



Environmental Compliance and Enforcement in Vietnam:

Rapid Assessment

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Credits

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Vietnam 2005 Country Assessment Report: Environmental Compliance and Enforcement Program

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Abbreviations

DoNRE	Department of Natural Resources and Environment
DoSTE	Department of Science, Technology and Environment (former)
IZs	Industrial Zones
EIA	Environmental Impact Assessment
EPZs	Export Processing Zones
LEP	Law on Environmental Protection
MARD	Ministry of Agriculture and Rural Development
MoNRE	Ministry of Natural Resources and Environment
MoF	Ministry of Finance
MoFI	Ministry of Fishery
MoH	Ministry of Health
Mol	Ministry of Industry
MoSTE	Ministry of Science, Technology and Environment (former)
PPC	Provincial People's Committees
VEPA	Vietnam's Environmental Protection Agency
VND	Vietnamese Dong
US\$	United States Dollar

I. Vietnam's Environmental Context

I. Background

Like other rapidly industrializing nations in Southeast Asia, Vietnam now faces significant environmental protection challenges in the wake of unprecedented economic growth. A look at Vietnam's urban centers illustrates the magnitude of these growing environmental concerns. With high rates of migration from rural areas to urban centers, Vietnam's burgeoning urban populations are outpacing existing municipal infrastructure and services and creating serious environmental problems with untreated sewage discharging directly into open waters, air pollution from mobile and industrial sources, unmanaged solid and hazardous waste and natural resource depletion.

In response to mounting evidence of environmental degradation, the Vietnamese government has enacted important environmental policies and legislation and established institutional structures to manage and protect the State's natural resources and environment. Despite these efforts, however, weak pollution controls, limited institutional capacity, lack of technical expertise, and insufficient funding have all considerably influenced and reduced the effectiveness of the government's environmental protection program and its enforcement efforts. According to the 2005 Environmental Sustainability Index Report,¹ Vietnam's ability to protect its environment ranks at the bottom of all 10 Association of South East Asian Nations (ASEAN) countries and places 98 out of 117 developing countries. This sustainability index benchmarks a nation's capacity for environmental stewardship based on 21 evaluation indicators, including CO₂ and greenhouse emission, water quality, air quality, land, environmental capacity, science and technology development, natural resources management capacity, capacity to reduce population pressure, among others

Water Pollution

Almost all river basins in Vietnam are polluted with residential and industrial waste. In Hanoi, Ho Chi Minh City and other major cities, residential, hospital and industrial wastewater remains untreated, flowing directly into lakes and canals crossing residential and production areas. In fact, over 70% of Industrial Zones (IZs) and 90% of production units do not have adequate waste treatment facilities in Vietnam. As a result, millions of cubic meters of untreated raw sewage are discharged into the surrounding environment everyday, polluting Vietnam's major rivers, including the Cau, the Nhue-Day and the Saigon-Dong Nai. (see Figure 1). The Vietnam Environment Water Monitoring 2004 reported that industrial parks (IPs) and export processing zones (EPZs) in the Southern Key Economic Zone discharge over 137,000 m³ of wastewater containing nearly 93 tons of waste into the Dong Nai, Thi Vai and Saigon Rivers each day. Meanwhile, only two out of 12 IPs and EPZs in Ho Chi Minh City, three out of 17 in Dong Nai, two out of 13 in Binh Duong, and none of the IPs and EPZs in Ba Ria-Vung Tau have wastewater treatment facilities. Not surprisingly, pollution levels in almost all major rivers for BOD (biological oxygen demand) and other pollutants are higher than the national water quality standards.²

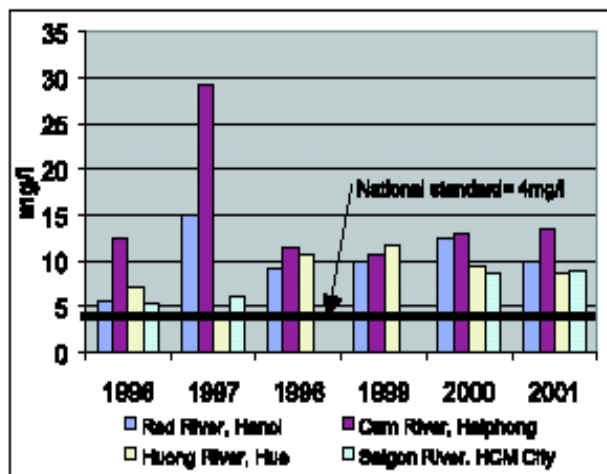


Figure 1: Biological oxygen demand (BOD) levels exceeding national standards in rivers through major Vietnamese cities

¹ Esty, Daniel C., Marc Levy, Tanja Srebotnjak, and Alexander de Cherbinin (2005). *2005 Environmental Sustainability Index: Benchmarking National Environmental Stewardship*. New Haven: Yale Center for Environmental Law and Policy.

² Figure 1: BOD level in almost all major rivers is higher than national standard of 4mg/l, TCVN 5942-95 – Surface water quality

In rural areas, water bodies are also quite polluted from household and livestock waste, as well as pesticides and insecticides. Only some 30-40% of rural households have access to clean water, and a mere 28-30% have sanitary latrines.³

Air Pollution

The main sources of air pollution in Vietnam today are from mobile transportation sources and industrial production. In 2002, transport activities used approximately 1.5 million tons of gas and oil, which resulted in emissions of more than 6 million tons of carbon monoxide, 35 thousand tons of nitrogen dioxide, 12 thousand tons of sulfur dioxide and over 22 thousand tons of hydrogen compounds (e.g., benzene, cyclohexane, pyrene, etc). With a growing urban population and increased traffic, Vietnam's cities are tracking air pollution levels and discovering hot spot areas that exceed the national air quality standards. The major polluting industrial sectors include thermoelectricity, construction materials, metallurgy, chemistry, and mineral exploitation. Antiquated production technology, lack of dust treatment and air pollution equipment all significantly contribute to Vietnam's growing air pollution problems.

According to the recent geodetic statistics provided by the Center for Environmental Engineering of Towns and Industrial Areas (CEETIA), the dust volume in the air of Hanoi's urban areas from 7a.m. to 5 p.m. exceeds some 1.3 to 2.3 times more than the allowable standard. In the past several years, the dust volume in the air has increased from 4 to 20%. Noise pollution from traffic also greatly exceeds the maximum noise standard for public and residential areas at TCVN 5949:1998 or 50-75dB(A) from 6a.m. to 6p.m. CEETIA estimates that air pollution costs Hanoi 1 billion Vietnamese dong (VND) (about US\$ 63,000) per day.

Forest quality and biodiversity

Maintaining Vietnam's biodiversity is one of the most urgent environmental issues today. According to the Ministry of Natural Resources and Environment (MoNRE), total forest-covered area in Vietnam is now approximately 11.5 million hectares or 37% of the country's entire land area, of which 9.7 million hectares are natural forests and 1.6 million hectares are plantation forests. In less than 50 years (from 1945 to 1990), forest-covered areas in Vietnam decreased from 43% to 27%. Thanks to recent reforestation efforts, however, forest-covered areas increased to 33% in 2001 and 34.4% in 2003. Poor agricultural practices and aquaculture continue to threaten upstream forests and coastland forests.

According to the World Bank,⁴ Vietnam is one of the world's most biologically diverse countries and is a priority area for global conservation. With distinctive climate and geography ranging from mountainous highlands to delta, Vietnam is home to more than 12,000 species of plants and 7,000 species of animals. Moreover, Vietnam's diverse ecosystems, including forests, marshes, rivers, and coral reefs, support nearly 10 percent of total mammal and bird species worldwide according to the World Bank. A number of factors including rapid development, forest fires, illegal wildlife trade and environmental pollution, all have had adverse impact impacts on Vietnam's biodiversity. During the past 50 years, 96 percent of Vietnam's coral reefs have been seriously damaged, 80 percent of the total area of mangroves has been decimated, and many species of wildlife have been lost forever. Human activity has an extremely negative effect on Vietnam's biodiversity.⁵

Solid waste

Vietnam generates over 15 million tons of solid waste annually, with households, restaurants, markets and businesses accounting for more than 80% of the total waste. Hazardous solid waste accounts for about 1% of the total solid waste, which originates from industrial production types of businesses, as well as health and agricultural

³ Report on 10 year implementation of Law on Environmental Protection, Ministry of Natural Resources and Environment

⁴ World Bank, Vietnam Environmental Monitor 2005 - Biodiversity.

⁵ SIDA and Vietnam Environmental and Natural Resource Protection Association, Vietnam – Environment and Life, 2001.

activities. While hazardous solid waste only accounts for a small percentage of the total waste, this number is on the rise without long-term management solutions for treating such dangerous substances.

Solid waste management and treatment options remain limited, with burning and burying being the primary forms of disposal. Such methods pose a serious threat to groundwater contamination.

Table I: Waste generation in Vietnam in 2003

	Source	Type	Waste generation (ton/year)		
			Urban	Rural	Total
Municipal waste	Residential Commercial Markets	Kitchen waste Plastic Paper Glass	6,400,000	6,400,000	12,800,000
Industrial Non-hazardous waste	Industries	metals woods	1,740,000	770,000	2,510,000
Industrial Hazardous waste	Industries	fuel oil waste sludge organic chemicals	126,000	2,400	128,400
Hazardous healthcare waste	Hospitals	tissue samples blood syringes	-	-	21,500
Total non-agricultural waste			8,266,000	7,172,400	15,459,900
Agricultural	Cultivation Livestock	Plant matter	NA	64,560,000	64,560,000

Source: Vietnam Environment Monitor 2004 (joint project of MoNRE, World Bank and CIDA)

According to the Department of Natural Resources and Environment (DoNRE) of Hanoi, the municipal solid waste generation rate has increased from 0.44 kg/person/day to 0.8-1 kg/person/day. Total discharged volume of municipal solid waste in urban areas of Hanoi is about 500,000 tons/year. Industrial solid waste volume is also increasing by 5% per year.

According to a joint World Bank and MoNRE report,⁶ industrial waste generation is concentrated in the South with nearly half of the country's industrial waste produced in the Northeast Mekong Delta region. Ho Chi Minh City alone contributes 31% of the total industrial waste generated in Vietnam, approximately 466 thousand tons. Assuming current economic growth trends, it is estimated that industrial waste in Ho Chi Minh City will reach 700 thousand tons by 2010. To date, however, Ho Chi Minh City has no appropriate and effective management to control hazardous waste from mixing with municipal waste.

Public awareness of environmental protection

More recently, MoNRE and provincial DoNREs have organized activities to increase public awareness of environmental issues and disseminate news of their environmental protection efforts. Activities include organizing events like Making for a Cleaner World (conducted in each province since 1994) and World Environment Day (June 5th), organizing environmental protection contests (music composing, paintings, journals, etc.), strengthening institutional capacity of environmental information management (SICEIM Project) with a pilot program in Hanoi aimed at disseminating environmental information on wastewater discharged by textile facilities. While these efforts have improved citizen awareness, overall public knowledge and compliance levels among the regulated community remains low.

Challenges to Vietnam's environmental protection

⁶ World Bank, Vietnam Environment Monitor 2004 – Solid Waste.

As a result of rapid industrialization and modernization in the last two decades, Vietnam has faced deterioration of environmental quality and natural resources. Associated serious environmental challenges and pressures include the following:

- Limited public awareness of environmental protection;
- Lack of human capacity and technical and financial resources to support an effective environmental inspectorate and implement environmental requirements;
- Increasingly complex and unresolved environmental issues in the wake of rising industrial and pollution levels;
- Outdated technology and infrastructure coupled with limited government and private enterprise financial resources for environmental protection;
- Population explosion, population migration from rural to urban areas and low living standards;
- Greater international environmental protection measures required due to international economic integration; and
- Competing needs of economic development and environmental protection, and the difficult task of striking a balance between these seemingly contradictory demands.

2. Legal framework and institutions

2.1. Government Structure

The State structure of the Socialist Republic of Vietnam includes four levels: central, provincial, district and communal. The central level includes the National Assembly, the Country's President, the Government, People's Supreme Court and the Supreme People's Procuracy. The National Assembly is the highest representative organ of the people and the highest organ of State power of the Socialist Republic of Vietnam. Members of the National Assembly are directly elected by the people with working terms of 5 years. The National Assembly has the authority to elect the Country's President, the Prime Minister of the Government, the President of the People's Supreme Court and the Director of the Supreme People's Procuracy. At the local government levels (in provinces, districts and communes), the People's Councils are directly elected by the people with 5-year terms. People's Councils elect People's Committees which function as State administrative agencies at the local levels. The Central Government and People's Committees at all levels form the State administrative system in Vietnam.

