



Environmental Compliance and Enforcement in the Philippines:

Rapid Assessment

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Philippine Country Assessment: Enforcement and Compliance Program

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ABBREVIATIONS AND ACRONYMS

ADB	Asian Development Bank
CENRO	Community Environment and Natural Resources Office, a field unit of DENR at municipal/ city levels
DENR	Department of Environment and Natural Resources, a cabinet level office
ECC	Environmental Compliance Certificate
EIA	Environmental Impact Assessment
EMB	Environmental Management Bureau, a unit of DENR dealing with pollution
E.O.	Executive Order. EO 192 is ranked at the same level as a Congressional statute
EUF	Environmental User's Fee
LGUs	Local Government Units – municipality, city or province
LLDA	Laguna Lake Development Authority
MBI	Market-based instruments
NEDA	National Economic Development Authority
PAB	Pollution Adjudication Board – quasi-judicial body deciding pollution cases
P.D.	Presidential Decree, ranked at the same level as Congressional Statutes
PENRO	Provincial Environment and Natural Resources Office, a field unit of DENR at provincial level
R.A.	Republic Act, national statutes passed by Congress
SEECCTA	Strengthening Environmental Enforcement and Compliance Capacity Technical Assistance, research project funded by the World Bank
SMR	Self-monitoring report

A. BACKGROUND AND CONTEXT

1. Environmental Challenges

The Philippines is experiencing rapid growth in population, projected at almost 83 million in 2004 and growing at 2.36 percent rate annually.¹ Fifty-seven percent of the population lives in urban centers. Many people in the rural areas moved to the cities and industrial areas to find work or engage in business as the economy grew. Urbanization and industrialization intensify the problems of pollution from both point and non-point sources. One third of the domestic biological oxygen demand (BOD) generated nationwide comes from Metro Manila and its neighboring suburbs alone.

Communities are struggling to cope with an inadequate capacity for waste management and the dangers associated with increased use of toxic and hazardous substances. The country generates about 10 million metric tons of garbage per year with Metro Manila accounting for a quarter. Only 2 percent of this waste stream is disposed of in sanitary landfills. The usual practice of garbage disposal in open dumps leads to contamination of water bodies. In a recent study, 58 percent of groundwater sampled was contaminated with coliform and needed treatment. There are about 5,150 reported cases of gastro-intestinal diseases per 100,000 population. Toxic wastes from industry are estimated at 2.4 million tons/ year and only about 5% are treated or recycled. Medical wastes generated from hospitals, which is another serious concern, is estimated at 6,750 tons/ year.

One of the most serious environmental challenges nationwide is the proper collection and disposal of garbage (“solid wastes”). The primary responsibility of collecting and disposing garbage has been devolved to local governments. The Department of Environment and Natural Resources (DENR) plays a supporting role by providing assistance to local governments in planning and designing management programs and in regulating disposal facilities. However, among the responsibilities assigned to DENR, the Environmental Management Bureau (EMB) is most concerned with hazardous materials and wastes in industrial areas, and also with non-point sources of water pollution. There are existing regulations on hazardous materials and wastes, and sufficient regulations, incentives and penalties for pollution management. However, EMB has very limited capacity to enforce these regulations.

2. National Policies

The 1987 Constitution provides that “(t)he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”² In a landmark decision, the Supreme Court held that this provision in the Declaration of Principles and State Policies is not empty rhetoric but is a legally enforceable right.³

In the late 1970s, the President, then exercising legislative power, issued two decrees on the same day that became the basis of government’s environmental policy. The Philippine Environmental Policy (P.D. No. 1151) required government agencies and private developers to submit an environmental impact statement for every project or activity “which significantly affects the quality of the environment.” This general requirement became the basis of today’s elaborate Environmental Impact Assessment (EIA) regulations. The Philippine Environment Code (P.D. No. 1152) established a comprehensive program for environmental protection and management. Subsequent laws, however, have superseded most of the

¹ National Statistics Office www.census.gov.ph; other data were gathered from The Philippines Environment Monitor 2003 and the National Solid Waste Management Commission.

² Constitution, Art II, Sec.16.

³ *Oposa v Factoran*. G.R. No.101083. July 30, 1993. The Supreme Court, in recognizing the right of citizens to sue on the basis of this provision, also in effect recognized that the Principle is adequate legal basis for DENR to cancel timber license agreements. The case is also significant because the petitioners were minors and suing on the basis of “intergenerational responsibility” which the Court also acknowledged.

chapters dealing with air and water quality, wildlife, fisheries, waste management, and other environmental issues.

