the United States consisting of four subsystems. Each subsystem addresses a different (but possibly related) aspect of the CAA regulatory requirements. AFS contains emissions, compliance and enforcement data on stationary sources of air pollution. Regulated sources cover the spectrum from large industrial facilities to relatively small operations such as dry cleaners. Automobile and other mobile air pollution sources are tracked by AMS, a different AIRS subsystem. While AFS maintains data in several levels of detail, the primary information is at the plant level. This information includes general source information, plant compliance status, significant violator information and air program information.

Biennial Reporting System (BRS). The BRS contains information reported to the Agency on alternate years by facilities which generate, treat, dispose, store or ship hazardous waste. The database contains information on substances and amounts handled.

CERCLIS Information System (CERCLIS). CERCLIS contains the official inventory of CERCLA (Superfund) sites, and integrates data from the Superfund removal, site assessment, remedial and enforcement programs. CERCLIS supports site project management, program budget planning, accountability requirements and commitments and reporting. Data in CERCLIS are organized by operable units (OU), which is a physical aspect or smaller component of the site. A site can have one or more operable units. Categories of data included in CERCLIS are: general site information, site assessment, removal activities, remedial investigation/studies and administrative and judicial enforcement activities.

Civil Enforcement Docket (DOCKET). The DOCKET is a case activity tracking and management system for both civil judicial and administrative federal EPA enforcement cases. Case information is supplied and updated by EPA's Offices of Regional Counsel and the Headquarters Office of Regulatory Enforcement case attorneys. The primary data contained for each enforcement action are: case descriptive information (case name, statute and section violated, case attorneys assigned to the case), major milestone dates (referred, filed, concluded and issued dates) and results and penalty information.

Federal Facility Information System (FFIS). FFIS is used primarily as a planning and budget tracking system for monitoring and planning projects which are intended to bring federal facilities into compliance with environmental regulations or to maintain compliance. The largest number of facilities are those related to national defense and those operated or run by the Department of Energy. The system contains an inventory of all federal facilities for which pollution abatement projects have been reported to the Office of Management and Budget (OMB), the compliance status of any facility with applicable regulations, information on projects planned or initiated and budget information related to the project. Information is reported by the different federal agencies twice a year.

National Compliance Data Base (NCDB). NCDB tracks compliance and enforcement data under the *FIFRA*, the *TSCA*, and the *Emergency Planning and Community Right-To-Know*



Act Section 313. NCDB is used, not only by regional and headquarters enforcement offices for tracking compliance and enforcement activities, but responds to communities requests for this information.

Permit Compliance System (PCS). PCS contains information from applications submitted to EPA and the states for permits to discharge into navigable waters of the United States as required by regulations of the National Pollutant Discharge Elimination System (NPDES) under the *Clean Water Act*. PCS also contains information about requirements contained in the permits issued and inspection, compliance and enforcement information. The specific data categories cover: permit facility data and identification of outfalls (pipes), monitoring requirements for each outfall, reported measurement values, compliance schedules, compliance schedule violations, inspection information, pretreatment audit, enforcement actions and permit tracking events such as when the permit expires.

RCRA Information System (RCRIS). RCRIS is the national program management and inventory system of the RCRA hazardous waste handlers. Handlers fit one or more of the following categories: treatment, storage and disposal facilities (TSDFs), large quantity generators(LQGs), small quantity generators(SQGs) and transporters. The system contains general information on all handlers, permitting and corrective action program status, and enforcement and compliance information. The information in RCRIS is developed by states and EPA regions for their program implementation purposes.

Safe Drinking Water Information System (SDWIS). EPA's Office of Ground Water and Drinking Water is responsible for the implementation of the Public Water System Supervision (PWSS) program established under the *Safe Drinking Water Act (SDWA)* of 1974. Currently, numerous information systems exist to support this effort. The primary agencies (states, territories and EPA regions) use a variety of individually developed data systems. SDWIS is the national system which contains information reported from these agencies.