Communist Party of Vietnam and Politburo

The Communist Party of Vietnam is not an official agency in the state structure of Vietnam. Although, the Constitution of Vietnam provides that the Communist Party of Vietnam functions as the organization responsible for leading the State of Vietnam through Political Program, strategy, policy, guideline and through Party's members holding important positions in state agencies.

According to the Charter of the Communist Party of Vietnam, the Central Steering Committee of the Communist Party is responsible for electing the Politburo, the General Secretary among members of Politburo and other important Commissions of the Party. The Central Steering Committee also decides the number of members of the Politburo.

The Politburo is responsible for conducting and supervising the implementation of the Resolution of the National Congress of the Communist Party and the Resolution of the Central Steering Committee; deciding guidelines, policies, organization, and personnel; and summoning and preparing the contents of meeting sessions for the Central Steering Committee.

The Politburo also elects the Standing Committee of the Politburo, which is responsible for conducting and supervising the implementation of Resolutions of the Communist Party; preparing contents submitting to the

Politburo for consideration and approval; and conducting the implementation of the Party's guidelines and policies on socio-economic, national defense, security, foreign affairs, and other important matters.

National Assembly

According to the Constitution, the National Assembly is the highest representative body of the people and the only governmental organization with legislative powers. In addition, it is empowered with a broad mandate to oversee all government functions, such as developing the socio-economic development plans of the country or establishing and dissolving ministries and ministerial level agencies of the Government. The assembly meets twice annually for seven to ten weeks at a time with elections for members held every five years.

With regard to its legislative powers, the National Assembly is the sole body empowered to adopt the Constitution, enact national laws and decide on the legislative program. According to the 1992 Constitution, the President of the Republic, the Standing Committee of the National Assembly, the Ethnic Council, the Committees of the National Assembly, the Government, the Supreme People's Court, the Supreme People's Procuracy, the Vietnam Fatherland Front and its members, as well as the individual Deputies to the National Assembly have the right to present bills to the National Assembly. Bills that require public comment are published and aired by the mass media to provide citizens and state organs at all levels an opportunity to comment before they are sent to the National Assembly. A bill becomes duly-adopted into law when a single majority of the Deputies of the National Assembly vote in favor of its adoption. Following adoption by the National Assembly, the bill must be signed by the President of the National Assembly. The President of the Republic promulgates the law, which becomes effective no later than 15 days from the date of its adoption.

As the highest state authority, the National Assembly has broad power over national policy and budget decisions. This body, for example, decides and approves the State budget (including the national revenue and expenditure balance); levies, amends and abolishes taxes; develops the national financial and monetary policies; creates the socio-economic development plans of the country. The National Assembly also elects the President of the Republic, the Chairman of the National Assembly and the Prime Minister, and approves all appointments of Ministers upon the recommendation of the Government. Moreover, the National Assembly has the authority to establish and dissolve ministries and ministerial level agencies of the Government, as well as establish, merge, divide and adjust the boundaries of the provinces and cities directly under the central authority. It can also establish or dissolve special administrative economic establishments.

The National Assembly decides issues of war and peace. It also has the power to declare an emergency situation and may take other special measures to ensure national defense and security. The National Assembly decides on amnesties and referenda. With respect to foreign affairs, the National Assembly decides on fundamental external policies. At the request of the President of the Republic, it ratifies or revokes those international treaties that Vietnam has signed or adhered to.

Finally, the National Assembly exercises a supervisory function over all activities of the State. For example, the National Assembly examines all working reports of the President of the Republic, the Standing Committee of the National Assembly, the Government, the Supreme People's Court and of the Supreme People's Procuracy. In addition, the National Assembly considers activity reports of the President of the Republic, the Standing Committee of the National Assembly, the Government, the Supreme People's Court and the Supreme People's Procuracy. It is entitled to abolish any legal documents issued by the President of the Republic, the Standing Committee of the National Assembly, the Government, the Prime Minister, the Supreme People's Court and the Supreme People's Procuracy, that fail to conform to the Constitution, the Laws and Resolutions of the National Assembly.

Government

The Government is the executive organ of the National Assembly and the highest organ of the State administration of the Socialist Republic of Vietnam. The Government reports to the National Assembly, the assembly's Standing Committee and the Country's President. The Government consistently manages the implementation of the State's tasks in the fields of politics, economics, culture, society, national defense and security and foreign relations; ensures the efficiency of the State apparatus from central to grassroots levels; assures that the Constitution and

laws are respected and executed; brings into full play the people's ownership in national construction and defense causes; and guarantees the sustainability and improvements of the people's material and spiritual lives. The Government also serves the following key functions:

- Leading the operation of ministries, ministerial equivalents, government-affiliated agencies, People's Committees at all levels; building and strengthening a unified State administrative apparatus from the central to local levels; guiding and supervising the implementation of legal documents issued by superior State agencies of People's Councils; enabling People's Councils to fulfill and execute their legal tasks and authorities; and training, upgrading, arranging and utilizing civil servants and public employees;
- Ensuring the execution of the 1992 Constitution and the laws by state agencies, socio-political organizations, social organizations, economic organizations, and civil and people's armed bodies; organizing and guiding the advocacy and educational activities for the people on the National Constitution and laws;
- Submitting draft laws, ordinances and other legal documents to the National Assembly and the Standing Committee of the National Assembly;
- Consistently managing the development of the national economy, culture, education, science and technology and public services; managing and guaranteeing effective use of people-owned assets; implementing socio-economic development plans, State budget, and national financial and monetary policies.
- Carrying out measures to protect the legitimate rights and benefits of citizens; enabling citizens to use their rights and fulfill their obligations; protecting the State and social assets and benefits; and preserving the environment;
- Reinforcing and strengthening the people's national defense and security; guaranteeing national and social security and order; setting up people's armed forces; executing call-up papers, orders to announce the State of emergency and other necessary measures to defend the country;
- Organizing and leading the State efforts in inventory and statistics, inspection and monitoring, anti-corruption, combating all signs of corruption, red-tape and authoritarian behavior in the State apparatus; addressing citizen's complaints and accusations; and
- Consistently managing the external relations, international negotiation and signing of international agreements on behalf of the State of the Socialist Republic of Vietnam, except for agreements which are signed by the Country's President and the President of another country; negotiating, signing, approving and joining international treaties in the name of the Government; steering the implementation of international treaties of which the Socialist Republic of Vietnam is one signatory or member; protecting the State's interests and legitimate benefits of overseas Vietnamese organizations and citizens.

2.2 National policies

National policies issued by the Government of Vietnam are increasingly concerned with environmental protection. Following the adoption of the Law on Environmental Protection (LEP) in 1993, the Politburo of the Vietnam Communist Party issued its first important environmental resolution in Directive No. 36-CT/TW in 1998 to strengthen environmental protection in the period of national industrialization and modernization. The issuance of this Resolution reflected the State's willingness to address environmental pollution as part of Vietnam's unprecedented economic growth. The Resolution addressed particular targets, tasks and solutions to promote environmental protection in Vietnam and specified responsibilities of relevant ministries, branches and localities. Moreover, the Resolution emphasized that: "*Environmental protection is the target and major content of sustainable development, and must be included in socio-economic development strategies, plans, and projects carried out by sectors and provinces, in order to avoid developing the economy regardless of environment impacts. Investment in environmental protection is also considered a significant contribution for sustainable development*" More recently, in 2004, the Politburo issued another resolution on environmental protection in the context of industrialization and modernization of the country, Resolution No. 41-NQ/TW (the 9th Party Congress).

In December 2003, the Government approved the National Strategy on Environmental Protection towards 2010 and Orientations towards 2020. The National Strategy sets targets for each stage of implementing the socio-

economic development plan in both general and specific terms. The Strategy is deployed in 36 programs and projects according to implementation priority hierarchy. Some major targets must be reached by 2010, including: (i) reducing pollution, (ii) improving quality of environment, and (iii) ensuring ecosystem balance at high levels and presented by an absolute percentage, as listed below:

- 100% newly-established units must apply clean technology or be equipped with pollution-reducing and waste-treating facilities to meet environmentally-related standards;
- 50% production units shall obtain ISO 14001 Certificate or Certificate of Environmental Standards Satisfaction;
- 40% of the urban areas, 70% of IZs and EPZs must have standardized wastewater treatment facilities; 90% of residential, industrial and service waste will be collected; 60% of hazardous waste and 100% of hospital waste will be treated;
- Seriously-polluted production units will be thoroughly resolved by various measures identified by Decision No. 64/2003/QD-TTg (closure, upgrades in technology, or investment in waste treatment systems);
- 50% of seriously-polluted canals, lakes, and ponds in urban areas will be improved;
- 50% of mineral exploitation areas and 40% seriously-degraded ecological areas will be recovered;
- Increase forest-covered land from 35.8%⁷ to 43% and recover 50% of degraded upstream forest areas⁸

Rapid urbanization and industrialization have resulted in serious environmental pollution and related health impacts, primarily caused by many industrial production units located in residential areas. To resolve this matter, the Prime Minister issued Decision No. 64/2003/QD-TTg (April 22, 2003), ratifying a Plan to address seriously-polluting production units to protect the environment and community's health in densely populated and polluted areas. The Plan identifies 4,295 seriously-polluting production units, proposes appropriate measures (e.g., renovating and upgrading technology, building wastewater treatment works and closing down some facilities) to minimize pollution, and establishes a step-by-step schedule to deal with such units from 2003 to 2012. The schedule is divided into 2 phases: (i) phase 1 from 2003 – 2007 to handle 439 units, including 4 wartime bomb and toxic chemical warehouses, 15 plant protection drug warehouses, 52 dumps, 84 hospitals and 284 production establishments; and (ii) phase 2 from 2008 – 2012 to continue handling 3,856 remaining units, as well as newly emerging units according to lessons learned from results of phase 1.

Table 2: Solutions for seriously-polluting establishments in phase I (2003-2007)

No.	Types of establishments	Basic solutions				Number	Percentage
		Closed down	Removal	Renovate and upgrade technologies	Build waste treatment works		
	Business and production establishments	1	28	55	200	284	64,69
	Hospitals	0	0	2	82	84	19,13
	Dumps	1	2	29	20	52	11,85
	Plant protection drug warehouses	0	4	1	10	15	3,42
	Wartime toxic chemical storage zones	0	1	0	3	4	0,91
	Total	2	35	87	315	439	100,00

⁷ Ministry of Agriculture and Rural Development, Announcement on forest areas and forest land in 2002.

⁸ Decision No. 256/2003/QD-TTg dated December 2, 2003 ratifying National Strategy on Environmental Protection from 2003 to 2010 with an orientation to 2020.

2.3. Legal framework

Since the State recognized the importance of environmental protection with the enactment of the LEP in 1993, it has promulgated over 200 subsequent pieces of environmentally related legislation. More recently, the State has promulgated environmental protection legislation that falls into three general categories: (i) laws that formalize the LEP; (ii) laws that protect specific environmental media, such as water, air and land; and (iii) laws that integrate environmental protection regulations and requirements into other legislation.

Law on Environmental Protection

The Constitution of 1992 requires individuals, state institutions as well as social organizations to abide by state regulations on the rational use of natural resources and environmental protection.⁹ The Law on Environmental Protection (LEP), passed in 1993 and amended in 2006,¹⁰ provides the overarching framework for environmental management and protection in Vietnam. The objectives of the LEP are “to raise the effectiveness of state management and responsibilities of government at all levels, of state agencies, of economic organizations, of social organizations, of people’s armed forces, and of all individuals with respect to environmental protection in order to protect the health of the people, to safeguard the human right to live in a clean environment, to serve the long-term and sustainable development of the nation, and to contribute to the protection of the regional and global environment..” The LEP grants former MoSTE (and now MoNRE) primary responsibility for exercising authority over state management of environmental protection.

The most significant differences between the original LEP and the amended LEP include changes affecting environmental impacts of new investment projects, waste management, environmental standards, public involvement and sanctions. For example, the revised LEP will expand the range of national, regional, sectoral and local investment projects subject to the environmental impact assessment process. Supplemental regulations will address the responsibilities, processes and management of various types of waste, including hazardous waste. The revised LEP also will provide clearer environmental quality and waste standards and delegate greater legal authority to state agencies to promulgate environmental quality regulations. Public disclosure of information will play a more important role as new regulations will require public comment in evaluating environmental impact assessments (EIA) and waste collection and management. The revised LEP will also better define responsibilities of relevant agencies related to environmental incidents. To minimize adverse impacts to the environment and to impose greater deterrence, the new LEP will provide stricter licensing and approval framework for investment projects.