In addition to general policy pronouncements, recently enacted specific laws on air, water, and waste management have sections on “Principles” and “Policy” that provide the basic tenets of environmental protection in the context of the subject matter of the law. The Clean Water Act, for example, promotes the use of economic instruments and adopts an ecosystem-wide approach to management of water resources. The Clean Air Act has a section recognizing “Rights” of the people, including the right to participate in the formulation, planning and monitoring of environmental policies and the right to bring action to enjoin activities that violate regulations and compel rehabilitation.

3. Legal Framework and Institutions

The Philippines is a constitutional democracy with a presidential form of government. The President exercises executive powers and, through her cabinet and the civil service, directs the implementation of statutes formulated by a bicameral Congress. The Supreme Court and the lower courts exercise judicial powers, which include the determination of the constitutionality of statutes and validity of administrative regulations. Government agencies under the President normally have the power to issue regulations that provide implementation details to general provisions in Congressional statutes.

The Philippines is divided into legally-defined local government units (LGUs). The largest is the province, which is composed of municipalities and cities. Highly urbanized cities are normally autonomous of the province where they are located. Municipalities and cities are further divided into Barangays (roughly, villages or communities). LGUs are led by a chief executive (the Governor, Mayor or Barangay Captain) and have local legislative councils that enact ordinances (with the force of law) that apply within the territorial jurisdiction. The executive and legislative powers of the LGUs are usually defined and limited by two Congressional laws, the charter that created the specific LGU and the Local Government Code, which provides general mandates to all LGUs. The Local Government Code has specific provision delegating to the various levels of LGUs certain responsibilities of environmental management.⁴ The Supreme Court has been very liberal in interpreting the authorities of local governments, even validating authority that has not been expressly granted by the Code as being part of protecting the “general welfare” of the residents.⁵

The powers and functions of executive agencies other than LGUs are provided in the Administrative Code. Under this law, the DENR is the primary agency responsible for environmental management as well as the use and management of all natural resources.⁶ The EMB is the unit within DENR that is primarily responsible for pollution issues and environmental impact assessment. A quasi-judicial body, the Pollution Adjudication Board (PAB), is composed of top DENR officials and representatives from the private sector. The PAB is authorized to decide pollution cases and impose fines.

Amendments in several key environmental laws (described below) have resulted in the expansion of authority of EMB as well as changed its structure. EMB was originally a central office that provided policy and technical assistance to the DENR field offices in the implementation of pollution laws. New statutes expanded the role of the EMB and set the stage for its decentralization. EMB is now authorized to

⁴ Local Government Code...

⁵ In at least one case, *Tano v Socrates*, the Supreme Court upheld the power of the provincial government to ban the catching and export of live fish even if that power is given to the city/ municipal government, not the province.

⁶ Executive Order No. 192 provided for the reorganization that created the DENR. The Administrative Code (E.O. No. 292) reiterated this institutional structure in the context of the entire Executive branch. Subsequent laws on specific topics (clean air, clean water, toxic and hazardous substances, solid waste management) have expanded or modified the general mandate of the DENR and its principal environmental arm, the EMB.

operate its own field offices directly tasked with the enforcement of pollution laws. These new laws have also resulted in redefining the powers of the PAB in deciding pollution cases.

The Laguna Lake Development Authority (LLDA):

In the past, there was a legislative trend to create special bodies to manage particular areas or resources. One such special body is the Laguna Lake Development Authority that manages the Laguna Lake and surrounding watersheds. Under its charter, the LLDA is organized as a corporation with local governments around the lake as stockholders. The LLDA was created to optimize the utilization of the lake for fisheries and other uses. Over the years the functions of the LLDA have evolved and have increasingly become regulatory. This regulatory function has been recognized in several court cases that have upheld LLDA's authority to inspect firms for pollution and impose penalties, following the standards imposed by DENR. LLDA is now an attached agency to the DENR for administrative purposes. It still has full autonomy for operations and policy directions, which allows it to implement certain programs that DENR itself cannot undertake without an enabling law. For example, the LLDA has successfully implemented a pollution charge system that levies a fee based on the volume of wastewater discharged. The experience of LLDA has inspired DENR to devise a similar scheme for nationwide implementation.

In recent years, the Philippines has strengthened pollution control laws by passing new or amendatory legislation on specific issues: toxic and hazardous waste management (1990), clean air (1999), ecological solid waste management (2000), and more recently on clean water (2004). While implementation mechanisms are slightly different under each law, enforcement remains a significant challenge. In addition, each new law adopts different regulatory strategies, giving varied powers and responsibilities to regular agencies (EMB, etc.), LGUs and specially-constituted multi-sectoral management bodies. For example, the Clean Air and Clean Water Acts both create specialized management areas with local governing boards,⁷ while solid waste management remains primarily a local government concern.