Superfund Enforcement Tracking System (SETS). SETS is a database system designed to track the names and addresses of potentially responsible parties (PRPs) who have been issued special or general notice letters pertaining to previous activities at an identified Superfund site, as contained in provisions of sections 106, 107 and 122 of *CERCLA*. The General Notice Letters inform the PRPs of their potential liability for the costs of response work associated with the investigation and control of actual or threatened releases of hazardous substances. Special Notice Letters inform PRPs of EPA's decision about the specific remedy to be initiated at the site and extend an opportunity to meet with EPA to facilitate a settlement for the cost of remediation activities at the site. Data contained in the database include the name and address of each PRP and date of notice letter.

Toxic Chemical Release Inventory System (TRIS). TRIS contains information on the release of toxic chemicals as reported by manufacturing facilities as required by the Emergency Planning and Community Right-to-Know Act of 1986. Data are reported annually by chemical, amount released and media to which the substance is released. The legislation also requires that the information reported be accessible by the public. Data are available to the public in a variety of ways. The data provide the public and government with information about possible chemical hazards in their communities and thus promote planning for response to potential chemical accidents. The data are also useful in estimating risk to human populations and ecosystems using risk models that factor in toxicity of the released chemical, exposure pathways and exposed population. Data in the TRIS include: facility identification, name, address and industry; off-site locations to which wastes containing toxic chemicals are transferred; chemical specific information; amounts of chemicals on-site and amounts released or transferred off-site; waste treatment methods and efficiency; pollution prevention activities.



Other Databases

United States Fish and Wildlife Service Database - Law Enforcement Management Information System (LEMIS). The Service's LEMIS database is an example of the coordinated exchange of information among various governmental agencies. LEMIS facilitates the processing, storage and retrieval of information collected during inspections and investigations, data on permits and licenses, and data that are shared with the automated systems of the Federal Bureau of Investigation as part of the National Incident Based Reporting System (NIBRS).

Regional Association Information Network (RAIN). The four State Regional Environmental Enforcement Associations are a consortia of government agencies from 47 states, the District of Columbia and four Canadian provinces engaged in environmental enforcement and compliance. Together they have created the RAIN. The RAIN is a multi-node bulletin board system which is available 24 hours a day to environmental enforcement and compliance professionals. The databases contained on the RAIN include membership directories, a criminal pointer system, a brief/legal forms library and a topical files library. This system provides the states with access to information regarding various environmental issues and/or environmental violators and people within the states to contact for more information.

Aspects of Data Collection

- **Who Collects Data.** Data entered into these programmatic databases come from a variety of sources: permit application and reporting forms completed by industry; permit limitations and requirements as written into permits; evaluation and inspection reports performed by EPA regional office staff and state enforcement and compliance officers; enforcement actions and results provided by either EPA or state enforcement staff. Some data are provided by companies under various reporting requirements.
- **What Data Do Country's Government Have?** Although the United States has an abundance of data related to enforcement, there is a pressing need to develop better integration among the databases. The primary enforcement-related EPA databases discussed above represent only a small portion of the more than 370 databases on Agency activities. The Appendix includes examples of some of the types of enforcement-related data collected.
- **Audit Privilege.** In regard to audit privilege, the Agency just issued its final policy on Incentives for Self-Evaluation. There is a continuing debate between EPA and the states over the privacy issues for evidence of violations discovered through self-evaluations. Fourteen states have enacted audit privilege laws, some of which include blanket privileges or penalty immunities for voluntarily disclosing violations. EPA's "Incentives for Self-Evaluation" strongly reflects the principle that compliance will be best achieved, and the public and the environment best protected, if polluters cannot hide evidence of violations or receive amnesty for behavior that causes serious harm or threats of harm, or involves criminal conduct or repeat violations.
- **Publication of Company Names.** The United States does release the company names of violators. Providing public access to such information helps to ensure that the public and community are aware of who the violators are and how affected facilities are performing.
- **New Measures for Collecting Data.** Industry's voluntary self-disclosure of violations is one new method for collecting compliance data. Also, the public will become an increasingly active provider of information on suspected violations as public groups



become more educated in identifying environmental problems and using their public right-to-know as an enforcement tool to gain information.