Subordinate legal documents

Following the adoption of the LEP, the National Assembly approved subordinate legal documents guiding the implementation of the law, which serves as the umbrella framework for environmental protection in Vietnam. The most important legal documents include: Decree No. 175/CP on implementation of the Environmental Protection Law; Decree No. 121/ND-CP providing sanctions for administrative violations in environmental protection, and numerous circulars and decisions on state management issued by MoNRE, and formerly MoSTE. More recently, the Government has passed a number of applicable legal documents on environmental protection including the Prime Minister’s approval of the plan addressing seriously-polluting production units (Decision No. 64/2003/QD-TTg); fees for wastewater discharge (Decree No. 67/2003/ND-CP); and by-laws established for the Association of Vietnam’s Environmental Protection Fund (Decision No. 782/2003/QD-BTNMT).

Environmental Impact Assessment

Article 18 of the LEP provides the legal foundation for requiring Environmental Impact Assessments (EIAs). Organizations and individuals are obliged to prepare EIA reports for certain specified projects and submit them for approval to competent state agencies. Any projects involving expanding production areas, residential areas, building economic, science, technology, health, society, security and national defense construction works may

⁹ Article 29 of the Law on Environmental Protection, 1993.

¹⁰ While the National Assembly adopted the 2005 LEP on November 29, 2005, this amended LEP shall come into force as of July 1, 2006.

require an EIA. Economic development projects are now also required to prepare EIA reports prior to being approved and implemented. EIA guidelines specify eight types of projects that require EIAs: (1) industrial zones; (2) urban areas; (3) transportation construction works; (4) brewery-liquor-soft drink production; (5) thermo-electricity plants; (6) textile and dyeing factories; (7) cement manufactories; and (8) clay and stone exploitation and processing.

Decree No. 175/CP (dated October 18, 1994 guiding the implementation of LEP) regulates that: “The investors, project owners or directors of public offices and enterprises must prepare EIAs of the following projects and institutions: (i) Master plans for regional development, the zoning and plans for development of branches, provinces and cities directly under the Central Government, the planning of urban centers and residential quarters; (ii) Projects on economic, scientific, medical, cultural, social, security and defense; (iii) Projects in vested or funded by foreign organizations or individuals, or international organizations, or built with loans from them or as joint ventures with them on Vietnamese territory; (iv) The projects mentioned at Points (i), (ii) and (iii) which were ratified before the 10th of January 1994, but which have not been evaluated for their environmental effect as required; (v) The economic, scientific, medical, cultural, social, security and defense establishments put into operation before the 10th of January 1994”. Pursuant to Decree No. 175/CP, all EIAs must include the following information: (i) Evaluating the present state of the environment in the area of operation of the project or the establishment; (ii) Evaluating the effect exerted on the environment by the operation of the project or the establishment; and (iii) Proposing measures for environmental protection.

Environmental Standards

Vietnam has more than 400 environmental quality standards that address ambient air, surface and ground water quality, industrial emissions, land and noise. In developing environmental standards, MoSTE and now MoNRE typically consider: (1) the quality of the environment; (2) discharge of waste; (3) technology controls; and (4) emergency warnings.

According to Article 22 of Decision No.175/CP, the list of Vietnam’s environmental standards comprises:

1. The environmental standard for protection of soil;
2. The environmental standard for protection of water;
3. The environmental standard for protection of air;
4. The environmental standard for noise;
5. The environmental standard for radiation and ionization;
6. The environmental standard for protection of residential quarters;
7. The environmental standard for protection of production areas;
8. The standard for environmental evaluation in protection of forests;
9. The standard for environmental evaluation in protection of the flora-fauna system;
10. The standard for environmental evaluation in protection of the eco-system;
11. The environmental standard for protection of sea;
12. The environmental standard for planning of industrial, urban and civil constructions;
14. The environmental standard for transportation, stockpiling and use of toxic and radio-active components;
15. The environmental standard for exploitation of open-cast mines and underground ones;
16. The environmental standard for motorized means of transport;
17. The environmental standard for units of organizations using micro-organisms;
18. The environmental standard for protection of subsoil;
19. The environmental standard for protection of tourism sites;
20. The environmental standard for import-export sector;
21. The environmental standard for hospitals and clinics treating special diseases.

Box I: Some of Vietnam’s major environmental standards

The environmental standards listed above are considered mandatory standards for environment-related operations. Formerly MoSTE and now MoNRE¹¹ is responsible for developing specific environmental guidelines and standards to improve Vietnam's pollution control measures, including standards concerning terms, classifications, sampling and analysis, environment quality (regulating value of parameters and polluted substances in air, land, surface water, underground water and coastal areas), wastes (ceiling permitted value in exhaust fumes, wastewater; classification of solid wastes by pollution substances), acoustics (permitted noise level). However, some air standards are so stringent that they should be comprehensively revised after the new LEP comes into force. MoNRE is responsible for drafting and enforcing environmental standards.¹² The 1996 Decision No. 2920-QD/MTg originally provided for 97 environmental standards; now there are 449 environmental standards that concentrate on 5 basic components of the environment: land, water, air, waste and noise.¹³

Other related laws

Before 1990 and the enactment of the LEP, the National Assembly passed important environmentally related legislation and regulations, including the Law on Protection of the People's Health (1989), Ordinance on Natural Resource Tax (1989), Ordinance on Dike Protection (1989), Ordinance on Aquatic Resources Protection (1989). Since 1991, the State of Vietnam has amended its Constitution and continued to pass different Codes and Ordinances concerning the task of environmental protection.¹⁴

Legal foundations for environmental inspection activities

Authorized agencies carry out environmental inspection activities under strict procedures for identifying and remedying offenses that violate environmental laws and policies. Environmental inspection is a fundamental part of ensuring compliance with legal environmental requirements. A number of laws and regulations govern environmental inspection activities, including Articles 40, 41, 42 and 43 of the LEP, Law on Inspectorate, Ordinance on Administrative Penalties, Articles 37 and 38 Chapter IV of Decree No. 175/CP, Decree No. 26/CP dated 26/4/1996 providing sanctions for administrative offenses in environmental protection, and Circular No. 1485/MTg dated 12/12/1994 of MoSTE providing guidelines for the organization, authority and scope of activity of the Environmental Inspectorate.

2.4. Institutions

Central Level

Ministry of Natural Resources and Environment (MoNRE): In August 2002, the National Assembly established MoNRE to replace MoSTE under Resolution No. 02/2002/QH11, followed by Decree No. 91/2002/ND-CP in November 2002, as the governmental agency responsible for the state management of natural resources (including land, water, minerals and environment, hydrometeorology, geographic measurement and topography). MoNRE also exercises the state management function over public services and control of state capital in state-owned enterprises in the domains of land resource, water resource, mineral resource, environment, hydrometeorology, geographic measurement and topography as stipulated by law. To minimize overlapping jurisdiction between governmental authorities, the State reorganized several other governmental agencies under this new ministry, including the Land Administration, Hydrometeorology Administration, Vietnam Environmental Protection Agency (an agency under MoSTE), Department of Geology and Minerals (an agency under Ministry of Industry) and Division of Water management under Department for Management of Water and Irrigation Works (Ministry of Agriculture and Rural Development).

¹¹ Article 2, Clause 3, Decree No. 91/2002/ND-CP dated November 11, 2002 provides that MoNRE is responsible for issuing legal documents and standards, procedures, technical norms in the fields of land, water, minerals, environment, hydrometeorology and mapping.

¹² Governmental Decree No. 91/2002/ND-CP dated November 11, 2002 regulating the powers, tasks and organization of MoNRE

¹³ Such standards are prescribed as Vietnam Standards and coded as TCVN, which can be accessed at VEPA's website <http://www.nea.gov.vn>

¹⁴ Constitution (1992) and Amended Constitution (2001); Amended Penal Code (1999); Law on Science and Technology; Law on Forest Protection and Development (1991); Amended Land Law (2003); Petroleum Law (1993); Mineral Law (1996); Law on Water Resource (1998); Law on Foreign Investment (1997) and amended Law (2000); Law on Domestic Investment Promotion (1999); Ordinance on Veterinary (1993); Ordinance on Flora Protection and Quarantine (1993); Ordinance on Radiation Security and Control (1996); Ordinance on Fees and Charges (2001).

Vietnam's Environmental Protection Agency (VEPA): On December 31, 2002, the Minister of MoNRE issued Decision No. 108/2002/QD-BTNMT, establishing VEPA's regulating powers, tasks and responsibilities. VEPA's primary role is to support MoNRE's leadership in implementing the state management over environmental activities, including the environmental inspectorate, pollution prevention, environmental quality improvement, natural conservation, environmental technology promotion and public awareness enhancement. In July 2004, the Minister of MoNRE amended VEPA's responsibilities under Decision No. 15/2004/QD-BTNMT, such that the authority to conduct environmental inspection was handed over to MoNRE's Environmental Inspectorate. VEPA, thus, is only responsible for cooperating with the Environmental Inspectorate of MoNRE to conduct environmental inspections and settle environment-related disputes, complaints and violations. The task, powers and organization of MoNRE's Inspectorate are provided in Decision No. 61/2002/QD-BTNMT dated December 25, 2002 by Minister of MoNRE. According to this Decision, MoNRE's Inspectorate is a division of MoNRE and belongs to State Inspectorate and is responsible for performing environmental inspections and managing professional inspections conducted by subordinate agencies. MoNRE's Inspectorate has legal authority to ensure compliance of state agencies, social-economic organizations and citizens within its jurisdiction and apply penalties to non-complying activities.¹⁵

Provincial Level

Provincial People's Committees (PPCs): The LEP provides that PPCs shall directly exercise their environmental management function under the national government. Article 6, Decree No. 175/CP specifically articulates the PPCs' roles and responsibilities for state management of environmental protection:

- Issuing documents within their legal powers on environmental protection in their locality;
- Directing and inspecting the implementation of the environmental protection regulations of the State and their locality;
- Checking evaluation reports on the environmental effects of projects and establishments as stipulated in Chapter III of this Decree;
- Granting certificates of environmental standards to production establishments and businesses, or withdrawing them;
- Cooperating with institutions at the central level in supervising, inspecting and handling violations of the LEP in the locality;
- Urging all organizations and individuals to observe the LEP; and
- Receiving and settling disputes, complaints, denunciations on environmental protection within their powers, or submitting them to the authorized institutions for settlement.

Provincial Department of Natural Resources and Environment (DoNRE): On April 2, 2003, the Prime Minister issued Decision No. 45/2003/QD-TTg that established provincial Departments of Natural Resources and Environment (DoNRE). Following this decision, MoNRE and the Ministry of Internal Affairs jointly issued an Inter-Circular No. 01/2003/TTLT-BTNMT-BNV promulgating guiding powers, tasks and organization of functional agencies that support People's Committees in managing state natural resources and the environment at the local level. According to this Circular, DoNRE is an agency of the PPC, responsible for supporting PPC in state management of land, water resources, minerals, environment, hydrometeorology and mapping in the province and reporting administratively to the national government.

DoNRE is responsible for submitting to PPC any grants, extensions and revocations of environmental certificates. However, under Decree No. 121/2004/ND-CP, the Chief Environmental Inspectorate of DoNRE is empowered to revoke the environmental certificates in case of detected violations. DoNRE's role includes conducting environmental compliance inspections, settling environmental-related disputes, compliance and violations within its provincial jurisdiction. Environmental Inspectorate of DoNRE may conduct both announced and unannounced inspections by itself or in cooperation with MoNRE's Environmental Inspectorate. DoNRE's Inspectorate must report to DoNRE regarding the performance of its tasks and responsibilities but not to MoNRE Inspectorate. VEPA is not responsible for conducting inspections but supports and cooperates with MoNRE's and DoNRE's inspectorate to conduct such inspection. In addition to its inspection role, DoNRE evaluates EIAs submitted by regulated establishments and collects fees for environmental protection.