There are five major national laws that define policy and deal with the abatement, control and management of pollution:

Environmental Impact Statement System (P.D. No. 1151, P.D. No. 1586 and its implementing rules)

The decree promulgated in the 1970s required certain projects to submit an environmental impact statement (detailing the environmental consequences of construction and operation) prior to the development activity. Two decades later, the regulations implementing the decree have become very sophisticated as experience grew. A presidential proclamation lists the types of "environmentally-critical projects" covered by the requirement (usually heavy industries). Subsequent regulations have added a list of "environmentally-critical areas" where even minor projects are required to conduct some impact assessment. The current regulations require detailed EIA for critical projects and relatively simpler studies or checklists for minor projects or activities in critical areas. The EMB is the primary implementer of the law. However, the environmental compliance certificate (ECC) of major projects needs to be approved by the Secretary of the DENR. The EMB also imposes and collects fines for violations (operating without an ECC or violation of conditions in the ECC). EMB may issue a "cease and desist order" that effectively closes down a project for violation of the regulations "to prevent grave and irreparable damage to the environment."

⁷ the "air shed" and "water quality management area" which do not necessarily have the same boundaries; thus one local government may be a member in different and probably several governing boards for each or both sectors.

Toxic Substances, Hazardous and Nuclear Waste Control Act (R.A. No. 6969)

The law deals with the importation, exportation, use, manufacture, distribution, processing, storage, possession and sale of chemicals considered toxic substances and hazardous wastes. The regulations mostly deal with record-keeping by waste generators and transporters to keep track of the movement and disposal of listed chemicals. The DENR, through EMB, is the primary implementing agency. The Secretary of the DENR is authorized to inspect, require the keeping of records, confiscate chemicals that are improperly documented or used, and impose fines on violators. In addition criminal sanctions may also be imposed on violators.

Clean Air Act (R.A. No. 8749)

The Clean Air Act covers abatement and management of air pollution from stationary and mobile sources. It creates “airsheds” as management units with a special governing body composed of local and national government officials as well as representatives from private sector and civil society. The governing board is mainly a policy-setting body. Enforcement and monitoring functions are still primarily lodged with DENR, through EMB. The responsibility of setting standards also lies with DENR. The law provides stiff penalties for violations (counted on a daily basis for continuing emissions that exceed standards. Cases of violations are heard before the PAB, which can issue “cease and desist orders” that stops the operation of pollution-generating equipment, but effectively closes down all operations of the industry. The law introduces market-based instruments (MBIs) such as emission trading. The law is considered very progressive in that it contains provisions on citizen suits and “suits and strategic legal actions against public participation” (SLAPP) that deter countersuits by accused polluting firms to harass public complainants.

Ecological Solid Waste Management Act (R.A. No. 9003)

The Ecological Solid Waste Management Act provides for the proper management of wastes generated by households, commercial establishments, etc. It sets definite timetables for the conversion of open dumps to better disposal facilities. It also mandates local governments, especially the barangays, to initiate and implement a system of segregating garbage for recovery of recyclable, re-usable materials to reduce garbage volume. The principal responsibility for implementation is given to local governments. DENR participates in providing guidelines for management programs, setting standards for disposal facilities and providing general technical support for local governments.

Clean Water Act (R.A. No. 9275)

This law provides for a program and regulations for the abatement and management of water pollution from point and non-point sources. It introduces MBIs such as the wastewater charge system that imposes fees based on the volume of effluents discharged. It strengthens enforcement by providing stiffer penalties for violations of standards. The permitting system has been modified to accommodate the fee system based on amount of pollution discharged.

The primary responsibility for standards-setting, monitoring and enforcement is still given to the DENR (principally EMB). Several other agencies are involved in developing and implementing major programs – e.g. The Department of Public Works and Highways is the principal agency tasked with formulating a sewage and septage management program. In addition, LGUs are expected to actively participate in planning, monitoring and enforcement. The law creates special “water quality management areas” governed by a board composed of local chief executives, representatives of national government agencies and private sector/ civil society.

The provisions in the law define specific agency responsibilities, but the mechanics of how this will operate on the ground, as well as the transition from old to new procedures and regulations, are left to the implementing rules and regulations that the principal agencies are supposed to promulgate. DENR is currently in the process of formulating implementing rules for the law.

B. SURVEY RESULTS

1. Legal Enforcement Authority and Institutional Arrangements

Recent amendments in the law have enabled the transformation of EMB from a staff bureau⁸ to a line bureau.⁹ Under the recent reorganization order, the EMB will set up a direct hierarchy from the CENRO-, PENRO-, and Regional-level up to the Central Office.¹⁰ The transformation is not yet complete and there are attendant problems in the transition. The problem mainly concerns the spinning off of pollution monitoring and enforcement functions of the regular DENR offices into an EMB regional office. A recent pilot study in Region IV-A tried to clarify the relationship between the new EMB regional office and the regular field offices of the DENR. The result was a memorandum of agreement specifying cooperation and coordination mechanisms in the enforcement of environmental [pollution] regulations. The coordinative mechanism is now being studied for adoption nationwide.

