



## **Environmental Compliance and Enforcement in Sri Lanka: Rapid Assessment**

November 2006

DRAFT



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## ACRONYMS

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## ACRONYMS

ADB	Asian Development Bank
AECEN	Asian Environmental Compliance and Enforcement Network
AirMAC	Air Resources Management Center
DEO	Divisional Environmental Officer
IIE	Initial Environmental Assessment
EIA	Environmental Impact Assessment
EPC	Environmental Pollution Control (Division)
EPL	Environmental Protection License
CEA	Central Environmental Authority
LLF	Load-based Licensing Fee
MoE	Ministry of Environment
NEA	National Environmental Act
SEO	Senior Environmental Officer
SME	Small and Medium-Sized Enterprise
USAID	United States Agency for International Development

## 1.0 INTRODUCTION

This study is a rapid assessment of Sri Lanka's environmental compliance and enforcement program conducted by the Secretariat of the Asian Environmental Compliance and Enforcement Network (AECEN) with funding from the Asian Development Bank (ADB) under TA 6234 and the United States Agency for International Development (USAID). The AECEN Secretariat carried out the assessment in collaboration with the Sri Lanka Central Environmental Authority (CEA), which is an AECEN member.

### 1.1 Background

Strengthening enforcement and compliance programs is a top priority of Asian governments, which are focused on designing policies that can stimulate sustainable development and economic growth. There is a strong need for governments to gain an improved understanding of the incentives facing firms, and to adopt new approaches that can optimize their environmental compliance assurance expenditures.

***Asian Environmental Compliance and Enforcement Network.*** Established in 2005, AECEN works to promote improved compliance with environmental legal requirements in Asia through regional exchange of innovative policies and practices. Composed of environmental agencies, AECEN objectives are to:

- Promote the development and implementation of improved environmental policies, laws, regulations and institutional arrangements;
- Strengthen practitioner capacity through specialized training and skills development; and
- Facilitate regional sharing of best practices and information on compliance and enforcement.

One principal activity of AECEN is to pilot innovative policies and practices at the country level and facilitate further adoption and dissemination through regional cooperation ([www.aecen.org](http://www.aecen.org)).

### 1.2 Objective and Methodology of Rapid Assessment

The objective of this rapid assessment is to help Sri Lanka to define priorities to address its key challenges in environmental compliance and enforcement and lay the groundwork for potential pilot activities that could be carried out in the aegis of AECEN. The rapid assessment followed the AECEN methodology which was also used to prepare similar assessments for the India, Philippines, Thailand and Vietnam. In preparing the assessment, a consultant worked with CEA officials to assemble the information via a survey questionnaire and follow-up interviews.

The questionnaire was designed to identify program strengths and weaknesses, priority reform areas and opportunities for strategic interventions in eight principal areas:

- Legal enforcement authority;
- Institutional arrangements and capacity building;
- Compliance monitoring;
- Enforcement response;
- Compliance assistance and data management;
- Economic and other incentive-based instruments;
- Indicators to evaluate program success; and
- Public participation.

On November 6, 2006, CEA and AECEN co-organized a stakeholder consultation meeting in Colombo to discuss a draft summary of findings.

## 2.0 BACKGROUND AND CONTEXT

Sri Lanka is an island nation of 65,610 square kilometers, and an estimated population of 19.6 million, with a density of 280 persons per square kilometer, which is one of the highest in the world.<sup>1</sup> Sri Lanka's economy has indicated a growth of 6% in 2005, compared to 5.4% in 2004. This growth momentum has continued to the first quarter of 2006, when the economy recorded a growth of 8.1%. In 2005, the industrial sector led by factory output and construction activities, showed a growth of 8.3%. GDP (2005) was 23.5 billion US\$; of which the industrial sector occupied 26.1 percent and the agricultural sector 16.8 percent.

The Eighth Schedule to the Constitution of the Democratic Socialist Republic of Sri Lanka (1978) established nine provinces for the country as semi autonomous regions. Of these, the concentration of industry is greatest in the Western Province with the districts of Colombo and Gampaha hosting 80 percent of the industries.<sup>2</sup> High polluting industries include textiles, food processing, leather tanning, metal finishing, agricultural and mineral products.

The State controls, if not owns, more than 80 percent of the land in Sri Lanka and thus dictates the direction of development of these lands. The State restriction on the possession, occupation<sup>3</sup> and the use<sup>4</sup> of this State land estate aggravate the pressure on land. It is expected that while the population in Sri Lanka will stabilize at 23 million by 2025, the urban population will rapidly increase from 30 percent to 60 percent.<sup>5</sup>

### 2.1 Environmental Challenges

Agrochemicals, fertilizers, industrial pollution and urban pollution, including domestic waste and sewage, are amongst the main sources of water pollution. Many industries do not have proper waste treatment facilities. A pilot study in the Kelani River Basin indicates that out of a select sample of 57 industries, less than half had partial or complete water treatment facilities<sup>6</sup>. Since the Kelani River is an environmentally sensitive site, compliance data is not typical, and elsewhere this level of compliance cannot be expected. The surface drainage of pollutants from urban environments and direct discharge has had an adverse impact on rivers and on a number of lakes in urban areas, including Beira Lake in Colombo, Kandy Lake in Kandy and the lake providing drinking water to Kurunegala.

As a result of urban congestion, there are difficulties in implementing pit latrine regulations, which has an impact on the urban ground water sources in the country. Due to the absence of gully-emptier facilities, local authorities are unable to control surface latrine over-flow. Other specialized problems include the salinization of ground water in parts of the country due to rapid ground water extraction and problems posed by gem mining.

Both mobile and stationary sources generate air pollution in Sri Lanka, particularly in urban areas. Air quality monitoring data particularly in Colombo indicates that air pollution is increasing, especially from mobile sources. To address this, Sri Lanka has promulgated ambient air quality regulations and vehicular exhaust emission standards, and has introduced lead-free gasoline.