¹⁵ Clause 3, Article 2, Decision No. 61/2002/QD-BTNMT

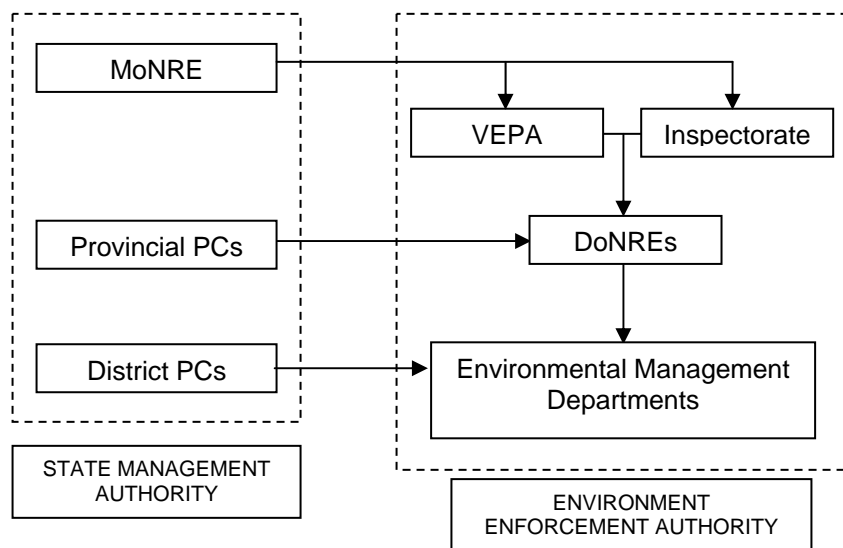


Figure 2: Organizational structure of Vietnam's environmental enforcement authority

3. Environmental compliance and enforcement in Vietnam

3.1. Achievements

1. Increased environment monitoring efforts in major economic zones, industrial zones, urban areas and seriously-polluted river basins has provided critical information necessary for the agencies to develop an effective response plan. Monitoring also provides much needed information to the public. A national environment-monitoring system is being built along side a national hydrometeorology-monitoring system. Monitoring stations are located throughout the country. Surface water monitoring systems are also set up in seriously polluted river basins, such as Nhue-Day River, Sai Gon-Dong Nai River and Cau River.
2. Recently, environmental officials have recognized that EIAs must contribute to effective pollution control, and at the same time afford favorable conditions for investment opportunities. To build capacity at the local levels, MoNRE has organized several training courses on the EIA process for local officials. EIA evaluation procedures also continue to improve with stricter examination of EIA implementation after regulated facilities obtain investment licenses and with further decentralized authority from MoNRE to DoNREs under Decree No. 143/2004/ND-CP. As of December 2004, MoNRE had evaluated over 6,000 EIA reports; 10,000 existing facilities had submitted a list of activities which might have an impact on the environment and more than 400 projects submitted registrations of environmental standards. According to Circular No. 490/1998/TT-BKHCHNMT, investment projects can be divided into two EIA categories:

- Category I: Projects that may cause environmental pollution on large areas as well as environmental incidents and are difficult to control and determine the environmental standards (i.e., projects to be implemented inside or near environmentally sensitive areas, nature preservation areas, tourist resorts, cultural or historical relics of national or international magnitude, oil and gas, airport, seaport, etc);
- Category II: Remaining projects shall be registered as meeting the environmental standards on the basis of self-determination and report analysis assessing environmental impacts.

This Circular also provides that the Decision ratifying the report on the assessment of environmental impacts or a certificate of the "environmental standards registration paper" shall serve as the legal basis for the State agencies to consider and allow continued implementation of a project.

3. Thanks to enhanced environmental supervision and inspection, environmental compliance and enforcement in Vietnam has gradually improved. The Inspectorate is also being gradually reinforced. According to MoNRE, environmental inspection is the most important task in ensuring compliance with environmental legal requirements.

Table 3: Environmental inspection in Ho Chi Minh City

Year	Inspected units	Non-complying units	Violating/inspected units (%)	Monetary penalty (mil.VND)
2000	1,179	163	13.8	179.35
2001	1,495	173	11.6	151.3
2002	1,462	228	15.6	251.7
2003	1,008	272	27	361.917
2004	1,977	343	17.3	594.9
	7,121	1,179		1539.167

Source: HCM City Department of Natural Resources and Environment

3.2. Constraints

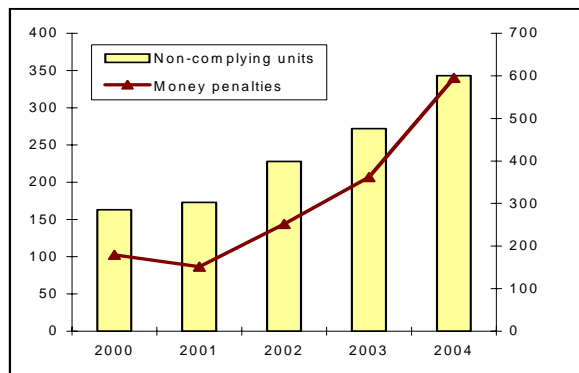


Figure 3: Number of violations and total monetary penalties collected in Ho Chi Minh City between 2002- 2004

Perception towards environmental protection

Promoting economic growth without consideration of true environmental costs continues to be the prevailing viewpoint among many officials in state management bodies. As a result, environmental protection has not been properly taken into account. For example, a number of industrial zones and production units do not strictly comply with provisions on pollution control and waste reduction and treatment. Tremendous pressures on the environment are ever apparent with problems in urban waste, public health, illegal wildlife trafficking, overharvesting of aquatic resources, etc.

Limitations of the environmental state management agencies

Environmental protection agencies in general continue to experience a shortage of personnel in charge of environmental protection, particularly at the local level. According to a MoNRE Report presented at the National Environment Workshop in April 2005, Vietnam has only some 500 officials in charge of state management over environmental protection; this number of environmental officials is very small compared to other neighboring countries in the region. The personnel also in general lack strong environmental backgrounds and training to support program implementation.

A related issue of effective environmental enforcement is the current lack of cooperation between functional ministries, branches and regions. Jurisdictional overlap is not uncommon since the legislation does not always clearly separate environmental functions and responsibilities among ministries. Some ministries still have not set up specialized departments for environmental protection. According to a recent MoNRE report, 64 provinces and cities directly under central authority have established provincial DoNREs, and 65% of provinces and cities have established district-level DoNREs. At the commune level, however, the task of environmental protection appears to have been forgotten. Many industrial zones and production units also do not have functional departments or personnel in charge of environmental protection.

Funding for environmental protection

Limited funding for environmental protection remains a serious challenge in Vietnam. The entire environmental budget for 2004 represented only 0.2% of the total GDP for Vietnam. Compared to other countries in the region, which invest about 1%, and developed countries, which invest about 3-4%, Vietnam's environmental budget is quite low. Under the present budget, the agencies are hindered in effectively repairing and upgrading environmental infrastructure projects, as well as investing in strengthening technical skills of officials. Insufficient resources also prevent investment in supporting facilities to upgrade production equipment and apply advanced technology to treat wastes by domestic enterprises.

Punishment for non-complying activities

Even with the recent passage of economic sanctions (e.g. fee for wastewater discharge (Decree No. 67/2003/ND-CP dated June 13, 2003 by the Government), fee for exploitation of mineral (Decree No. 137/2005/ND-CP dated November 9, 2005 by the Government)), existing punishment and penalties imposed on environmental non-complying activities in Vietnam are not strict enough to deter violators. Several reasons explain why most of the regulated facilities do not comply with environmental regulations. According to a recent MoNRE report,¹⁶ for example, 70% of industrial zones and 90% of production units simply do not have facilities for treating wastewater. While the Criminal Code provides for environmental criminal sanctions, no environmental crime has ever been brought and tried in the courts. In order to settle an environmental criminal sanction, the case must first be filed as an administrative decision. This requirement is imposed because of the difficulty in detecting and collecting evidence against violators.

¹⁶ Ministry of Natural Resources and Environment, National Environment Workshop, *Report on Strengthening State Management in Environmental Protection in Stage of Industrialization and Modernization in Vietnam*, 2005.

II – ASSESSMENT RESULTS

I. Legal Enforcement Authority

Policy Formulation

According to the Government's Decree No. 91/2002/ND-CP, MoNRE is the environmental ministry responsible for overseeing state management of land, water and mineral resources, environment, hydrology, meteorology, metrology and cartography nationwide. MoNRE also has primary responsibility for state management over public services and state ownership of capital contributions in state-owned enterprises in the areas of land, water and mineral resources, environment, hydrology, meteorology, metrology and cartography according to the provisions of law. In addition to these general powers, MoNRE is responsible for:

- i. submitting Government bills, drafting ordinances and other legal documents concerning land, water and mineral resources, environment, hydrology, meteorology, metrology and cartography;
- ii. submitting to the Government development strategies/plans, long-term, five-year and annual plans governing land, water and mineral resources, environment, hydrology, meteorology, metrology and cartography, and other important projects of the ministerial agencies;
- iii. promulgating legal documents, standards, processes, procedures and economic and technical norms in the domains of land, water and mineral resources, environment, hydrology, meteorology, metrology and cartography within its authority; and
- iv. organizing and instructing the implementation of legal documents, strategies, and plans after they are approved, and the branch's standards, processes, procedures and economic and technical norms; propagating, disseminating and training laws and information on land, water and mineral resources, environment, hydrology, meteorology, metrology and cartography.

Licensing

As a result of state management decentralization, several levels of licensing bodies govern environmental management and protection. Licenses, permits, registration and authorized agencies' approval are considered the most important management instruments. Currently, there are a number of different permits and licenses applicable to regulated facilities and activities that impact the environment. Line ministerial agencies, such as Mol, MoFI and MARD, and Provincial People's Committees are responsible for issuing particular licenses and permits within their jurisdiction. For example, under Decree No. 13/2003/ND-CP dated February 19, 2003, six ministries, including MARD, MoH, Mol, MoST, MoT and MoNRE, are involved in issuing licenses for the transportation of certain identified dangerous materials. Similar jurisdictional overlap exists in issuing EIAs, where multiple agencies are authorized to evaluate and approve EIAs submitted by regulated facilities. The actual agency responsible for approving the EIA is also authorized to issue a pollution control certificate once the applicant installs the required waste treatment technology. Overall, each licensing body has broad powers to revoke and modify such issued license or granted permit in the event a violation is detected.

1. Certificate of environmental standards satisfaction
2. Approval to EIA report
3. Registration of environmental standards satisfaction
4. List of activities having impact on the environment
5. Permit for collecting, transporting, storing and disposing hazardous waste
6. License for transporting hazardous goods by land roads (applicable to some types of goods)
7. License for measurement and mapping activities
8. License for collecting minerals
9. License for producing minerals
10. License for investigating minerals
11. License exploring minerals
12. License for mining
13. Certificate of proper implementation of pollution-tackling measures by seriously-polluting facilities.
14. License for investigating underground water
15. License for exploring and using underground water
16. License for exploring and using surface water
17. License for discharging waste water

Box 2: List of some major licenses and permits applicable to environmental-related activities

Environmental Inspection

The LEP and its guiding documents and particularly the Law on Inspectorate provide explicit authority for environmental inspectorate to carry out environmental inspections. Specifically, the Environmental Inspectorate is authorized to conduct examination and inspection at regulated facilities, settle environmental-related disputes and complaints and impose penalties on non-complying facilities. The Environmental Inspectorate agency is set up both at the central (MoNRE) and provincial (DoNREs) levels.

On May 12, 2004, the State issued Decree No. 121/2004/ND-CP on administrative sanctions and penalties applicable to environmental violations. This Decree provides a range of penalties, including warnings, monetary penalties and potential extra-penalties, such as temporary or permanent dispossession of licenses for non-compliance with environmental standards.¹⁷ Depending on the circumstances, non-complying facilities may be forced to carry out certain remedial measures and/or activities. Inspection team or inspectorate can apply one or more of the following methods to conduct inspections at regulated facilities:

- Carry out inspections (both announced and unannounced) at regulated facilities on a periodic basis;
- Require regulated facilities to prepare annual written reports on environmental compliance or at inspection visits;
- Question regulated facilities and require a description of works that have been completed;
- Collect dossiers, materials, related information,
- Take and analyze samples at regulated facilities as evidence; and
- Record voice and images, and take photos if needed.

Challenges

- ***Lack of inspection enforcement authority at local level agencies that are mainly responsible for land/housing***

Implementation of environmental laws in Vietnam is complicated because of the multiple layers of government. Legal authority for environmental inspections, for example, is only granted to MoNRE's and DoNRE's inspectorates, and has not been further decentralized to lower levels. In 2003, MoNRE and the Ministry of Internal Affairs joined forces and issued the Inter-Circular No. 01/2003/TTLT-BTNMT-BNV to

¹⁷ A license for compliance with environmental standards is applicable to regulated entities, including establishments engaging in collecting, transporting and treating wastes, oil refinery, chemicals, hydropower plant, sugar refinery, rubber, cement, etc. as prescribed in Circular No. 2781/TT-KCM dated December 3, 1996 under MoSTE.

provide guiding tasks, powers, responsibilities to functional agencies, like provincial DoNREs, that support PPCs in managing state natural resources and environment. This Circular explicitly only provides provincial DoNREs legal authority and jurisdiction for environmental inspection. As a result, the district-level DoNREs, which are the agencies responsible for cooperating with upper-level inspectorate (MoNRE and provincial DoNREs) and conducting inspections if required, lack professional skills and resources to conduct proper compliance inspections at regulated facilities. What this means is that at the commune/ward level, there is no functional department or official in charge of environmental protection to detect and tackle timely violations of non-complying activities. Moreover, provincial and district-level DoNREs principally address land and housing matters, such that the Hanoi DoNRE, for example, has mobilized officials in-charge of environmental protection to deal with land and housing works.