- **Processes for Assessing Accuracy.** Assuring data integrity is a serious concern for the Agency, particularly with risk assessment studies. Non-compliance with prescribed procedures for collecting, maintaining, reporting or falsifying data is a violative act. Headquarters staff managing the Good Laboratory Practice (GLP) compliance program validate studies submitted to the Agency and provide data audit guidance, policies and procedures for GLP compliance for most statutes. Laboratory audits maintain the integrity of risk assessment data. The National Environmental Laboratory Accreditation Program (NELAP) is an EPA-endorsed program, in cooperation with the states, for laboratory certification/accreditation. NELAP certifies that laboratories engaged in research and the conduct of studies required for submission to the Agency are in compliance with GLP Standards. Data integrity is also an international concern. The Organization for Economic Cooperation and Development's Principles of Good Laboratory Practice and Compliance Monitoring were developed in cooperation with EPA and are compatible with the GLP Standards.
- **Inspection Tracking Systems.** Databases tracking inspections, sample records or chain of custody data generally are maintained by the state(s) in which the inspection took place. Typically, headquarters does not have direct access to state databases. For company submitting information, the FIFRA Section 7 reporting system collects company-provided information on production volume. This data can be quite useful in tracking suspicious large volume shipments of pesticides. Several databases described earlier also collect company-provided data.
- **Inspectors' Checklists.** Traditionally, inspectors have used media-specific checklists. However, multi-media inspection checklists have been available since the late 1980s. In 1993, the Agency issued a national multi-media screen inspection checklist to be used as a guideline for the inspector. The Agency is currently assessing the checklists in use and ascertaining what changes may need to be made. Typically, an inspection checklist will accompany the inspection report if it is forwarded to the regional EPA office for further action.
- **Obligations to Release Data to Public.** Under the *Emergency Planning and Community Right-to-Know Act (EPCRA)*, certain companies are required to report to EPA on July first of each year their releases, transfers and waste management practices for more than 300 listed toxic chemicals. Facilities that fail to submit the toxic chemical release or management information are subject to civil administrative complaints of up to \$25,000 per day. Generally, data, except for that related to ongoing cases, are available to the public through the *Freedom of Information Act*, including information on emissions and compliance status.
- **Public Access to Data.** OECA has expanded the public's access to environmental enforcement data. EPA has provided access to documents via two electronic systems, the Enviro\$en\$e Bulletin Board System (via modem connection) and the Enviro\$en\$e World Wide Web. The new Sector Notebooks include detailed instructions for downloading the Notebooks on either system.

As part of the Paperwork Reduction Act of 1995, the federal government established the Government Information Locator Service (GILS) as a government-wide initiative to help the public locate and access information. Using GILS, the public can access 130 different EPA computer systems, which include databases, information clearinghouses, hot lines, information centers in headquarters and regions and various libraries.



- **Use of Data.** As individual systems have evolved and continue to respond to regulatory requirements of the statutes they support, the Office of Enforcement and Compliance Assurance has developed a capability to integrate information across the systems. The Integrated Data for Enforcement Analysis system provides a sophisticated query capability and provides responses interactively. IDEA is an excellent tool for conducting case screening and for supporting enforcement targeting efforts. Currently IDEA is used by EPA enforcement and compliance staff and state enforcement personnel for targeting, record keeping and policy development. OECD is planning to make IDEA directly available to the public in the near future.

8. Citizens' Role

Active citizen participation is a crucial role in the EPA mission. Often the first step toward the Agency pursuing an enforcement action is a tip or complaint from a private citizen to one of the Agency's telephone Hot Lines. To achieve the goal of developing a personal and industry acceptance of environmental accountability, the public and industry need to be positively educated toward environmental issues and understand the importance of each individual's and company's role in securing environmentally beneficial changes.

The Agency is committed to ensure the integration of environmental justice into EPA programs and policies. The Agency is working vigorously to assure equal access to environmental protection for all groups regardless of socio-economic or minority status. EPA has established the National Environmental Justice Advisory Council to coordinate the Agency's efforts to promote public participation, partnerships, outreach, accountability and communication with communities suffering disproportionately high and adverse human health or environmental effects. Educating the public on environmental concerns and encouraging active participation in the planning stage for new activities will help ensure that programs sensibly meet community needs and objectives.