According to the most recent State of the Environment Report, 2,500 tons of solid waste is collected daily, of which 57 percent is in the Western Province. This solid waste is un-segregated and includes hazardous and non-hazardous waste material and medical waste. The absence of a proper disposal

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<sup>1</sup> Sri Lanka: State of the Environment Report 2001; <http://www.ricap.unep.org/reports/soe/srilankasoe.cfm>

<sup>2</sup> Sri Lanka: State of the Environment Report 2001

<sup>3</sup> State Lands (Recovery of Possession) Act.

<sup>4</sup> State Lands Ordinance & the Land Development Ordinance.

<sup>5</sup> The Water Vision 2025 – Sri Lanka

<sup>6</sup> The Report on the Pilot Study Undertaken in the Kelani River Basin for the Introduction of a LLF Scheme in Sri Lanka

system for solid waste is a continuing concern island wide. The present method of disposal consists largely of open dumping in low lying areas, thus impacting water bodies.<sup>7</sup>

Public protest has hindered Government attempts to site waste disposal facilities. There are, however, some efforts to pilot recycling and reuse and alternative disposal methods. MatEx, a material exchange data-base, seeks to find a solution to the management of solid waste by creating a platform that brings the waste producer and potential buyer together.<sup>8</sup>

Sri Lanka is considered one of the twenty-five bio-diversity hotspots of the world. The State of the Environment Report indicates that deforestation and unsustainable land use practices result in the loss of an estimated 5-10 mm of topsoil every year to soil erosion, which is most acute in the hill country, where the critical watersheds are located. As to discharge of pollution to the land, existing regulations focus almost exclusively on water bodies, and not soil.

## 2.2 Constitution

The Constitution of the Democratic Socialist Republic of Sri Lanka makes the protection, preservation and improvement of the environment for the benefit of the community a directive principle of State policy. Similarly, the Constitution declares the protection of nature and conserving its riches a fundamental duty of every person in Sri Lanka.

In 1987, the 13th Amendment to the Constitution of Sri Lanka devolved power to nine Provincial Councils and recognized the role of the Provincial Councils in the protection of the environment. While certain Provincial Councils have taken some initiative on environmental protection, there has been little concerted effort on devolution in this regard. Another important outcome of the 13th Amendment is that the local authorities, which previously were under the central government as a second tier of governance, were brought under the respective Provincial Councils administration. As a result, while the central government law determines the form and structure of local authorities, under the Constitution the Provincial Councils may confer additional powers on local authorities, but may not reduce any powers.

## 2.3 Legal Framework

In Sri Lanka there are over 70 laws that pertain to different aspects of protecting and conserving the natural environment and human health. Prior to 1980, there was no overarching legislation that could regulate pollution from all sources, and various agencies addressed issues pertaining to their sectors per sector-specific laws. In particular, the Factories Ordinance addressed industrial operations, including the safety and welfare of workers, while the Nuisances Ordinance regulated certain defined nuisances. Local authorities were entrusted by law with the regulation, control and administration of all matters relating to public health, public utility services and public thoroughfares within their geographical areas.

**National Environmental Act.** In 1980, the National Environmental Act (NEA) was enacted with the objective of protecting and managing the environment as a whole. The initial provisions of the Act focused on ‘environmental management’; with very little enforcement power vested in the implementation agency. In 1988, the Act was amended to expand implementation authority to: (1) ‘environmental protection’, (2) ‘environmental quality’ and (3) ‘approval of projects’.

While in 1988 the provisions on *environmental protection* applied to all activities that discharge, emit or deposit waste into the environment and cause pollution, a subsequent amendment in 2000 limited these provisions to listed ‘prescribed activities’. While this amendment limited the jurisdiction of the Act, the

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<sup>7</sup> *The Problem of Municipal Solid Waste and its Disposal.* (ITI). Daily News. 01 Nov. 2006.

<sup>8</sup> *The Problem of Municipal Solid Waste and its Disposal.* (ITI). Daily News. 01 Nov. 2006.

purpose was to focus resources on priority challenges. An amendment in 2005 enhanced the fines specified under the Act.

The *environmental quality* provisions of the NEA provide for the prevention of pollution of inland waters, the atmosphere, soil or the surface of any land and the control of excessive noise. Unlike the provisions on environmental protection, which are restricted to a defined list of prescribed activities, these provisions apply to all polluting activities. The environmental quality provisions, however, are more complicated to enforce and require ‘proof of pollution’. Further, the subsidiary legislation required to bring these provisions into effect are incomplete. In general, the government relies on these provisions at the time of litigation, where charges are brought under these provisions along with provisions on environmental protection.

CEA implements the *environmental assessment* with the support of other government agencies that provide project approval. The level of detail for the assessment depends on whether the developer is required to carry out an initial environmental assessment (IEE), or an environmental impact assessment (EIA). For the EIA, the project must complete a public comment period, while the IEE does not. For development activities within the coastal zone, the Coast Conservation Department implements the environmental assessment process as per the Coast Conservation Act. CEA issues site clearance through an administrative process that has been acknowledged by the Supreme Court<sup>9</sup> and the Court of Appeal.<sup>10</sup>

The *environmental management* provisions provide the primary tools for policy formulation and overall coordination, through the formulation of a land use scheme, basic policy on the management and conservation of natural resources, and exploitation and conservations systems for fisheries, wildlife and forest resources. At the National level, however, these provisions have not been activated by the CEA, and the resources designated for this purpose are limited.

Since 1996, the NEA has prescribed regulations for the *management of hazardous waste*, and in 1999 the CEA prepared Guidelines for the Implementation of Hazardous Waste Management Regulations. To date, the CEA has not issued licenses, and the regulations have not been implemented due to the lack of treatment and disposal facilities. Since 2004, the CEA has been implementing an environmental clearance process for hazardous waste, allowing certain types of hazardous waste to be co-processed at a cement plant. Other alternative interim measures are also in place.

***North Western Province Environmental Statute.*** With the enactment of this Provincial Statute in 1990, the North Western Province Environmental Authority assumed jurisdiction within the province. As a result, the NEA is no longer a national act.