- ***Jurisdictional overlap between the People's Committee and Environmental Inspectorate in imposing penalties on non-complying facilities***

According to regulations governing administrative sanctions and penalties, the People's Committees and professional agencies, including the inspectorate, are authorized to impose a broad spectrum of sanctions, including warnings, fines, penalties and other extra-remedial measures on non-complying or facilities. Decree No. 121/2004/ND-CP dated May 12, 2004 grants PPCs and Environmental Inspectorate at each level the same legal authority to impose sanctions against environmental violators. In most cases, however, the People's Committees handle violations, particularly at the local level because PPCs dominate over environmental inspectorate in enforcement due to greater human resources and ability to mobilize the police force.

2. Institutional Arrangements and Capacity Building

Vietnam has approximately 500 officials in charge of environmental management and protection at all levels. Provincial DoNREs were established in April 2003¹⁸ following the merger of the Department of Land Administration (Housing) and several functional departments in charge of state management over water, mineral resources and environment, including the Departments of Agriculture and Rural Development, Industry and the Department of Science, Technology and Environment (DoSTE). To date, only 50% of provinces have established district-level environmental management departments.¹⁹ However, most inspectors from DoSTE did not shift to DoNRE. In Hanoi, for example, only one inspector from DoSTE moved to DoNRE. As a result, DoNREs face a shortage of qualified personnel to promote environmental compliance and enforcement. Moreover, land administration and housing now account for most of DoNRE's workload. Environmental compliance and enforcement, therefore, are not a priority of these provincial departments.

Before 2004, Hanoi's environmental inspectorate had 16 personnel that conducted more than 150 inspections on an annual basis. After 2004, however, Hanoi's environmental inspectorate dropped to a mere 6 persons. With such a dramatic decrease in personnel, the number of annual inspection visits correspondingly fell by 50%, so that the number of visited facilities only accounted for about 15% of the total regulated facilities. Today only 2 out of 14 to 16 officials at the district-level DoNREs are in-charge of environmental protection in each district; Hanoi has a total of 14 districts. *Reported by Hanoi DoNRE*

Box 3: Shortage of personnel in charge of environmental protection in Hanoi

Ho Chi Minh City has 200 officials in charge of environment management, including full-time and part-time employees in both the City's DoNRE and district-level DoNREs. This number of environmental officials is simply too small to provide adequate environmental management and protection to a big city of nearly 8 million people, with tens of thousands of small- and large-sized facilities, and hundreds of fixed and mobile markets. Moreover, before 2004, district-level DoNREs had a broad range of delegated responsibilities, including garbage collection and

¹⁸ Decision No. 45/2003/QĐ-TTg dated April 2, 2003 on setting up DoNRE and renamed DoSTE to DoST under provincial PPCs.

¹⁹ Ministry of Natural Resources and Environment, National Environment Workshop, *Report on Strengthening State Management in Environmental Protection in Stage of Industrialization and Modernization in Vietnam*, 2005.

management, pollution management, planting, school healthcare, as well as environmental management etc. To encourage greater focus on environmental management, the PPC of Ho Chi Minh City in 2004 further decentralized the environmental management authority to the district level by setting up two separate departments of urban management and environmental management.

The LEP and its guiding documents explicitly provide for cooperation between functional agencies in administrating inspections and enforcement actions. For example, enforcement actions require the involvement of several functional agencies, including local People's Committees, police and professional agencies. In practice, however, there is insufficient cooperation between these agencies, resulting in the local PPCs handling most enforcement cases as mentioned above.

There is jurisdictional overlap between ministries and branches in the field of environmental protection, particularly between MoNRE and other ministries. Such overlap is particularly acute in the areas of inspection and EIA evaluations. Not surprisingly, the existing institutional overlap results in complex state management of environmental protection.

Funding shortages for environmental protection are now hindering the ability of environmental protection agencies from duly completing their tasks and functions. Presently, the annual budget for all environmental protection agencies accounts for 0.2% of Vietnam's entire national GDP.²⁰ The state budget for environmental protection is based upon an annual financial plan submitted by administrative officials. The real costs of ensuring environmental compliance through inspections, sample analysis and enforcement actions, however, exceed the actual budget. For example, the cost for sampling analysis alone is about 10 million VND (about US\$ 630)/ per sample (including 5 - 10 indicators). Regulated facilities only reimburse these costs in cases where the agency detects and reports violations of these non-complying facilities. Other financial support for environmental protection and management comes from Vietnam's Revolving Fund, Environmental Protection Fund, and revenues from monetary penalties, which are allocated mainly to repair and upgrading environmental protection works rather than to support the agencies themselves. Overall, however, funding shortages greatly impair the ability of environmental protection agencies from monitoring environmental compliance and detecting and settling violations in a timely and regular manner.

With a limited budget for operations, environmental protection agencies are unable to support relocating seriously-polluting establishments from urban areas like Ho Chi Minh City. Thus far, it has been difficult securing funding or loans for relocation and operational improvement of such establishments. During 2003 and 2004, only 16 out of 263 establishments received financial support in the amount of 11 billion VND (US\$ 700,000) from the City. Given the poor environmental condition of An Ha Canal on the Thay Cai River, DoNRE of Ho Chi Minh City recently investigated 57 facilities in the Tan Phu Trung Industrial Park that manufacture rubber, chemicals, recycled paper, etc. and determined that 34 of these facilities discharged wastewater directly into the canal. Following this investigation, however, DoNRE did not impose any fines or other sanctions on these violating facilities.

Challenges

- ***Ineffective cooperation between relevant agencies in enforcement***

Although the LEP regulates the tasks and responsibilities of various state agencies in environmental protection and enforcement, the LEP fails to provide a cooperative mechanism to coordinate enforcement efforts. Subordinate legal documents also do not provide specific cooperation methods for relevant agencies to enforce violations nor do they penalize agencies for failure to cooperate. There is no agency specialized in environmental enforcement such as environmental police. Meanwhile, the Environmental Inspectorate is generally weak at mobilizing human resources and organizing enforcement efforts.

²⁰ Reported by MonRE

- **Shortage of officials in-charge of environmental protection in provincial DoNREs – most inspectors specialize in land/housing**

Most DoNREs are mobilized to settle land and housing works, resulting in a shortage of environmental inspectors. The task of environmental inspection seems to be irrationally omitted, particularly at the district and commune levels. MoNRE now has only 2 out of 17 inspectors working at VEPA who have a specialized background in environment inspection. Due to this inspector shortage, Hanoi DoNRE's number of environmental inspections decreased by 50% in 2004 from 150 cases to 70 cases. Ho Chi Minh City DoNRE's solution to its inspector shortage was to delegate inspection authority to management boards of IZs and EPZs.²¹

- **Lack of capacity and specialized knowledge among enforcement officials at all levels**

Lack of professionally trained officials in charge of environmental protection remains a challenge for environmental protection agencies at all levels. Environmental inspectors are now selected from officials with various trainings and backgrounds. Only a small number of inspectors in DoNREs have an environmental protection and inspection background.²² As a result, officials often design ineffective plans for monitoring compliance, implementing economic instruments, and conducting high-quality inspections.

- **Limited agency funding for environmental compliance and enforcement**

The current budget allocated for environmental protection throughout Vietnam fails to meet the national needs. Without sufficient funding, the ministry is unable to carry out its mandated duty to protect human health and the environment. The ministry lacks basic equipment and cannot provide adequate professional training to its officials. Since budget disbursements are based on annual plans proposed by MoNRE and DoNREs, there is little flexibility for the agencies to deviate from the prescribed annual plan on inspection and enforcement actions. Moreover, additional sources of funding, such as the Vietnam Environmental Protection Fund, are not available for MoNRE or DoNREs to improve their environmental compliance and enforcement programs; rather this fund is mainly disbursed as loans and grants for enterprises to upgrade their technology.

3. Compliance Monitoring: Permitting, Inspections, and Self-Monitoring Requirements

The DoNREs primarily rely on four methods to collect information and inventory the regulated community: (1) facility permits, licenses and registrations; and (2) self-monitoring reports from facilities; 3) agency inspections and reports; and (4) reported public complaints. It should be noted, however, only about 10 percent of regulated facilities voluntarily provide self-monitoring reports, and the majority of these facilities are foreign-invested enterprises. To collect additional information, MoNRE and DoNREs also have installed monitoring stations in particular areas considered to be pollution “hot spots.”

Vietnam has over 17 types of permits, licenses and registrations available for environment-related activities nationwide. Following decentralization, various authorities, including the Provincial PCs, line ministries and MoNRE, now are authorized to evaluate application dossiers, approve and issue permits and/or licenses to applicants. While the application process for submitting and obtaining necessary permits, licenses and/or registrations can be complicated, once establishments are licensed, various authorities typically do not conduct compliance inspections. Moreover, state management agencies are inexperienced in evaluating environmental pollution technology registered by regulated facilities. Accordingly, the implementation of environmental protection measures by regulated facilities in some cases fails to match the registration requirements proposed in their EIA reports.

²¹ Decision No. 76/2002/QĐ-UB dated July 2, 2002 by Ho Chi Minh City's PPC promulgating Regulation on state management on environment applicable to IZs and EPZs in Ho Chi Minh City

²² There is only 1 specialized environmental inspector in Hanoi's DoNRE and 7 in Ho Chi Minh City's DoNRE

The majority of agency-conducted inspections are driven either by a preset inspection plan or citizen complaints. In 2004, MoNRE only conducted two announced inspections in combination with land inspections. The lengthy month-long administrative procedure involved in preparing and issuing an inspection decisions explains why MoNRE conducted so few announced inspections. As a result of these procedures, the environmental inspectorate under MoNRE and DoNREs is unable to promptly react to potential violations. Additionally, regular inspections may conflict with efforts to promote and encourage investment opportunities in localities. To this end, the local government (Provincial PCs, particularly in the South) restricts inspectorate from conducting more than two inspection visits per enterprise per year, except for emergency inspections of detected violations. Thus, environmental inspections are frequently carried out in combination with other kinds of government inspections, such as labor or taxes.²³

In 2005, in cooperation with the district-level Department of Environment Management, Hanoi DoNRE conducted a survey questionnaire among the regulated community to help target major pollution sources and necessary inspections. To date, Hanoi has not carried out any annual inspections of regulated facilities due to a lack of funding and personnel. Given these limitations, Hanoi DoNRE is proposing to further decentralize the inspection authority to district-level Departments of Environment Management.

Hanoi's DoNRE normally conducts environmental inspections by (i) compliance inspections, (ii) unannounced complaint-initiated inspections and (iii) inspections to appraise offers by regulated facilities or local authorities. DoNRE can only collect compliance data from large- and medium-sized facilities since many of these facilities invest in self-monitoring systems and are capable of supplying compliance data (almost foreign-funded enterprises). By contrast, small-sized facilities typically do not have self-monitoring systems and thus lack compliance data. Finally, Hanoi's DoNRE lacks human resources to conduct frequent inspections at such facilities. *Reported by Hanoi's DoNRE.*

Box 4: Hanoi DoNRE Environmental Inspection Efforts

Challenges

- **Low compliance rate for self-monitoring requirements due to lack of enforcement and underdeveloped monitoring systems**

Decree No. 175/CP (1994) regulates that “*all production organizations and businesses are obliged to strictly abide by the law ... making periodical reports to the State managing institution for environmental protection in the locality on the present state of environment in their area of activity*” (Article 8). However, there is no clear regulation that requires self-monitoring reporting at regulated facilities. In practice, only about 10 percent of regulated facilities in Hanoi and Ho Chi Minh City and lower numbers in other provinces submit their self-monitoring reports to environmental agencies on an annual basis. Most of these facilities are foreign-funded enterprises. Such non-compliance stems from the agencies taking few enforcement actions against violators coupled with the primitive and undeveloped monitoring systems at regulated facilities. In this environment, it is not surprising that citizens detect and report the majority of all environmental violations.

- **Limited inspection authority and delayed procedures prevent timely detection of violations**

There is no regulation that enables the environmental inspectorate to immediately respond to detected violations. The current inspection procedures take approximately a month or longer to issue an inspection decision and to organize an inspection. Given this time lag between the decision to initiate the inspection and the inspection itself, the collected evidence does not accurately reflect the seriousness of the violation.

²³ Annual inspection is in accordance with Decree No. 61/1998/ND-CP dated August 15, 1998. It regulates that inspection must not be conducted twice per year at one business establishment for the same purpose, except when environmental violations are detected.