United States Country Report
Appendix A: Wildlife Enforcement Data

FY 1994 Wildlife Inspection Activity*

Port of Entry	# of Shipments	% of Total	Total Value
Designated Ports			
Honolulu	3,300	5.1%	\$13,233,473
Los Angeles	10,229	15.8%	71,224,178
Seattle	1,882	2.9%	31,841,590
San Francisco	1,561	2.4%	6,078,593
Portland	842	1.3%	5,539,806
Dallas/Ft Worth	2,879	4.4%	60,310,339
Chicago	3,861	6.0%	37,189,949
Miami	5,387	8.3%	69,211,373
New Orleans	827	1.3%	21,161,598
Baltimore	636	1.0%	9,024,702
New York/Newark	16,374	25.3%	357,783,695
Boston**	964	1.5%	\$16,050,085
Subtotal	48,742	75.2%	\$698,639,381
Non-Designated Ports			
San Diego	351	0.5%	\$893,294
Blaine	836	1.3%	6,929,969
Guam	310	0.5%	1,273,219
Brownsville	147	0.2%	830,848
El Paso	1,328	2.0%	21,522,216
Houston	744	1.1%	37,116,904
Laredo	608	0.9%	1,326,614
Detroit	608	0.9%	2,494,454
St.Paul	333	0.5%	403,866
Atlanta	397	0.6%	3,801,043
Tampa	704	1.1%	2,329,928
San Juan	157	0.2%	810,019
Buffalo	625	1.0%	2,710,671
Golden	140	0.2%	379,094
Pembina	982	1.5%	5,194,664
Anchorage	2,584	4.0%	5,372,859
Subtotal	10,854	16.7%	\$93,389,662
Others***	5,233	8.1%	\$6,406,387
Total	64,829	100.0%	\$798,435,430
* As of 12/15/94.			
** Boston was designated July 28, 1994			
*** Includes non-staffed ports.			

United States Country Report
Appendix A continued: Wildlife Enforcement Data

Investigative Caseload FY1992-94

Classification	FY1992			FY1993*			Fy 1994		
	Opened	Closed	Pending	Opened	Closed	Pending	Opened	Closed	Pending
Assault	2	3	3	0	1	2	1	1	2
Eagle Protection	159	171	178	152	182	148	168	172	144
Lacey	938	833	948	927	1,019	856	1,036	899	993
National Wildlife Refuge	3,001	2,816	2,205	485	423	2,267	386	459	2,194
Migratory Bird Stamp	231	233	68	155	159	64	197	192	69
Migratory Bird Treaty	2,930	3,287	1,339	2,671	2,517	1,493	2,691	2,962	1,222
Endangered Species	3,416	3,929	3,444	3,449	3,719	3,174	2,938	3,093	3,019
Marine Mammal Protection	132	137	186	162	151	197	193	185	205
Airborne Hunting	6	6	9	3	3	9	3	8	4
Tariff Classification	3	8	3	2	1	4	0	1	3
Other Federal Laws	33	27	17	25	28	14	28	26	16
State Laws	61	62	48	99	83	64	113	111	66
All Other Investigations	46	59	104	61	85	80	57	17	120
Permit/License Investigations	11	12	8	11	11	8	6	7	7
Antarctic Conservation	2	2	1	0	0	1	0	0	1
Archeological Resources	1	2	2	1	0	3	1	2	2
African Elephant Conservation	105	140	182	69	104	147	72	42	177
Wild Bird Conservation Act**	0	0	0	3	0	3	18	14	7
Total	11,077	11,727	8,745	8,275	8,486	8,534	7,908	8,191	8,251

Note: Pending Cases (Prior FY) + Opened Cases (Current FY) - Closed Cases (Current FY) = Pending Cases (Current FY)

* As of 12/20/94

** The Wild Bird Conservation Act became effective October 23, 1992

Annual Violation Statistics*
FY1992 - FY1994

	1992	1993	1994
Violations	9,580	8,744	8,595
Fines**	\$1,981,941	\$6,401,036	\$1,938,009
Jail (Yrs)	36	125	62
Probation (Yrs)	771	869	731
Civil Penalties	\$398,319	\$408,703	\$285,125
<p>* Data compiled as of 12/20/94 ** FY1993 fines include a \$4M fine for an oil spill</p>			