***Waste Management Statute of the Western Provincial Council.*** This Provincial Statute provides for the establishment of the Waste Management Authority of the Western Province with powers to introduce waste management regulations and waste management guidelines within the Western Province. These regulations and guidelines cover ‘solid waste’, ‘hazardous waste’ and ‘clinical or infectious waste’ thus allowing a possible duplication of the CEA’s powers and functions.

## 2.4 Key Institutions

The governance structure in Sri Lanka is three tiered. Parliament at the center, Provincial Councils at the provincial level and Local Authorities consisting of Municipal Councils, Urban Councils and Pradeshiya Sabhas at the local level.

The sovereignty of Sri Lanka is vested in the people, while the Parliament exercises the legislative power of the people, and the President exercises the executive power. Other than in the event of Parliamentary privileges, the judicial power lies with courts, tribunals and institutions created and established by law or

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<sup>9</sup> Gunaratne v. The Homagam Pradeshiya Sabha and others. (1998) 2 Sri.LR 11.

<sup>10</sup> Keangnam Enterprises Ltd. V. E A Abeyinghe & others.

the Constitution. Laws formulated by Parliament enjoy immunity from challenge upon passing, and a Court or tribunal may not question the validity of any such law made by Parliament.

**Ministry of Environment.** Established in 1990, the Ministry of Environment is responsible for providing “leadership to manage the environment and natural resources in order to ensure national commitment for sustainable development for the benefit of the present and future generations” and the vision of “a healthy and pleasant environment, sustaining nature for the well being of the people and the economy”. The following agencies are under the Ministry of Environment: Department of Forest, State Timber Cooperation, Central Environmental Authority, Wild Life Trust, Department of Wildlife Conservation, Geological Survey & Mines Bureau, and the Marine Pollution Prevention Authority.

The Ministry formulated the National Environment Policy (NEP) in 2003, and the Caring for the Environment (CFE) 2003- 2007 Path to Sustainable Development as an action plan towards the implementation of the NEP. The Ministry has also formulated national policies including the recent National Policy on Watershed Management and the Biodiversity Conservation Action Plan (BCAP).

**Central Environmental Authority.** Established by the NEA, the Central Environmental Authority (CEA) is the administering agency for the NEA and is under the Ministry of Environment. Established in accordance with the NEA, the CEA Board consists of the Chairman and two other members appointed by the President in consultation with the Minister. Two members are required to have adequate expertise and qualifications in the subject of environment, while the third is required to have suitable administrative skill and experience in environmental management.

The Authority is a body corporate with perpetual succession that may sue and be sued in its name. While the CEA is empowered to establish its own fund, in terms of Article 154 of the Constitution and the provisions of the Act, it is subject to the Auditor General’s scrutiny and thus comes under Parliamentary supervision. A 30-member Environmental Council<sup>11</sup> appointed by the Minister advises the CEA. The CEA established District Environmental Agencies for each administrative district under the Chairmanship of the Government Agent of the District.

The CEA is responsible for the coordination of all regulatory activities relating to the discharge of wastes and pollutants into the environment and the protection and improvement of the quality of the environment. In order to carry out its objectives, the Authority is empowered to survey and to investigate the causes, nature, extent and prevention of pollution, and to conduct, promote and coordinate research on environmental degradation and its prevention. CEA can give directives to local authorities to comply with any CEA recommendations. The CEA may also provide information and education to the public regarding the protection and improvement of the environment.

The CEA has five divisions: Environment Pollution Control, Environment Management and Assessment, Environment Education and Awareness, Human Resources, and Operational Planning and Monitoring. In decentralizing its functions, the CEA has established four regional and four sub-regional offices throughout the country.

Except for the Western Province, CEA operates provincial regional and sub-regional offices that handle most compliance and enforcement functions. In the Western Province, where the CEA head office is located, the Environment Pollution Control Division has been carrying out routine compliance and enforcement functions, detracting from its national responsibilities, though this situation will change. The CEA recently established a regional Provincial Office for the Western Province, and is in the process of transferring the functions of the Environment Pollution Control Division to this regional office.

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<sup>11</sup> The members of the Environmental Council include the Director General of the CEA, seven members representing voluntary agencies in the field of environment, two members from among persons with adequate expertise or experience in environmental protection and management, and senior officers representing 20 Ministries and other agencies of the Government. There are no criteria specified in the NEA for the selection of the representatives of voluntary agencies in the field of environment, and of the two experts on the Council.

In implementing the hazardous waste regulations, the CEA has also established a Hazardous Waste Management Unit, which has been fully staffed since 2003. Despite its mandate, however, the Unit focuses much of its attention on the management of solid waste management, and not on the management of hazardous waste.

**AirMAC.** MoE and CEA established the Air Resources Management Center (AirMAC) in partnership with other stakeholders to provide leadership, guidance and facilitation in air quality management. Its objectives include the development of an effective coordination mechanism and the integration of all air pollution abatement programs. In 1996, AirMAC initiated a program for the continuous monitoring of ambient air quality in the Colombo City. The CEA produces weekly reports which are disseminated to the media and prominently displayed on a bulletin board in the City. AirMAC is also engaged in the development of public private partnerships particularly in testing and issuing Vehicle Emission Certificates.

**Provincial & Local Government.** Below the Parliament, the next level of governance is represented by the nine Provincial Councils established by the 13<sup>th</sup> Amendment to the Constitution. Provincial Councils consist of an elected legislative body and a Governor appointed by the President, who performs the functions of the executive. The Provincial Councils may make statutes applicable within the province in respect of subject areas specified under the Constitution. Since the Provincial Councils are subsidiary lawmaking bodies, their statutes do not enjoy immunity from challenge, and courts may at any time strike down a provincial statute on constitutional grounds.<sup>12</sup>

Local authorities consisting of Municipal Councils, Urban Councils and Pradeshiya Sabhas constitute the third level of governance. Local authorities are bodies corporate and have the power to formulate subsidiary legislation on subjects specified in the respective laws and thus formulate by-laws for their areas. This power, which is an exception to the rule that Parliament may not abdicate its law making power, is subject to challenge in terms of whether or not it has been exercised within the limits prescribed by law. Thus, Courts may scrutinize and set aside by-laws at any time on the grounds of their being *ultra vires*<sup>13</sup>. Since 1987, local authorities have been placed under the Provincial Councils. Provincial and local administration is further complicated in the conflict areas.