- ***Ineffective EIA process with multiple agencies involved***

Ineffective cooperation between functional agencies, insufficient examinations at the post-licensing stage, and the involvement of various state management agencies have contributed to poor implementation of EIAs. Although approved EIA reports are considered the basis for compliance monitoring and inspections, only a small portion of regulated facilities are assessed for complying with their commitments outlined in the EIAs. The simple reason is that DoNREs lack human resources and professional skills to assess compliance with EIAs. Moreover, the environmental inspectorate relies on the results of analyzed samples and compares them with environment-related standards to identify potential violations. With limited resources, the environmental inspectorate has difficulty evaluating environmental protection technology or measures applied by suspected facilities.

4. Enforcement Response

Vietnamese law provides legal authority for MoNRE, the People's Committees at all levels and the environmental inspectorate to invoke a variety of enforcement responses that range from civil and administrative penalties (e.g., a maximum monetary penalty of 70 million VND or US\$ 5,000, remedial measures). The Law on Inspectorate and Decree on Administrative Sanction and Penalty against non-complying facilities, for example, provide procedures for conducting inspections, issuing warnings and applying administrative sanctions and extra penalties (e.g., revoking environmental-related permits/licenses/registrations) against violators. MoNRE's annual plan and citizen complaints also largely influence and shape enforcement responses at all levels.

Under Decree No. 121/2004/ND-CP, the People's Committees at all levels and the environmental inspectorate are authorized to impose administrative sanctions against environmental violators. The relevant and responsible agency, in turn, has authority to decide the appropriate enforcement measures. The Decree on Administrative Sanction and Penalty explicitly enumerates three enforcement responses, which include: (i) deducting a fine from the violator's bank deposit; (ii) confiscating the violator's assets equivalent to the amount of the monetary penalty; and (iii) carrying out other appropriate measures. Once a violation is detected, depending on its nature and seriousness, the relevant enforcement agency can issue a warning or impose a monetary penalty (up to 70 million VND or US\$ 5,000) on the violator. In addition, the enforcement agency can impose an extra penalty, including temporarily or permanently revoking environment-related permits or licenses, confiscating material evidence relating to the violations. Competent authorities can also authorize extra remedial measures for violators to carry out.

In addition to strong legal authority, Vietnam's operating permits, licenses and registrations of regulated facilities provide the legal basis for enforcement as each type of entitlement includes specific effluent and emission limits and other environmental restrictions. Enforcing a violation, however, remains a challenge as the procedures require coordination between several functional agencies, including the local People's Committee and the police. Standard inspection procedures are detailed in the chart below:

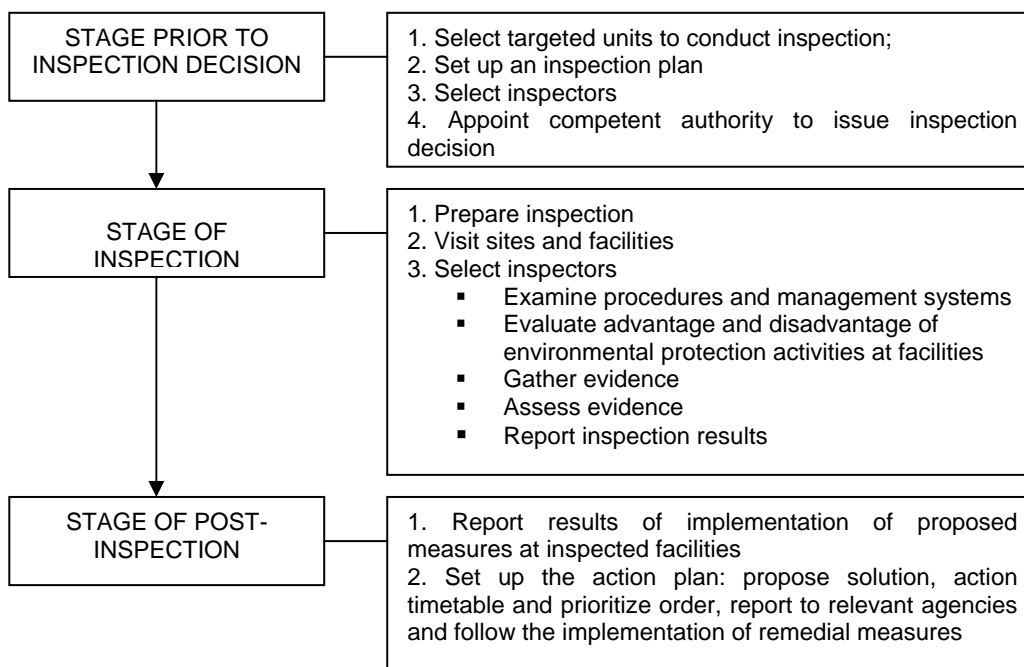


Figure 4: Standardized inspection procedures

In Ho Chi Minh City, environmental protection agencies (DoNRE, inspectorate) have failed to enforce and deter environmental violations as most industrial units continue to directly discharge untreated wastewater into canals. Almost all rivers in the suburbs of Ho Chi Minh City, such as Ba Bo, Thay Cai (An Ha), Vam Thuat (Ben Cat), are seriously polluted by municipal and industrial waste.

Challenges

- ***Limited coordination between environmental inspectorate and licensing agencies before taking enforcement measures***

Under Decree No. 121/2004/ND-CP dated May 12, 2004, the environmental inspectorate has legal authority to decide to suspend or revoke an environmental related permit, license or registration of a seriously-polluting production establishment. However, they cannot decide to suspend the operation of such an establishment. In such cases, the environmental inspectorate must report the violation to the licensing agencies and propose the issuance of a suspension decision.

- ***Sanctions and penalties are too weak to deter violators***

Depending on the nature and seriousness of a violation, the relevant enforcement agency shall decide an appropriate penalty against the violator. Although the Penal Code of 1999 enumerates 10 specific environmental crimes, the authorized environmental agencies have never criminally prosecuted any violators. Moreover, the monetary penalties are not strong enough to deter regulated facilities from violating environmental regulations. The maximum monetary penalty of 70 million VND (US\$ 5,000) is often lower than the actual environmental damages caused by the violator's actions.

5. Compliance Assistance and Data Management

Environmental protection agencies at all levels are required to provide compliance assistance to the regulated community. VEPA is responsible for assisting MoNRE develop and conduct educational programs to enhance

public awareness of environmental protection, provide advice and guidance on regulations and technology, and promote professional conduct (compliance assistance) relating to environmental protection to branches, localities, organizations and individuals. In the past few years, VEPA has held a number of training courses and provided technical advice and guidance directly to regulated facilities to enhance their awareness and knowledge of environmental compliance and protection measures. Recently, MoNRE and provincial DoNREs have set up “hot lines” and online dialogue sessions to directly receive and answer questions from organizations and individuals about environmental requirements and how to file complaints.

Most DoNREs manage and store their data in paper archives. The application of informatics technology in input, storage and processing monitoring data remains limited. Although, DoNRE of Hanoi is currently planning to develop an information management system to store, retrieve, process and share information with other relevant agencies in state management of environmental protection. VEPA has set up a small intranet system to collect and receive monitoring data from monitoring stations. Tabulated forms are provided to regulated facilities to update compliance data.

Challenges

- ***Lack of funding for compliance assistance***

The state budget disbursement for environmental protection in general and for compliance assistance in particular is less than requested on an annual basis. Given this funding shortage, foreign aid assistance has supported almost all technical training courses and technical assistance projects conducted in Vietnam. As the state agency responsible for compliance assistance, VEPA provides technical assistance to regulated facilities, organizes training courses, promotes technology transfer and provides public information to increase public awareness of environmental protection. The state budget dedicated to environmental protection in Vietnam, however, remains insufficient (0.2% of GDP) to enable MoNRE and VEPA to expand technical assistance activities to regulated facilities and to provide public outreach materials. Recent efforts to develop “hot lines” and build websites for MoNRE and VEPA are considered a considerable improvement in compliance assistance.

- ***Low level of information technology application in data management***

DoNREs currently have limited computer hardware and software resources for managing data. Hanoi’s DoNRE, for example, has no computer database for compliance and monitoring data. Similarly, the computer system for automatically updating monitoring data in VEPA is also obsolete and inadequate. DoNRE’s staff also needs additional computer training to conduct their daily work.

6. Economic Instruments and Other Incentives

As a complement to existing command-and-control regulations for environmental management, the agencies are introducing and testing economic instruments, which include: (i) pollution charge fees for wastewater discharges; (ii) Environmental Recovery Fund for mineral exploration; (iii) Vietnam Environmental Protection Fund; (iv) city-level funds (e.g., Hanoi); and (v) monetary penalties for environmental violations. The original LEP did not provide for economic incentives that encourage environmental compliance among the regulated community. The revised LEP, however, will provide specific encouragement measures and incentives related to land use, loans and taxation.

To promote compliance with environmental standards and encourage facilities to adopt cleaner technologies, in January 2004 Vietnam enacted Prime Ministerial Decree 67, which requires industrial and domestic polluters to pay a fee for wastewater discharges. Following consultations with provincial departments and industrial polluters, the Ministry of Finance and MoNRE issued a joint government circular defining the pollution charge program procedures to be implemented primarily by provincial and city agencies.

Implementing agencies are required to collect fees from industries based on a sectoral analysis of pollutant loads and self-reported performance information. In accordance with Decree 67, 20% of environmental protection fee

collected from industrial wastewater discharge revenues will be directed to provincial DoNRE to compensate for expenses of testing and sampling.

Under this wastewater discharge user fee program, Ho Chi Minh City has recorded a high level of compliance among regulated facilities. In fact, DoNRE of Ho Chi Minh City has collected about 1.5 billion VND (equal to US\$94,000) in total user fees. As this program continues to develop, the agencies should reevaluate the actual user fee since it currently is about one-fifteenth the cost other countries charge and fails to adequately compensate environmental damage costs. Arguably, the agencies could require organizations or individuals to compensate the government for breaching their duty and causing environmental damage under the Civil Code; however, there is no current guidance for pursuing this kind of claim.

Challenges

- ***Need to develop economic instruments for other environment media, including air, noise, land pollution and waste discharge***

To date, Vietnam has only applied one economic instrument scheme to wastewater discharge. Based on this experience, Vietnam must raise public awareness and address implementation challenges when developing new economic instruments for other environmental media. Some potential future economic instruments include fees applicable to exploitation of minerals and environmental fees calculated for clean water supply in urban areas and waste collection by the Urban Environment Company (URENCO).

- ***Difficulties implementing economic instrument programs due to limited technical capacity of both environmental inspectorate and operators in collecting samples and managing data***

According to Decree No. 67/2003/ND-CP, the fee for industrial wastewater discharge is calculated according to concentration levels of polluted substances. Collecting and analyzing industrial wastewater samples is quite complicated and requires skilled and qualified environmental experts. At present, most local level environmental protection agencies and operators are not qualified to collect, manage and analyze wastewater samples. Additional training of officials is greatly needed to establish an effective economic instrument program in Vietnam.

7. Indicators to Evaluate Program Success and Programmatic Priority Setting

Vietnam currently does not have a comprehensive indicators system to evaluate the success of its environmental compliance and enforcement program. Data, however, is collected on an annual basis by provincial and municipal DoNREs and indicates an overall low compliance rate among regulated facilities. In Hanoi, for example, only 12% of all facilities comply with environmental regulatory requirements.

The DONREs compile environmental data statistics to assess the implementation of environmental protection requirements and to prepare an annual report on environment activities and improvements in provinces and cities. These annual assessments typically evaluate the following types of information:

- Number of fines assessed/year
- Monetary value of fines/year
- Number of cease and desist orders issued/year
- Number of corrective actions and consent orders/year
- Number of notice of violations and enforcement actions/year
- Number of enforcement cases initiated by citizens' complaints/year

One limitation of these annual assessments is that they only report the results of environmental protection activities conducted by the local management agencies. Every year, each DoNRE is responsible for preparing and submitting the Report on the Environment Situation to MoNRE. Both VEPA and MoNRE have access to these reports. Furthermore, it is difficult to evaluate environmental improvement since the raw data only indicates a low number of inspections and enforcement actions compared to the total number of regulated facilities. Additionally, the level of environmental improvement due to compliance and enforcement actions cannot be accurately

measured because Vietnam lacks a well-developed monitoring system and still has limited baseline compliance data. In sum, the data must be improved to accurately capture the status of Vietnam's environmental compliance and enforcement program.

At the national level, the national Environment Situation Report is based on the submitted provincial or municipal reports and monitoring data from the national monitoring system. However, the quality of the data is not strong enough yet to develop reliable indicators evaluating the success of the program on environmental legislation, compliance and enforcement. The existing indicators mainly provide basic information on the national environment each year.