United States Country Report
Appendix B: Environmental Enforcement

<i>Dollar Value of FY 1995 EPA Enforcement Actions (by Statute)</i>					
	Criminal Penalties Assessed	Civil Judicial Penalties Assessed	Administrative Penalties Assessed	\$ Value of Injunctive Relief	\$ Value of SEP's
CAA	\$156,700	\$11,964,583	\$2,366,859	\$114,784,941	\$4,331,622
CERCLA	\$16,000	\$5,677,000	\$194,534	\$282,814,505	\$114,600
CWA	\$11,564,900	\$6,361,250	\$5,462,329	\$302,902,435	\$50,162,839
EPCRA	\$0	\$39,977	\$4,084,188	\$141,437	\$8,707,770
FIFRA	\$73,600	\$39,300	\$1,630,039	\$5,071	\$685,879
RCRA	\$10,961,400	\$937,500	\$13,076,989	\$2,229,785	\$5,457,366
SDWA	\$100,000	\$34,000	\$255,191	\$520,874	\$20,000
TSCA	\$0	\$168,282	\$7,042,884	\$1,842,977	\$15,125,576
Multi-Statue/Unk.	\$348,500	\$8,645,680	\$1,941,161	\$201,395,027	\$19,235,121
Totals	\$23,221,100	\$33,867,572	\$36,054,174	\$906,637,052	\$103,840,773

Data comes from EPA criminal docket and case conclusion data sheets.

United States Country Report
Appendix B: Environmental Enforcement

CASE CONCLUSION DATA SHEET (sample only)

Name: _____
 Phone: _____
 Date: _____

A. Case and Facility Background

1. OECA DOCKET System # _____
2. Court Docket/Regional Hearing Clerk Administrative Docket # _____
3. Case name: _____
 Information for one Facility: (If more facilities, attach additional pages.)
4. (a) EPA-FINDS facility-identification-number: _____
 (b) EPA Program ID for the facility: _____
5. Facility Name : _____
6. Facility Address: _____ Street: _____ City: _____ State: _____ Zip: _____
7. (a) Primary 4-digit SIC-code: _____ b) Other 4-digit SIC-codes: _____, _____, _____, _____
8. Dun & Bradstreet number (if applicable) _____
9. (a) EPA Lead Attorney: _____
 (b) EPA Program Contact: _____
10. Statute(s) and Section(s) violated (Not authorizing section nor CFR) _____ / _____, _____ / _____, _____ / _____, _____ / _____, _____ / _____, _____ / _____, _____ / _____
11. Action Type
 (a) Consent decree or court order resolving a civil judicial action
 (b) Administrative Penalty Order (with/without injunctive relief)
 (c) Superfund administrative cost recovery agreement
 (d) Federal facility compliance agreement (not incl. RCRA matters)
 (e) Field citation
 (f) Administrative Compliance Orders
12. Administrative action date: _____ Issued/Filed _____ Final Order _____
13. Authorizing section for administrative actions: _____ / _____
14. Was this a multi-media action? Yes No
 Check all that apply/make this action multi-media: inspection complaint settlement SEP
15. Was this action a part of a community-based/geographic initiative? Yes No
16. Was the Agency activity taken in response to Environmental Justice concerns? Yes No
17. Was Alternative Dispute Resolution used in this action? Yes No

B. Compliance Actions (Non-SEP Related)

18. What action did violator accomplish prior to receipt of settlement/order or will take to return to compliance or meet additional requirements? This may be due to settlement/order requirements or otherwise required by statute or regulation (e.g. actions related to an APO which did not specify compliance requirements). Where separate penalty and compliance orders are issued in connection w/same violations(s), report the following information for only one of those orders. Select response(s) from the following:
- | | |
|--|--|
| <input type="checkbox"/> Testing | <input type="checkbox"/> Monitoring/Sampling |
| <input type="checkbox"/> Use Reduction | <input type="checkbox"/> Recordkeeping |
| <input type="checkbox"/> Industrial Process Change | <input type="checkbox"/> Labeling/Manifesting |
| <input type="checkbox"/> Emissions/Discharge Change(install/modify controls) | <input type="checkbox"/> Reporting |
| <input type="checkbox"/> Storage/Disposal Change | <input type="checkbox"/> Information Letter Response |
| <input type="checkbox"/> Removal | <input type="checkbox"/> Permit Application |
| <input type="checkbox"/> RD/RA | <input type="checkbox"/> Training |
| <input type="checkbox"/> Remediation | <input type="checkbox"/> Provide Site Access |
| <input type="checkbox"/> Restoration | <input type="checkbox"/> RI/FS |
| | <input type="checkbox"/> Site Assessment |
| | <input type="checkbox"/> Auditing |