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<sup>12</sup> Supreme Court Special Determination on the 13th Amendment to the Constitution Bill prior to its enactment in 1987 - In Re the Thirteenth Amendment to the Constitution

<sup>13</sup> Nicholas v. Hapawana Terunnanse. 02 New Law Reports 346.

### 3.0 RAPID ASSESSMENT RESULTS

Responding to the Ministerial policy on Caring for the Environment 2003 – 2007, in 2004 CEA conducted an internal assessment and developed an action plan to identify strategies for enhancing achievement of its mission. Entitled *Road-map for Caring for the Environment 2004 – 2007*, some expected outcomes included a focus on improving enforcement and compliance:

- 100 percent industrial compliance with environmental regulations;
- Strengthened law enforcement capacity; and
- Established centers for environmental information, education and promotion of skills and commitment for environmental protection.

The *Road Map* also outlines the activities needed to achieve these objects but does not set interim targets to measure progress. Since components of the *Road Map* are at various stages of implementation, this rapid assessment and its recommendations can support CEA efforts.

### 3.1 Legal Enforcement Authority

Per the NEA, the CEA has overall regulatory authority pertaining to environmental pollution, including policy making, standard setting, investigation, coordination and research. To support the CEA functions, the Minister may formulate regulations as required by the Act. As detailed in Table 1, CEA possesses a range of regulatory powers, though with key limitations that reduces its effectiveness as the principal compliance and enforcement agency.

**Table 1: Summary of Enforcement Authority**

CEA Powers and Responsibilities	Yes	No	Remarks
Conduct policy and rule-making	√		Responsibility shared with the Ministry of Environment
Establish standards/guidelines	√		Promulgation of regulations
Coordinate of regulatory activities	√		Oversight over local authority regulatory activities
Approve industrial siting applications	√		For non-prescribed projects – administrative process
Issue, cancel and suspend licenses	√		Only on prescribed activities
Access to records and equipment	√		Director-General or authorized officer to require by notice
Enter and inspect facilities	√		Director-General or authorized officer
Require self-monitoring/reporting	√		Per license (EPL) requirements
Close facility; require corrective action		√	No provision
Impose civil judicial sanctions		√	No provision
Impose civil administrative sanctions		√	No provision
Impose criminal fines/penalties		√	Through courts
Issue cease and desist/closure orders		√	Through courts

Since the 2000 amendment of NEA, CEA has had the authority to license only “prescribed activities” listed under Part IV-A of the NEA, which are the 80 mainly highly polluting industries, even though CEA

had jurisdiction over all other activities under its broader mandate to regulate “environmental quality” under Part IV-B. The narrow scope of the permit system to cover only activities under Part IV-A, coupled with the lack of regulatory powers over local authorities (see Section 3.2), limits CEA’s ability to regulate polluting activities.

As detailed in Section 3.3, CEA has the powers of inspection and monitoring, including the authority to require self-monitoring and reporting. Under the NEA, the Director-General or an officer authorized by him in writing may enter any land or premises to examine and inspect, take samples, review books, records or documents, take photographs etc. When there is reasonable cause to suspect any serious obstructions in the execution of duties, the inspector may enter accompanied by a police officer. The prevention or obstruction of the inspector in the course of such inspection is an offence. These provisions are very specific on what the inspector may do after entering premises, and do not extend to investigative powers.

While CEA has the power to suspend or cancel a license, the Authority may not order a corrective action per a compliance schedule or closure of a facility. This power remains with the courts, which can only close a facility following criminal conviction. In fact, all sanctions (fines and imprisonment) must be pursued as criminal violations, and CEA does not have civil judicial or administrative authority. Not surprisingly, criminal cases brought by CEA are difficult to prosecute, and consume precious government resources and time.

***Enforcement and Local Authorities.*** Under the NEA, the CEA has the authority to issue directives to local authorities on a number of subject areas, particularly in relation to the unauthorized discharge of solid waste. Where the CEA has issued a directive to a local authority, the law does not provide means of ensuring compliance, nor sanctions for non-compliance. As a result, there is little incentive for the local authorities to comply with such directives, which limits the effectiveness of CEA.

There are also ambiguities related to delegated authority to local governments. It is unclear, for example, whether or not the CEA can pursue an enforcement action in court against a violator for activities listed in Part B. It is also unclear whether or not a local authority could obtain a closure order based on delegated authority. Neither situation has been tested in Court.

### Key Challenges

- ***Limited scope of CEA regulatory powers*** due to the strict interpretation of the inapplicability of the compliance and enforcement function to only “prescribed activities” per Part IV-A of NEA compromises overall effectiveness of CEA.
- ***Weak enforcement powers*** due to inability to conduct investigations, close facilities, require corrective action per compliance schedule, or impose administrative fines or penalties is a major challenge facing CEA. The CEA also has incomplete or undefined enforcement powers over non-complying local authorities.

## **3.2 Institutional Arrangements and Capacity Building**

***Delegation of authority.*** The Act provides the CEA with wide powers of delegation. With the concurrence of the relevant Minister, the CEA may delegate any of its powers, duties and functions under the Act to any Government department, corporation, statutory board, local authority or any public officer. Notwithstanding such delegation, CEA retains the primary obligation to protect the environment and to administer the Act. Based on these provisions, CEA has delegated the power to license certain categories of industries to local authorities.

As mentioned earlier, the 13th Amendment established Provincial Councils and sets out as a Provincial Council responsibility the “protection of environment within the Province to the extent permitted by or under any law made by Parliament”, while the Concurrent List sets out “protection of the environment”

as a Concurrent responsibility. Thus, the Constitution affirms that the Provincial Councils have a role to play in the protection of the environment, though the provisions indicate that Parliament intends to exercise a supervisory function over such Provincial activity. The Government, however, has not clearly delineated the role of Provincial Councils in environmental protection.