Challenges

- ***Lack of a comprehensive monitoring system***

MoNRE developed and now manages a national environmental monitoring system for "hot spots," which include seriously polluted areas in river basins and airsheds. This monitoring system, unfortunately, does not have sufficient information on environmental problems at the local levels. At the heart of the problem is that the LEP does not require regulated facilities to submit regular self-monitoring reports, and accordingly, does not impose sanctions or penalties for failing to provide self-monitoring data. As a result, most regulated facilities have not invested in developing monitoring and reporting systems and MoNRE, with its limited resources, is unable to collect information on a regular basis to assess environmental conditions and trends in Vietnam.

- ***Lack of baseline compliance data***

Most provincial and municipal DoNREs under the central authority have not developed baseline compliance data systems, which are critical for managing and evaluating compliance of regulated facilities with environmental requirements. Moreover, the agencies have not properly invested in information management systems that store, process and evaluate environmental data on industry. The majority of information on regulated facilities comes from self-monitoring reports or direct inspection visits. To date, the environmental agencies have not adequately explored using post-inspection EIA procedures as a basis for collecting invaluable data from the regulated community.

8. Public Participation in Environmental Compliance and Enforcement

According to the Law on Complaints and Denunciations of 1998, citizens can file environmental complaints and denunciations with the People's Committees at all levels and the environmental inspectorate agencies under DoNREs or MoNRE. Citizens are entitled to complain to state authorities about administrative violations or decisions by authorities, including decisions by the environmental inspectorate in the course of complaint-initiated inspections that violate a citizen's legitimate rights. The LEP also provides citizens the right to complain and report violations of non-complying facilities to state authorities. However, there are no legal documents or court procedures specifying a mechanism to encourage citizens to report and file complaints against environmental violators. Despite this lack of procedures, 90% of all inspections are in response to citizen complaints according to the DoNREs of Hanoi and Ho Chi Minh City.

Recent MoNRE public outreach efforts have improved public disclosure of information. In particular, MoNRE discloses necessary environmental information to communities through environmental newspapers, magazines, VEPA and MoNRE's websites. In Ho Chi Minh City, DoNRE regularly publishes environmental information, such as situation of pollution in the City and policy and regulations on environmental protection, etc., on a LED screen placed near Ben Thanh Market. VEPA, in partnership with the World Bank, launched a 3-year pilot information disclosure program from 2001 – 2003 that focused on wastewater discharges from 50 textile-and-dye and food-processing production units. Under this pilot program, VEPA worked with selected production units to carry out monthly monitoring and then ranked these environmental monitoring efforts. The results of the environment monitoring, in turn, were disclosed to the production units and to the public via mass media and a website.

MoNRE and the Hanoi People's Committee are now finalizing an air monitoring system and information disclosure program in Hanoi. With five LED screens placed at five city gates of Hanoi, MoNRE plans to automatically publish information about the air quality at these identified spots. Hanoi currently has five monitoring stations, four of which are fixed and the other is mobile. MoNRE will negotiate with Hanoi's PPC and donors to reach approval in handing-over the five stations to Hanoi.

Overall though, public access to information remains rather limited in Vietnam. Citizens can access only necessary information if their inquiries are delivered through public organizations, such as Vietnam Fatherland Front, Veteran Association, Women Association, etc. Such organizations propose and require relevant agencies to disclose information.

Challenges

- ***Limited public access to information***

Currently, public access to sources of environment information is quite restricted in Vietnam. No regulation expressly requires MoNRE and DoNRE to provide the public with information about the environment. Citizens typically only know about environment accidents, degradation or pollution through the mass media. In addition, there is no legal authority granting public access to review EIAs and the potentially adverse impacts investment projects have on the environment as well as remedial measures investors commit to implement. Only for some important projects (almost always foreign investment projects, such as golf-courses, cement or chemical plants, etc), local PPCs request investors to make EIAs available for citizens review.

- ***Difficult to support allegations of plaintiffs' suits due to limited evidence***

The 1995 Civil Code provides in Article 628 for "*individual, juridical persons and other parties causing environmental harm to pay indemnification damages in accordance with the LEP.*" However, the LEP and its guiding documents have no clear regulations on civil actions by citizens. Article 52 of the LEP only states that "[o]rganizations, individuals that commit acts of violation against the environmental protection legislation, causing damage to the State" or other party shall "*compensate for the damages and costs or remedying the consequences.*"

Public knowledge and awareness of environmental standards and regulated entities' compliance with such standards are severely limited because there is no public access to information. To compound this problem, bringing an environmental case in general is often very difficult due to evidentiary issues. Violators tend to have the relevant information and self-reported information submitted to the agency is generally not available to the public. Given the difficulties in gathering evidence, allegations in many environmental cases are based on general complaints or material damages that occurred, rather than hard evidence linking the environmental violation to the actual harm. What's more, Vietnamese regulations do not provide plaintiffs in environmental actions reduced or exempt court fees.

- ***Poor public perception towards environmental protection***

Public awareness towards environmental protection in Vietnam still remains low. Many people believe that the state agencies, rather than themselves, are responsible for environmental protection. Environmentally related health problems, however, are increasingly affecting residents in polluted areas. As these problems become more prevalent, citizens in Vietnam will demand greater environmental protection, despite low standards of living.

III – RECOMMENDATIONS

Based on the survey results and interviews with Vietnamese officials, Vietnam should consider implementing a range of short-term and long-term reform measures to strengthen environmental compliance and enforcement.

Proposed short-term measures will enable the agencies to rely on existing legal authority to promote change while long-term measures will require major legal reform and restructuring to fundamentally transform existing authority, capability and capacity.

A. Short-term recommendations

1. Increase the number of environmental inspectorate and officials in charge of environmental protection at the local level

Enforcement agencies must be strengthened particularly at the local level. With only 500 officials in-charge of environmental protection for the entire country, the number of officials in charge of environmental management and protection in DoNREs should be increased to meet the requirements of this formidable task. Moreover, most of these officials at MoNRE and the DoNRE levels are mobilized to handle land and housing works. To remedy this situation, state management function for the environment and other areas should be separated in both MoNRE and especially within DoNREs. DoNREs should separate land/housing administration and environment functions to avoid jurisdictional overlap and work overload. To this end, DoNREs should set up a separate division dedicated to land/housing administration with its own assigned officials. Environmental inspectors then will be able to focus on their state duty to manage the environment. Such separation of functions would greatly increase the effectiveness of environmental management and protection.

2. Increase capacity and knowledge of environmental inspectorate

A strong environmental inspectorate requires specialized knowledge. Thus, agencies should hire officials with backgrounds in environmental science, technology or management and offer regular professional trainings and procedures to increase capacity and environmental knowledge of local officials. With no environmental lawyers on staff, MoNRE and DoNREs lack legal expertise necessary for drafting and implementing environmental legislation. According to the Hanoi and Ho Chi Minh City DoNREs, the number of specialized environmental inspectorate and environmental lawyers in DoNREs' organization should increase to ensure each DoNRE has at least 1 environmental lawyer practicing. Practically speaking, however, it may be difficult to recruit trained knowledgeable environmental lawyers.

To build a specialized environmental inspectorate, MoNRE should organize training courses for DoNRE inspectors in professional conduct and knowledge of laws and regulations, foreign languages, environmental technology and science. DoNREs should regularly provide training courses on compliance and enforcement program for environmental inspectors to establish greater uniformity within the departments.

3. Further decentralize enforcement authority to local levels

The lack of enforcement authority at the commune/ward level results in an ineffective enforcement program. Environmental protection agencies at the local levels lack legal authority to conduct inspections and settle violations in large part because of poor coordination with other relevant agencies, such as environment specialists and police. Complicated inspection procedures of regulated facilities further slow down the inspection process. Prior to conducting periodic environmental inspections, DoNREs and also MoNRE must follow certain procedures, which include: (i) identifying inspection targets; (ii) making an inspection plan; (iii) selecting members of the inspection team; and (iv) proposing the final decision on inspection. Given the number of steps involved in this process, it often takes a month just to prepare for a periodical inspection.

MoNRE should propose a more efficient procedure for conducting periodic inspections, focusing on further decentralizing authority to the district-level Departments of Environment Management and Management Boards of IZs, and EPZs. With greater legal authority and capacity, local authorities will be better equipped to respond more effectively to environmental violations.

4. Increase agency budget and investment in facilities to promote improved environmental management

State budget disbursements for environmental management should be based on the annual plans proposed by MoNRE and DoNREs that estimate expenses for approved enforcement programs. Up until 2005, the agency budget has primarily funded building or repairing infrastructure related to environmental protection. While the budget should continue to support these important efforts, it should also fund capacity building trainings for the environmental inspectorate.

The state budget for environmental management lags behind other government offices because 100% of penalties collected for environmental violations revert back to the state treasury. By contrast, in the field of combating illegal trade of heroin and counterfeit goods, 100% of penalties collected are reinvested to provide professional training to officials. In the field of taxation, 30% of penalties collected are reinvested in a fund for purchasing equipment and awarding to the department.²⁴ No regulation currently exists that outlines how penalties derived from fines and sanctions for environmental violations should be reinvested into environmental enforcement efforts. Accordingly, MoNRE should cooperate with MoF to draft and submit for the Government's approval a Decree directing penalties collected from environmental administrative sanctions to support environmental training, enforcement and overall administration.

5. Strengthen post-license examination and inspection

Effective compliance monitoring and inspections of industrial activities require a significant number of technically trained personnel with ample financial support. Almost all officials in-charge of environmental inspectors have been trained with general background knowledge on environmental protection and inspection. What they lack, however, is professional training and knowledge on conducting environmental inspections, carrying out samples, etc. without the assistance and overarching support of the agency. As a result, the agency conducts few post-license examinations and inspections of regulated facilities on an annual basis. The poorly trained and staffed Environmental Division within each DoNRE cannot adequately conduct inspections necessary to deter potential violators. In line with an increase in the number of environmental inspectors, DoNREs must focus on increasing staff capacity to provide them with adequate knowledge and professional skills in the field of environmental inspection.

Environmental agencies should focus on post-license examination and inspection to ensure that regulated facilities duly carry out measures for reducing environmental impacts as registered in their EIAs. Post-license inspections should mobilize public involvement by publicizing EIA contents and information about potential negative impacts to the environment. The agencies should promote the role of local citizens in detecting and notifying violations of non-complying facilities.

The inspection procedures should be reviewed to reduce the time needed for preparation and timely settlement of violations. Moreover, the legal authority for making inspection decisions should be further decentralized to inspectorate rather than rest with the chief of inspectorate or head of DoNRE as it does now.

6. Review penalties to ensure effectiveness of sanctions

Existing monetary penalties lag far behind the actual amount of compensation required to remedy environmental damages or to invest in proper wastewater treatment systems or other required cleaner technology. Under the existing penalty scheme, violators are willing to pay the penalty rather than invest in proper wastewater treatment systems or other environmental requirements. MoNRE should review the penalty structure to promote greater deterrence among environmental violators.

The Ordinance on Administrative Penalties provides the PPCs and inspectorate at each level legal authority to impose monetary penalties for all environmental administrative violations, with the maximum monetary fine set at 70 million VND (USD \$5,000) (Article 14). District and upper level PPCs and inspectorate, however, have stricter settlement authority to impose higher fines and penalties on environmental violators. Commune PPCs must refer the violation cases to district PPCs for settlement purposes. As a result of this rigid vertical structure, environmental cases are often not settled in a timely fashion. Accordingly, administrative penalties

²⁴ Circular No. 09/1998/TT-BTC dated January 20, 1998 guiding the usage of penalties collected from administrative violation sanctions in the field of taxation.

applicable to environment violations should be separated from other types of administrative penalties to remove the limitation on the competence of the PPCs and Environment Inspectorate in imposing stricter fines and penalties on violators.

7. Enhance cooperation between functional agencies in compliance and enforcement

A successful environmental enforcement program demands close coordination and cooperation between responsible governmental agencies. The LEP does not provide clear guidance on cooperation between relevant agencies when conducting inspections and enforcing against violators. Moreover, the environmental inspectorate is generally quite weak at mobilizing resources to coordinate enforcement efforts. As such, setting up an environmental police force should be a priority to improve enforcement of administrative decisions. MoNRE and the Ministry of Public Security could propose establishing an environmental police similar to the newly-established sea-guard police force that combats smuggling. To ensure coordinated inspections and timely enforcement decision-making, the regulations governing this environmental police would have to closely track that of the environmental state management agency and inspectorate. In addition, the other relevant agencies (MARD, MoFI, Mol, MoC, etc.) should develop compatible monitoring data systems and regularly share information to bring more coordinated environmental enforcement actions.