No Action (Penalty Only) _____
 Other (please describe) _____

United States Country Report
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CASE CONCLUSION DATA SHEET (sample only) continued

19. Cost of actions described in item #18. (Actual cost data supplied by violator is preferred figure.)
 Physical actions: \$ _____ Non-physical actions: \$ _____
 (Left column) (Right column)

20. (a) Quantitative environmental impact of actions described in item #18:

REDUCTIONS/ELIMINATIONS:

Pollutant	Pollutant code	CAS #	Amount	Units	(Percent)	Media
_____	_____	_____	_____	_____	(_____%)	_____
_____	_____	_____	_____	_____	(_____%)	_____
_____	_____	_____	_____	_____	(_____%)	_____
_____	_____	_____	_____	_____	(_____%)	_____
_____	_____	_____	_____	_____	(_____%)	_____
_____	_____	_____	_____	_____	(_____%)	_____

REPORTED INFORMATION:

Pollutant	Pollutant code	CAS #	Amount	Units	Media
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

20. (b) Qualitative environmental impact of actions listed in item #18. Select one or more of the following observed or predicted benefits:

- Human health protection: ___Actual___Potential ___Reductions beyond compliance requirements
- Worker protection: ___Actual___Potential ___Increased public awareness
- Ecosystem protection: ___Actual___Potential ___Increased Fed/St/local govt knowledge
- Environmental Restoration/Land Use ___Potential
- Other (please describe)_____

C. Supplemental Environmental Project (SEP) Information

21. Categories of SEP(s) (Check all appropriate categories; if no proceed to #26)

- ___ (a) Public Health
- ___ (b) Pollution Prevention
 - ___(1) equipment/technology modifications
 - ___(2) process/procedure modification
 - ___(3) product reformulation/redesign
 - ___(4) raw materials substitution
 - ___(5) improved housekeeping/O&M/training/inventory-control
 - ___(6) in-process recycling
 - ___(7) energy efficiency/conservation
- ___ (c) Pollution Reduction
- ___ (d) Environmental Restoration and Protection
- ___ (e) Assessments and Audits
- ___ (f) Environmental Compliance Promotion
- ___ (g) Emergency Planning and Preparedness
- ___ (h) Other SEP category (specify) _____

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CASE CONCLUSION DATA SHEET (sample only) continued

22. SEP description: _____

23. Cost of SEP. Cost calculated by the Project Model is preferred. \$ _____

24. Is Environmental Justice addressed by SEP? _____ Yes _____ No

25. (a) Quantitative environmental impact of SEP: pollutants and/or chemicals and/or waste-streams, and amount of reductions/eliminations (e.g., emissions/discharges)

Pollutant	Pollutant code	CAS #	Amount	Units	(Percent)	Media
_____	_____	_____	_____	_____	(_____%)	_____
_____	_____	_____	_____	_____	(_____%)	_____
_____	_____	_____	_____	_____	(_____%)	_____
_____	_____	_____	_____	_____	(_____%)	_____
_____	_____	_____	_____	_____	(_____%)	_____
_____	_____	_____	_____	_____	(_____%)	_____

25. (b) Qualitative environmental impact of SEP. Select one or more of the following predicted benefits:

Human health protection:	Actual	_____	Potential	_____
Worker protection:	Actual	_____	Potential	_____
Ecosystem protection:	Actual	_____	Potential	_____
Environmental restoration				_____
Increased public awareness				_____
Increased Fed/State/local govt. knowledge				_____
Other (please describe)	_____			

D. Penalty (if there is no penalty, enter 0 and proceed to #27)

26. (a) Assessed Penalty \$ _____
 26. (b) (if shared) Federal share \$ _____
 26. (c) (if shared) State or Local share \$ _____
 27. For multi-media actions, Federal amounts by statute:

Statute	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____

E. Cost Recovery

28. Amount cost recovery awarded: \$ _____ EPA
 \$ _____ State and/or Local Government \$ _____ other

Please attach additional Conclusion Sheets or sheets of paper to provide information which does not fit on initial Case Conclusion Data Sheet.

NORTH AMERICAN ENFORCEMENT COOPERATION





IV. North American Enforcement Cooperation

A. Bilateral Initiatives

There have been several transboundary cooperative initiatives undertaken in 1995.