As a consequence, both the North Western Province and the Western Province have enacted provincial statutes pertaining to the protection of the environment. In particular, the Environmental Statute No. 12 of 1990 of the North Western Province duplicates many of the provisions of the NEA. As a result, the NEA is considered inoperative within the North Western Province. If other Provinces were to enact provincial statutes on their own and render the NEA inoperative, this would significantly limit CEA's activities. It is, therefore, important to rationalize the functions at the national and provincial levels.

A further complication to delegation lies in the fact that the 13th Amendment vests the subject of local authorities as a provincial subject. So far, the delegation processes of the NEA by-passes the provincial councils. This can cause future problems in implementation, particularly in the supervision of local authority functions.

**Human Resources.** At present, CEA has a total staff of 749 persons. Senior Environmental Officers (SEOs) carry out inspections for Part A activities. Each of the four regional offices has four SEOs and each of the four sub-regional offices has 2 SEOs, thus making a total of 26 SEOs. The Legal Division of the CEA consists of five lawyers.

For Part B inspections and related activities, there are 368 Divisional Environmental Officers (DEOs) presently placed in Divisional Secretaries and District Secretaries offices throughout the country. (As a result of restructuring these regional and sub-regional offices will all be called provincial offices.) The Government recruited approximately 300 of the DEOs during a single recruitment effort, and placed under Divisional Secretaries and local authorities. The CEA is presently streamlining this massive personnel recruitment. The services of the DEOs are available to the local authorities on a pre-arranged rotation. At present, the DEO service is not linked to the SEO service, though plans are underway to do so with the establishment of proposed district level offices.

**Budgetary Support.** The Act provides for the establishment of a separate fund for the CEA. While the initial capital for the CEA came from the Consolidated Fund, the CEA may thereafter establish and maintain a separate fund, though as yet no such Fund has been established. Main income sources for the CEA are application fees, rent, license fees, inspection fees, sale of publications and laboratory services.

Each year, the CEA prepares a budget based on the actual expenditures for the previous year adjusted for inflation. Any new activities need to be factored in at the time of budgeting. Since the actual transfer of funds from the treasury takes into account the predicted income for the previous year, at the end of the year, the CEA is left with a zero balance. The actual disbursement of funds is done monthly on a pro rata basis, and any surplus is also factored into the monthly disbursement. As a result, there is little financial flexibility for CEA's activities. The total budget for 2005 was 166 million rupees, while the budget for 2006 is 194 million.

Although there are several divisions within the CEA, their funding is part of the main budget. Staff salaries, travel expenses, etc. of all divisions are lumped under one main budget, and are not divided up according to the various divisions. Only funding allocated for some specific activity is directly handled by the concerned division.

**Local Government Capacity.** The capacity of local authorities is uneven. Some local authorities, such as the Colombo Municipal Council, have their own laboratory, while most do not even have the necessary personnel for the implementation of the environmental permitting and monitoring functions. To date, there has not been an assessment of the current capacity of the local authorities to implement basic compliance and enforcement functions.

The Commission Report on Local Authorities made several recommendations to enhance the environmental management capacity of local authorities. These include: establishment of environmental committees, establishment of an environmental department/division at each local authority, financial resources streams linked to the environment and appointment of environmental officers for every local authority.<sup>14</sup>

**Training.** According to the *Road Map*, the most urgent capacity need is support for the ‘functions at the sub-national level’ – i.e. the DEOs, whose services are provided to the local authorities, and who are also expected to carry out a supervisory role over the local authorities. The CEA is presently engaged in streamlining and enhancing the capacity of the DEO service.

The delegated functions in relation to EPL are carried out by the relevant local authorities, of which only a few of the 309 are fully competent and equipped. The CEA provides technical and legal advice to local authorities on the EPL functions, while the Ministry of Local Government and Provincial Councils provides administrative and financial support. In 2006, the CEA prepared and published a *Training Manual for Environmental Inspectors*, which covers licensing procedures, inspection planning, sampling procedure and evidence, and sets the template for inspection work.

#### Key Challenges

- **Overlapping legal authority between CEA and Provinces** has led to a dual program that duplicates efforts and compromises national regulatory uniformity.
- **Absence of a separate CEA fund** as authorized by NEA limits CEA’s ability to finance compliance and enforcement activities and initiatives, including implementing new economic-incentives programs.
- **Limited human, institutional and financial capacity** of CEA and local authorities to carry out legal mandates on compliance and enforcement is an obvious long-term challenge.

### **3.3 Compliance Monitoring: Permitting, Inspections and Self-Monitoring**

**Permitting.** The principal permitting program under ‘environmental protection’ is the Environmental Protection License (EPL) scheme, which applies to any person who discharges, deposits or emits waste into the environment and causes pollution; the EPL provisions apply only to ‘prescribed activities’ per Part IVA of the Act. The Environmental Pollution Control Division (EPC Division) of the CEA administers the EPL program through the Pollution Control Unit, Hazardous Waste Management Unit and the Laboratory Services Unit.

CEA has issued a range of effluent discharge standards, including discharge into inland surface waters, industrial effluent discharge on land for irrigation, industrial and domestic effluent discharge into marine coastal areas, and separate effluent standards for rubber, textile and tanning industries discharging into inland surface waters.

Per the CEA Annual Reports, CEA has issued and renewed a large number of licenses. In 2004, for example, the number of applications for licenses showed a 27 percent annual increase; in 2005, 214 new licenses were issued (see Table 2).

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<sup>14</sup> Report of the Commission of Inquiry on Local Government Reforms, 1999.

**Table 2: Environmental Protection Licenses in 2005**

Province/District	EPL Renewed	EPL Issued
Western	160	114
Kandy	13	14
Kegalle	05	17
Galle	15	34
Trincomalee	01	06
Anuradhapura	03	06
Ampara	01	09
Weeravila	14	09
Jaffna	--	--
Badulla	--	05
<b>Total</b>	<b>212</b>	<b>214</b>

(source CEA Annual Report-2005)

Implementation authority for the EPL scheme is divided between the CEA and the local authorities. The list of “prescribed activities” contains two lists – Part A and Part B.<sup>15</sup> The CEA regulates activities in Part A, which are the 80 mainly highly polluting industries (petrochemicals, cement, textiles, rubber, food processing) and issues the EPL. As delegated by CEA, relevant local authorities regulate activities defined in Part B, which include less polluting and small-scale industries (e.g., brick kilns, grinding mills, small hotels), and issue the EPL.