8. Strengthen compliance promotion programs targeting technology upgrades in selected industries

Many regulated facilities with older and more polluting technology systems are simply unable to achieve environmental compliance with legal requirements. According to Decision No. 64/2003/QĐ-TTg dated April 22, 2003, 20% of production establishments cause serious environmental pollution and must be compelled to invest in upgrading their technology and building wastewater treatment systems. These establishments, however, are facing great difficulty in securing financial support to upgrade their technology systems. Meanwhile, Vietnam's Environmental Protection Fund has failed to provide new environmental investment opportunities to these businesses through loans and grants. The reason for this is that the Fund only provides two limited loan instruments: (1) banking loan interest support once the principal investor has finished the project and repaid the loan principal; and (2) financial support to environmentally-related projects (upgrading environmental infrastructure, R&D, etc) that amounts to only 50% of the total project's budget.²⁵

MoNRE must revise the Environmental Protection Fund regulations and its provisions on financial management and disbursement. Specifically, the Fund should increase the level of funding to targeted industries that require technology upgrades. Moreover, in the revision of the Fund's regulations, MoNRE should focus on diversifying financing instruments available for the Fund to provide support for investment projects.

B. Long-term recommendations

1. Further modify the new Law on Environmental Protection to strengthen environmental management

The new Law on Environmental Protection will provide an important basis for setting up a complete framework for environmental protection. Specifically, the revised Law on Environmental Protection should address the following issues:

- Amending provisions to clearly assign tasks of environmental protection and enforcement among competent agencies at central and local levels to avoid jurisdictional overlap;
- Amending provisions to increase investment and government budgets both at the central and local levels for environmental protection;
- Providing a strong legal basis for developing and applying economic instruments in environmental enforcement;

²⁵ Circular No. 93/2003/TT-BTC dated October 6, 2003 by MoF guiding the financial management for Environment Fund.

- Mandating stronger penalties and other sanctions (including criminal ones) against non-complying entities;
- Amending provisions on environmental planning, EIA requirements for economic development strategies, EIA post-license examination, importation of scrap materials, and self-monitoring requirements; and
- Providing a stronger legal basis for public participation in environmental compliance and enforcement, policy-making, EIAs evaluation, and incentives for citizens to file suits against violators.

In addition, a number of regulations should be enacted to carry out the intent of the LEP; they include revised environmental standards, certificate for environmental compliance, funding for environmental protection, a broader application of economic instruments, stronger self-monitoring and self-reporting requirements, improvement of public environmental education, environmental protection in IZs, EPZs, among others.

2. Increase environmental inspectorate authority

Authority for environmental inspection and enforcement should be completely handed over to the Environmental Inspectorate. Moreover, environmental inspectorate functions at the central level should be decentralized to the local levels so that violations can be promptly detected and resolved.

Current regulations, however, grant legal authority to both the Environmental Inspectorate and the People's Committees for authorizing sanctions and penalties to environmental violators.²⁶ Dual jurisdiction often promotes lack of accountability between the agencies for conducting inspections and applying penalties to non-complying facilities. In addition, the environmental inspectorate is unable to mobilize relevant agencies (evaluating agency, police, etc.) involved in the inspection process as well as to enforce the Inspectorate's decision on non-complying entities.

3. Increase application of economic instruments

Economic instruments should be considered important tools to complement traditional command-and-control enforcement measures. In the future, MoNRE should propose various economic instruments, such as taxes, charges, funds, pollution quotas, environmental labels for products, etc., and introduce a step-by-step approach to state environmental management based on careful consideration of socio-economic development factors. To effectively promote economic instruments in Vietnam, MoNRE should consider:

- Enhancing public awareness about economic instruments and the need for polluters to compensate for environmental damages;
- Diversifying the types of economic instruments, including pollution taxes, deposits to the Vietnam Environmental Protection Fund, compensation liability for environmental damages, etc;
- Applying incentive schemes in the forms of financial assistance, tax reductions for environmental protection measures or clean production; and
- Step-by-step introducing regimes of exchange and transfer of discharge quota among regulated facilities aiming at set up an exchange market for pollution quota.

²⁶ Governmental Decree No. 121/2004/ND-CP dated May 12, 2004 provides jurisdiction to both People's Committees and Environmental Inspectorate in applying administrative sanctions and penalties to violators.

4. Develop new regulations on citizen monitoring

The current LEP only provides a rough framework for citizen monitoring. The legal basis for citizen's involvement in monitoring environmental compliance and enforcement remains weak. New regulations are needed to strengthen and facilitate citizens participating in Vietnam's environmental compliance and enforcement program. Specifically, the new regulations should consider:

- Requiring state management agencies in environmental protection to disclose environmental information for public access;
- Requiring investors to publish EIAs as a basis for citizens to monitor the project's progress and compliance with environmental requirements; and
- Providing incentives for citizens to monitoring environmental compliance and to file civil actions against environmental violations

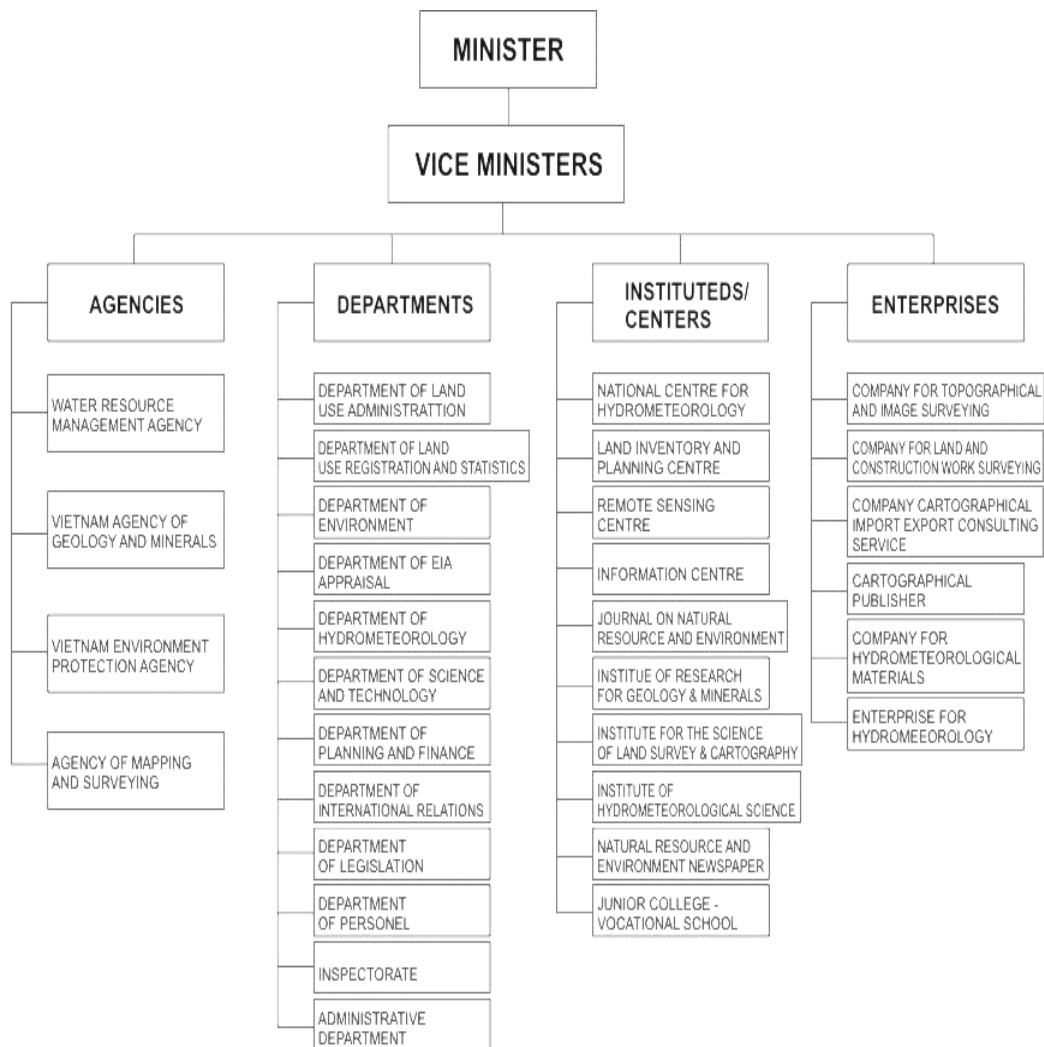
5. Develop legal requirements mandating self-monitoring and self-reporting requirements

The current LEP has no provisions requiring regulated facilities to carry out self-monitoring and self-reporting activities. As a result, MoNRE lacks accurate compliance monitoring data necessary for identifying non-complying facilities. Moreover, uneven compliance and enforcement of the law leads to unfairness between complying and non-complying facilities. To address this issue, the Government should impose strict sanctions or penalties on non-complying facilities. To strengthen self-monitoring and self-reporting, the government should:

- Revise the LEP to promulgate legal regulations for regulated facilities to submit regular self-monitoring, self-reporting and record-keeping requirements;
 - Target 90-100% compliance among highly polluting regulated facilities that cause adverse impacts to the environment by requiring them to submit self-monitoring reports and provide annual assessments of their operations to local authorities;
 - Strictly supervise and enforce the requirements; and
 - Strengthen compliance assistance by simplifying administrative procedures for financial support from the Environmental Protection Fund or other financial institutions.
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ANNEXES

Annex I: Organizational Structure of MoNRE



Annex 2: List of Prioritized Action Programs

(Issued together with PM's Decision No. 256/2003/QD-TTg dated December 02, 2003 ratifying the National Strategy on Environmental Protection towards 2010 and its Orientations towards 2020)

No	Programs	Responsible Agencies
1.	Project on reforestation of 5 million hectares	MARD
2.	Action Plan to thoroughly tackle units and establishments causing serious environmental pollution (implementing PM's Decision No. 64/2003/QD-TTg dated April 22, 2003)	MoNRE
3.	Program for overcoming the consequences of toxic chemicals used by the U.S. in the Vietnam war (implementing PM's Decision No. 33/1999/QD-TTg dated March 1, 1999)	MoNRE
4.	Program on recovery seriously degraded upstream forests	MARD
5.	National target program on clean water and rural hygienic environment (implementing PM's Decision No. 237/1998/QD-TTg dated December 03, 1998).	MARD
6.	Program on treating hazardous wastes	MoNRE
7.	Program on treating hospital wastes	MoH
8.	Program on repairing and upgrading seriously polluted urban canals and lakes	MoC
9.	Program on strengthening institutional capacity in environmental protection	MoNRE
10.	Program on upgrading urban water drainage system and building concentrated wastewater treatment system	MoC
11.	Program on strengthening management, protection and development of Natural Reservation Zones (implementing PM's Decision No. 192/2003/QD-TTg dated September 17, 2003).	MARD
12.	Program on completion and reinforcement environmental protection legislations	MoNRE
13.	Program on study, formation and application of economic instruments into environmental management	MoNRE
14.	Program on environmental protection in Cau river basin	MoNRE
15.	Program on environmental protection in Nhue – Day river basin	MoNRE
16.	Program on environmental protection in Sai Gon – Dong Nai river basin	MoNRE
17.	National plan for dealing with oil and petroleum overflow accidents in period 2001 – 2010.	National Steering Committee for Seek and Rescue
18.	Program on protection national and international level wet-land areas	MARD
19.	Project “Introduction environmental protection into national educational system”	MoET
20.	Program on integrating environmental protection requirement into socio-economic development plans	MPI
21.	Program on community-based environmental protection	Vietnam Fatherland Front
22.	Program on strengthening management and treatment capacity to solid wastes in urban areas and industrial zones	MoI
23.	Program on improving air quality in urban areas	MT
24.	Program on recovery specific ecological systems, which are seriously degraded	MARD
25.	Program on building concentrated wastewater treatment system in all industrial zones	MoC
26.	Program on strengthening the role of mass-media to enhance public awareness towards environmental protection	MoCI
27.	Program on mobilizing public involvement into environmental protection	MoNRE
28.	Program on application of clean technology	MoC

No	Programs	Responsible Agencies
29.	Program on assisting enterprises to implement environmental protection and international economic integration	MoT
30.	Program on building and implementing progress of technology renewal to meet environmental protection requirements	MoST
31.	Program on recovery environmental quality in mineral exploitation areas	Mol
32.	Program on protection and development natural and cultural relics	MoCI
33.	Program on building and expansion of ecological villages	MARD
34.	Program on protection of race animals are in high danger of extinction	MARD
35.	Program on strengthening science research and technology development to support environmental protection	MoST
36.	Program on strengthening environmental monitoring	MoNRE

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