With the aid of USEPA grants, Mexican border enforcement officers and technical personnel are receiving training from the Southern Environmental Enforcement Network and the Western States Hazardous Waste Project.

Twice this year American and Canadian officials joined forces for “border blitzes” to determine compliance with environmental regulations at border crossings. The joint effort consisted of regulatory inspections of carriers, generators and receivers of designated wastes. Through a series of meetings, companies and waste streams were targeted by the officials. Waste streams of common interest included construction and demolition debris, asbestos, waste oil, hazardous wastes and waste paper. The agencies involved in this effort included Environment Canada, Canadian and U.S. Customs, Ontario Ministry of Environment and Energy, Quebec Ministry of the Environment and Wildlife and the New York State Department of Environmental Conservation. The New York State Organized Crime Task Force and the New York State Department of Environmental Conservation worked closely with Environment Canada and the Ontario Ministry of Environment and Energy regarding the transfer of high halogenated waste oil to New York City for sale as heating oil. As a result of their mutual effort, a New York-based company pled guilty to falsifying business records, a felony in Westchester County, New York.

The United States DOJ has formed a United States/Canadian Coordinating Committee on Environmental Protection in the State of Maine. This committee is designed to identify and discuss environmental problems affecting border states and their respective environmental programs, joint activities to address these problems and training. Issues addressed in 1995 included illegal transportation of regulated wastes and endangered species across the borders, enforcing marine environmental laws, smuggling of chlorofluorocarbons, and the need for cross-agency training. Members include Environment Canada, United States EPA, United States and Canadian Customs, United States DOJ, United States Fish and Wildlife Service, Canadian Wildlife Service, United States Coast Guard, F.B.I., Quebec Ministry of the Environment and Wildlife, Nova Scotia Environment, New Brunswick Department of the Environment, Maine Department of the Environment, Maine Marine Patrol, and the Northeast Environmental Enforcement Project.

The United States and Mexico initiated a program to train customs and environmental inspectors in compliance monitoring and enforcement of transboundary hazardous waste shipment regulations. The bilingual training course, sponsored by the United States/Mexico Cooperative Enforcement Strategy Workgroup formed under the 1983 “La Paz Agreement” between the United States and Mexico, has, in 1995, stimulated increased binational cooperation in detecting and responding to illegal shipments. Activities were initiated in the areas of cooperative enforcement targeting, enforcement data-sharing, training and technical consultations, case-specific investigations, promotion of interagency cooperation and promotion of voluntary compliance. For example, the United States and Mexico cooperated in outreach to the United States parent companies of maquiladora facilities operating in northern Mexico to encourage voluntary environmental compliance, particularly through participation in Mexico’s voluntary environmental auditing program.



B. Trilateral Initiatives

North American Permanent Working Group on Environmental Enforcement and Compliance Cooperation (PWG)

In April 1995, the CEC Secretariat, consistent with its role of providing support to the Parties in delivery of their NAAEC obligations, established a working group consisting of senior level officials responsible for environmental enforcement and compliance representing each of the three countries. The group is now formally established as the North American Permanent Working Group on Environmental Enforcement and Compliance Cooperation (PWG) in recognition of the continuing common obligation to cooperate in environmental enforcement. The PWG has adopted the following mandate:

- strengthen cooperation among the Parties in environmental enforcement and compliance while respecting the individual approach of each Party;
- deliver concrete cooperative enforcement and compliance initiatives;
- establish a working relationship among the environmental enforcement agencies in recognition of the shared borders and inherent shared enforcement and compliance challenges;
- exchange information and experiences with alternative approaches to enforcement and compliance; and
- facilitate enforcement and compliance opportunities among the three countries.

Membership currently includes representatives of federal, state and provincial environment and wildlife enforcement officials. The intent is to eventually expand the membership to ensure representation of all key departments and agencies with environmental enforcement responsibilities such as fisheries, conservation, parks and protected areas. For Canada and United States, two rotating seats have been established to provide for representation by provincial and state governments respectively. The PWG is currently chaired by the United States EPA. The CEC Law and Enforcement Cooperation Program provides administrative and program support.