The law provides that, notwithstanding the delegation, it is the responsibility of the CEA to protect the environment and to administer the provisions of the NEA. Thus, with final responsibility still rests with the CEA, which is required to exercise a strong supervisory role over local authorities. This arrangement is complicated, however, by the fact that the CEA is under the MoE, while the local authorities are under the Ministry of Local Government and Provincial Councils.

The NEA provides an administrative appeals procedure on EPL for any applicant for a license “aggrieved by the refusal of the Authority to grant the license”, or to any holder of a license “aggrieved by the suspension or cancellation of same, or refusal to renew the license”. This right of appeal is not available to the public aggrieved by the decision of the CEA in favor of the licensee. (The same applies for approvals granted under the environmental assessment process.)

**Inspections.** Eight Regional and Sub-regional offices of CEA carry out inspections and monitoring activities throughout the country. Given inadequate manpower and equipment, however, these offices are unable to carry out regular monitoring of activities, and usually they do not prepare an annual monitoring and inspection plan. Although CEA carries out some unannounced spot inspections at irregular intervals, generally inspections are complaint driven, or carried out when processing license applications or renewals. In addition, by notice in writing, CEA may require the occupant to furnish the Authority within a specified period information on manufacturing, industrial, or trade processes, or on wastes discharged or likely to be discharged.

In 2005, the CEA prepared a monitoring program for the Western Province, which established a monitoring date for each industry that corresponded to the deadline for license renewal, and ensured that each licensed industry was monitored at least twice a year. Due to the recent transfer of some EPC Division functions to the Provincial Office, this monitoring program is not yet in full operation.

**Self monitoring and Self-reporting.** The National Environmental (Protection and Quality) Regulations, No. 01 of 1990 provide the general terms and conditions for an EPL, and require licensees to measure, calculate, and register of samples to determine actual level of pollution and risk of exposure;

<sup>15</sup> Gazette Extraordinary No. 1159/22 of 22.11.2000.

and record data and report to the Authority. As a result, self-monitoring and self-reporting is often introduced as a license requirement in the EPL. The monitoring and reporting frequency varies depending on the activity, and is typically on quarterly or bi-annual basis. Also, there are no sanctions for self monitoring violations. In addition, licenses granted under the environmental assessment process may also include self-monitoring and reporting requirements.

#### Key Challenges

- ***Lack of comprehensive permitting, monitoring and inspection procedures*** significantly limits the ability of CEA or local authorities to establish a solid foundation for compliance assurance.
- ***Limited application of self monitoring requirements*** places an excessive burden on an already over-stretched CEA in conducting routine compliance monitoring tasks.
- ***Absence of laboratory accreditation measures*** reduces the effectiveness of the existing program and future efforts to develop self-monitoring or pollution charge programs.

### **3.4 Enforcement Response**

CEA detects violations through its own monitoring activities, complaints and self monitoring reports. Upon detecting a violation, the relevant CEA Regional or Sub-regional Office issues one or more warning letters to the violator, setting forth a time limit for the facility to come into compliance. If the violator fails to come into compliance, the relevant Regional or Sub-regional office refers the matter to the Legal Division of the CEA. Prior to proceeding with an enforcement action, the Legal Division sends a show-cause letter, and if the response is unsatisfactory, the Legal Department proceeds with the enforcement action through criminal litigation.

In the case of a violation, CEA may suspend or cancel the license, though this suspension does *not* result in immediate closure of a facility, or even the establishment of a compliance schedule. Only courts can order a compliance schedule or closure after conviction. As a result, non-complying facilities may continue to operate during the litigation, which can be quite lengthy.

Violations are prosecuted in the Magistrate's Court, and penalties include fines and imprisonment. Courts are, however, generally unwilling to imprison those convicted for environmental offences unless there are extreme reasons to do so. CEA does *not* have civil judicial or administrative authority.

In the absence of provisions under Part IVA of the NEA to obtain immediate closure orders, the CEA has resorted to the provision on the power to issue directives and to obtain temporary closure orders, to obtain an immediate closure of a polluting industry. Courts have generally been willing to issue such orders, though not in all cases.

***Legal Consultation.*** Litigation can raise difficult legal issues that require opinions and assistance outside the CEA's present capacity. As a result, the CEA can consult with the Attorney-General's Department for litigation advice on fee-for-service basis. In addition, the CEA can only obtain outside legal assistance with prior approval of the Attorney-General.

There are significant capacity limitations at CEA, which lacks the funding to pay for the Attorney-General's Department for litigation support. At present, there are over 80 cases pending, approximately 35 of which relate to violations of EPL conditions, or failure to obtain a license. Seven cases relate to failure to abide by directives issued by the CEA.

### Key Challenge

**Weak, inflexible agency enforcement tools** prevent CEA from exercising a responsive, effective, proportionate response to non-compliance that would punish polluters, redress harm and create an atmosphere of deterrence.

## **3.5 Compliance Assistance and Data Management**

The CEA Environmental Education and Awareness Division carries out targeted and general awareness activities, including outreach and provision of information to the regulated community. The CEA has, in fact, prepared several guidelines to promote compliance, including the Guidelines for the Implementation of Hazardous Waste Management (1999) and the Technical Guidelines on Solid Waste Management in Sri Lanka. The CEA maintains a web site ([www.cea.lk](http://www.cea.lk)), which contains some information targeting the regulated community, including a list of suggested “Specialists/Consultants for Technological Guidance on Pollution Control” and a list of laboratories.

One recommended output put forward in the *Road Map* was the development of educational material and provision of training on sustainable consumption, sustainable production, ISO standards and cleaner production for the regulated community. Under the Ministry of Industry, Sri Lanka also operates the National Cleaner Production Center, which carries out industry audits and provides recommendations on cleaner production approaches to industry.