Programs and Activities

The PWG identified the following priorities for 1995:

- preparation of the 1995 Annual Report on Enforcement including development of a common and consistent framework for measuring and reporting on effective enforcement;
- training and capacity building for more effective enforcement and compliance, with initial emphasis on use and application of auditing as an instrument for enhanced compliance; and
- facilitate improved development and access to compliance data bases initiate trilateral pilot projects to test alternative enforcement and compliance approaches for specified regions or corridors. The pilot projects selected for 1995 included:
 - Trilateral cooperation on enforcement of laws regarding transborder trade and shipping of hazardous substances/wastes
 - Trilateral cooperation to improve capacity to detect and stop illegal import/export of endangered species

A number of subgroups were established to assist the PWG in the delivery of these programs and priorities.



Annual Report Working Group

During 1995, this subgroup developed a common framework for the Annual Report on Enforcement, including consistent definitions for enforcement and compliance. For this first North American report it was agreed the three countries would provide an overview of their respective environmental enforcement and compliance powers, polices, strategies and programs. The 1995 report would focus on pollution control and wildlife enforcement programs and would include a summary of enforcement data for those areas. For future reports, a more detailed reporting on enforcement and compliance programs and actions will be issued.

North American Working Group on Wildlife Enforcement Cooperation (NAWEG)

Support was given by the PWG for the establishment of NAWEG to further cooperation among the three countries' wildlife enforcement agencies. A Memorandum of Agreement is in draft stages which reflects a formal commitment among the wildlife enforcement agencies of the Parties to cooperate in wildlife enforcement, joint training programs, and to exchange information and expertise. NAWEG has all ready established close working relationships and in 1995 delivered a number of cooperative training programs focused on improving CITES enforcement in North America including:

- a training program for Mexican wildlife enforcement and customs officials working in the Mexico - United States border area;
- trilateral technical training program on the identification of endangered fur bearing species; and
- exchanged information on respective laws, polices and programs.

Environmental Audit Working Group

In 1995, this subgroup delivered two cooperative information and training programs for the maquiladora industries in the Mexico-United States border region at Ciudad Juarez and Tijuana. The programs were directed at facilitating maquiladora participation in Mexican, American and Canadian environmental audit programs, pollution prevention programs and voluntary compliance initiatives, in particular ISO 14000. In consort with these industry training programs, the agencies held information exchange meetings among enforcement officials on government policy and programs in these areas and developed priorities for cooperation for 1996. The subgroup decided to expand its focus to voluntary compliance initiatives generally.

Transboundary Movement of Hazardous Substances/Waste Working Group

In 1995, the subgroup held a series of conference calls to exchange information on existing monitoring and tracking systems to identify priority sites for piloting improved transborder tracking systems.

Compliance Database Working Group

During 1995, the subgroup surveyed existing systems for collecting, storing, managing and accessing compliance data and examined opportunities and constraints to sharing data. Information was shared on respective electronic tracking systems and potential compatibility.



Training/Capacity Building

A Roster of North American Enforcement and Compliance Training Programs is being published and distributed to facilitate participation in existing domestic programs. The roster will also be used to identify training gaps and potential topics for the development of joint training programs.

V. Future Initiatives

The Permanent Working Group has identified, subject to available resources, the following priorities for enforcement cooperation in 1996 in North America:

Information Exchange

- technical assistance to Mexico for development and implementation of their compliance data system
- publication and distribution of a Directory of North American Environmental Enforcement Agency Contacts to facilitate improved cooperation and information exchange

Training and Capacity Building

- CITES enforcement technical guide and instructor training workshop focusing on birds and crocodiles
- information/training session for maquiladora industries on voluntary compliance initiatives
- joint review of program implications of ISO 14000
- interagency cooperation to counteract transborder smuggling in CFCs

Program Implementation

- the agreed program area for 1996 for cooperative planning is the design and implementation of a North American program for improved tracking and enforcement of laws for transborder movement of hazardous substances and wastes

Common Reporting

- the PWG will again cooperate in the preparation of the Annual Report on Enforcement
- the PWG will contribute to a study and consultation on enforcement and compliance indicators

Alternative Approaches to Compliance

- the PWG will assist with agency and stakeholder consultations on the CEC North American report on voluntary compliance

APPENDICES



**Appendix A:
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on Environmental Enforcement and Compliance Cooperation (PWG)**

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