CEA has also not established an environmental information management system, and most compliance and enforcement data is stored in paper archives.

### Key Challenges

- **Limited provision of compliance assistance to the regulated community** prevents CEA from an effective means for targeting specific polluting industries, especially SMEs, by directly leveraging available information, technologies and best practices.
- **Absence of a comprehensive computerized data management system** prevents the development, use and sharing of core program information

## **3.6 Economic and other Incentive-Based Instruments**

At present, Sri Lanka implements a traditional command and control compliance and enforcement program. To date, the only incentives provided by the government are several soft loan schemes in collaboration with banks to implement pollution reduction strategies and actions. Presently, a soft loan scheme titled E-Friends II is in implementation.

Since 2000, however, CEA has been exploring options for establishing a wastewater pollution charge program, or load-based licensing fee (LLF) scheme. Having selected the Kelani River as a pilot location for the scheme, CEA has completed some analysis and testing for the scheme and drawn some conclusions.

In particular, the scheme would be based on chemical oxygen demand, and operate on a two-tier basis where industries that meet environmental standards would pay a lower nominal rate, while those failing to meet the standards would pay a penal rate. The scheme would initially apply to highly polluting industries and would return revenues to a revolving fund established under the NEA, or some other legal arrangement. Implemented on a phased basis, the scheme would also offer incentives to industry, including the provision for soft loans to industries that do not have access to a common treatment system.

While much work remains in defining the scheme, including clarifying fiscal and regulatory elements, and implementation and capacity requirements, the Cabinet has in principle approved its establishment based on a policy paper prepared by the CEA, which reflects the results of the previous analysis though leaves unresolved remaining implementation requirements.

#### Key Challenge

***Absence of economic or incentive-based instruments*** does not allow CEA to leverage market and community forces and access additional financial resources to complement a relatively weak command-and-control compliance and enforcement system.

### **3.7 Performance Indicators**

To date, CEA has not developed indicators to evaluate its compliance and enforcement program, though it maintains a wide range of relevant information that could support performance management. The CEA Annual Report includes information on: number of new licenses issued, number of licenses renewed, number of complaints filed, number of responses to complaints, number of site recommendations issued and number rejected, number of reports submitted to court, number of ‘prescribed projects’ approved, number of cases filed and number of cases concluded. Overall, baseline information on compliance and enforcement is uneven or non-existent; CEA also manages this information via a paper archival system. The *Road Map* recognizes the need to develop environmentally significant indicators and to publish electronically the relevant evaluation data on a quarterly basis.

#### Key Challenge

***Lack of performance indicators and targets to assess effectiveness of enforcement program*** is a significant constraint to effective priority setting and program management.

### **3.8 Public Participation**

Backed by a strong civil society, there are a large number of environmental non-governmental organizations (NGOs) operating in Sri Lanka. The CEA consults directly with NGOs on a range of issues, and maintains a registered database of over one hundred environmental NGOs and has provided an office at the CEA headquarters for NGOs. In fact, the *Road Map* recognized the need to establish ‘focal units’ at CEA headquarters and regional offices for coordination with civil society, as well as a facility at the headquarters and regional offices to respond to public complaints.

***Access to Information.*** Sri Lanka does not have an access to information law, although the Law Commission has recommended the need for one,<sup>16</sup> and judicial decisions favor recognizing the right to have access to information in an environmental context.<sup>17</sup> The Evidence Ordinance also provides that where a right to inspect a public document exists, the person entitled to examine is also entitled to obtain a certified copy. In the absence of a right to information act, the usual approach is that information is confidential unless declared not to be so. The AirMAC initiative, which releases regular ambient air quality monitoring reports, sets an important precedent in dissemination of public environmental information.

***Citizen Complaints.*** CEA responds to citizen complaints either in writing or by a complaint hot line that is located at the Western Province Provincial Office (see Table 3). For the hotline, there is no support unit or dedicated staff to follow up on complaints, and CEA merely directs complaints to the

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<sup>16</sup> *Report on freedom of Information and Draft Access to Official Information Act (1996)*, Law Commission of Sri Lanka.

<sup>17</sup> *Bulankulama & others v. Secretary, Ministry of Industrial Development & other.* (2000) 3 Sri.L.R. 243.

relevant division for investigation. The concerned division deals with subsequent inquiries from the complainants, which takes a considerable amount of staff time.

Table 3: Citizen Complaints Received by CEA in 2005

Type of Complaint	Western Province	Other Provinces	Total
Hotline	286	37	323
Written complaints	1350	615	1965
Total Complaints	1636	652	2288

**Citizen Enforcement.** There are no direct enforcement provisions in the NEA available to citizens. Citizen enforcement is either by way of a nuisance action if it can be proved, or by challenging the CEA usually by writ actions such as Certiorari and Mandamus seeking a Court order compelling the CEA to implement the law. If successful, the citizen has to await another lengthy process for the CEA to file action and compel compliance. Although the power to issue these prerogative writs was vested only in the Court of Appeal, which sits in Colombo, subsequent to the 13<sup>th</sup> Amendment, these writs with respect to matters within the Province could now be issued by the Provincial High Courts.

In general, the judiciary in Sri Lanka has been positive in its response to public interest litigation. During the last two decades, several high profile environmental cases have established important precedents with respect to the shared responsibilities between the State and society<sup>18</sup>, transparency in decision making<sup>19</sup>, establishing monitoring committees with representation from the affected community to monitor individual industries, etc. Public nuisance litigation – the invocation of the powers of prerogative writs and the exercise of fundamental rights jurisdiction – continues to play a significant role in environmental litigation. Actions akin to ‘class actions’ can be brought in terms of the Civil Procedure Code though these provisions have not been explored sufficiently in relation to environmental issues.

#### Key Challenges

- **Public access to information is not recognized** in law, which limits public participation in decision-making related to compliance and enforcement.
- **Ineffective citizen complaints process and limited public awareness of program** reduces opportunities for CEA to leverage public involvement in compliance and enforcement process..

<sup>18</sup> Bulankulama & others v. Secretary, Ministry of Industrial Development & other. (2000) 3 Sri.L.R. 243.

<sup>19</sup> Gunaratne v. The Homagama Pradeshiya Sabha & others

## 4.0 RECOMMENDATIONS

The following proposed recommendations are based on the rapid assessment questionnaire, interviews with officials and a stakeholder consultation meeting held on the November 6, 2006 at the CEA headquarters in Colombo. The short term recommendations can be implemented immediately and may require only new or revised regulations. Long-term recommendations require more substantive changes, including amending the NEA or other laws, or more intensive planning or resource requirements.

### 4.1 Short-Term Recommendations

- ***Strengthen cooperation mechanism between agencies MoE, CEA, Local Authorities and other concerned agencies.***

The Government should establish formal mechanisms for improved coordination between environmental agencies, such as MoE, CEA and local authorities. The Government should put forward a mandate for resolving issues at the policy level, including through inter-ministerial or cabinet-level coordination, and regular staff-level meetings.

- ***Establish integrated permitting, monitoring and inspection policies, procedures and practices for use by CEA and local authorities***

Given the institutional complexities in Sri Lanka, it is important to develop and implement uniform policies and procedures for permitting, monitoring and inspection for use by CEA and local authorities. Building on the experience and capabilities of the CEA within the Western Province, CEA could devise policies and procedures that address EPL issuance, monitoring and inspections to ensure more transparent and effective compliance assurance programs. CEA could build on its recent inspector training program in developing these new policies and practices, and work to support laboratory accreditation as a core capacity.

- ***Move forward on pilot testing and implementing the waste water discharge fee scheme***

Based on the initial analysis of the wastewater LLF scheme, and Cabinet approval for this policy, CEA should move forward aggressively in supporting necessary reform initiatives, including working with policy makers and the regulated community to pilot test the proposed scheme. One approach would be to address wastewater discharge for priority Part A industries, addressing all technical, institutional, legal and financial factors.

- ***Explore strategies for adopting voluntary incentives-based instruments, including public disclosure and fiscal incentives programs***

In addition to launching the LLF scheme, CEA should explore the possibility of putting in place incentives-based instruments including public disclosure programs, which have proven successful in other Asian countries, and fiscal incentives that promote cleaner production.

- ***Operationalize a separate CEA Fund***

Based on existing legal authority, in consultation with the Finance Commission, Treasury Department and Auditor-General's Department, the CEA should work to establish a separate financial mechanism or fund to promote overall program sustainability and effectiveness, and developing economic incentive initiatives.

- Upgrade and expand citizen monitoring tools and capacity, including the existing hotline

CEA should upgrade and expand the citizen complaint mechanisms for receiving complaints, monitoring response and providing feedback to the complainants. Building on the existing hotline capability, the mechanism should be available not only at the head office but at provincial offices with electronic linkages to the EPC Division.

- ***Develop comprehensive compliance assistance program to assist regulated community***

While CEA has developed some promising outreach and compliance assistance initiatives, the Authority should build on these efforts by establishing a more comprehensive program that enlists the support of chambers of commerce and industry, and builds on the existing National Cleaner Production Center. In developing this effort, CEA could focus initially on establishing a more comprehensive information clearinghouse mechanism.

- ***Develop performance management system and national indicators***

CEA should establish a performance management system for priority setting, planning and performance evaluation of compliance and enforcement programs, including establishing a set of national performance indicators. Linked to an enhanced information management capacity, CEA should develop a mix of program (input), activity (output) and results (outcome) indicators that would enhance CEA's accountability, and assist CEA in designing proactive compliance and enforcement strategies.

- ***Upgrade and expand capabilities and capacity in information management***

CEA should work to establish a uniform system of collection, management and sharing of compliance and enforcement information at the national and local levels. The Government should also provide extensive staff training on information management. The new system would save administrative costs, improve data quality, and increase transparency of CEA activities by enabling public access to the information.

## **4.2 Medium-Term Recommendations**

- ***Reformulate delegated and devolved authority to create a more effective and efficient institutional framework***

The Government should lead a consultative process to define more clearly the relative responsibilities of national agencies, provincial councils and local authorities in compliance and enforcement. In keeping with the Constitution and actual capacities on the ground, the Government should revise the NEA to address the inherent loopholes and weaknesses in delegation of prescribed-activities to local authorities, and obvious duplications in responsibilities between national agencies and provincial councils. At a minimum, CEA should retain powers to sanction local authorities for non-compliance.

- ***Amend the NEA to enable CEA to deploy more flexible, effective enforcement tools***

The Government should amend the NEA to expand enforcement authority to enable the CEA to deter noncompliance and redress harm via a range of enforcement response tools and mechanisms. CEA and local authorities should have access to a flexible array of sanctions, including civil administrative penalties, issuance of compliance schedules, facility closure, and remedial actions.

- ***Enhance human, institutional and financial capacity for implementing compliance assurance activities***

To develop an effective compliance and enforcement program, the Government will need to address urgent human, institutional and financial capacity limitations at the national, provincial and local levels. As a first step, the Government should carefully evaluate the capacity of CEA in regulating the highly polluting industries, and of local authorities in regulating small and medium industries. CEA should set in place a program of action with targets for strengthening capacity.

- ***Strengthen self-monitoring and self-reporting requirements for EPL for all regulated industries***

Given the existing authority under the EPL regulations, CEA should strengthen its self-monitoring requirements as applied to EPL to set out formal procedures on monitoring, record-keeping and reporting for both Part A and Part B industries. CEA should support amendments of the NEA to provide sanctions for non-compliance. The use of self-monitoring data as evidence of non-compliance would put additional pressure on industry to comply, and could be linked to a public disclosure or other incentives-based program.

- ***Sharpen agency focus towards higher risk hazardous waste management activities***

Due to the limited effectiveness of local authorities in addressing solid waste, there has been a strong public expectation that CEA should take action, and as a result a disproportionate amount of CEA – particularly of the Hazardous Waste Management Unit – is spent on solid waste management. In line with its mandate, the Authority should refocus priorities on hazardous waste, which poses a higher risk to the environment and public health.