Another issue involves the division of functions within the field offices of EMB. At present, Region VI centralizes all permitting functions in the Regional office, leaving the provincial and community level staff to conduct monitoring and inspections. In certain instances involving serious cases of violations or pollution incidents, the Regional office sends a team to the field to conduct inspections. In Region IV-A, permitting and enforcement are performed by the same unit. In all Regional offices, there is a separate division for EIA. EMB needs to address these institutional issues quickly at the same time it re-examines its substantive mandates and operational procedures. The new administrative order reorganizing EMB will hopefully standardize the operations of EMB regional offices across the country.

The collection and disposal of garbage is a very serious problem nationwide. Garbage collection is the responsibility of local governments. The collected wastes are invariably dumped in open dumpsites. The new ecological waste management law requires the conversion of these unsanitary dumps into “controlled dumps” and eventually to sanitary landfills, but there are no funds to implement this (LGUs are to generate their own funding through fees). The DENR is pushing LGUs to meet the requirements for proper disposal or it will initiate cases against violating LGUs. The DENR is mandated by the same law to assist local government units to prepare their programs to manage solid wastes. It also regulates the design and operation of the disposal facilities. The transfer of authority and responsibility over environmental management functions from national agencies to local governments is a big challenge to both DENR and local governments. DENR is often accused of being too reluctant to devolve regulatory authority, while LGUs are often characterized as incapable of properly exercising these responsibilities.

Recent laws have the tendency to create specialized multi-sectoral bodies to address specific issues, among these are the protected areas management board [biodiversity conservation in specially-designated protected areas], the governing board for airsheds [air quality management] and the governing board for water quality management areas. Each of these bodies requires membership and participation from national agencies [DENR, etc] and local governments located within the defined management areas. A local government unit can potentially be a member of several of these bodies that have overlapping

⁸ without having field offices of its own, merely provides policy and implementation guidelines to the DENR Secretary who then instructs the field offices to do the enforcement.

⁹ with field staff to directly enforce environmental regulations.

¹⁰ DENR Administrative Order No. 2002-17.

geographical boundaries. EMB is planning a pilot study to harmonize some of the overlapping functions and areas. For instance, the various designated watersheds and their management bodies created by provincial governments or special laws may also serve as water quality management areas/ bodies and may be matched with protected area boundaries where applicable.

Challenges

- ***Transition problems in the recent transformation of EMB as a “line” Bureau with budget and personnel***

EMB staff at the community and provincial¹¹ levels is re-assigned personnel that, for the moment, still report to the regular DENR regional offices and not directly to the EMB hierarchy. Even EMB Regional Directors are former directors in the regular DENR hierarchy. This has resulted in some delays in transmission of reports and in determining accountability. It has not been made clear who they are accountable to - the Regional Executive Director (of the DENR field hierarchy) or the EMB Director. In theory, it is to the latter, but in practice, an EMB director still looks to the DENR Regional Executive Director, who he formerly reported to. Moreover, this transition remains slow as EMB offices remain housed in the DENR field offices and are dependent on their office resources.

- ***Overlapping authorities as a result of the creation of special multi-sectoral environmental management bodies***

Multi-stakeholder management or policy bodies have the advantage of broad support from all sectors. The problem, however, is that there have been too many bodies created mandating the same memberships or representations. The challenge is recognizing which of these bodies can be merged or which functions can be performed by the same set of members clothed with different mandates. DENR plays a critical role because it invariably co-chairs and provides secretariat support for these special bodies. These are additional duties for the agency to attend to without a corresponding increase in budget or personnel.

- ***Devolution of responsibility for waste management to local governments that lack capacity***

During several recent consultations and trainings on waste management conducted by NGOs, DENR and LGUs themselves, it became very clear that local government officials are unaware of their responsibilities under the Ecological Solid Waste Management Act. Many of the obligations of LGUs require technical capability aside from financial investments. DENR can employ a carrot-and-stick approach in facilitating LGU compliance through capacity building activities and threatening to penalize LGU officials for not meeting their obligations under the law. EMB is already exceeding its budget on training of its own personnel in monitoring and inspection. A comprehensive program for capacity-building is urgently needed to prepare the LGUs for implementing the provisions of the law.

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

EMB has full legal authority and a complete array of regulatory instruments for a comprehensive enforcement strategy. What it lacks are well-trained inspectors and the logistical support necessary to carry out the inspections and enforcement actions.

¹¹ DENR has a Regional office that covers several provinces, a Provincial Environment and Natural Resources Office (PENRO) for each province and a Community Environment and Natural Resources Office (CENRO) which may cover a single or cluster of municipalities/ cities.

The DENR, and even its predecessor agencies, has traditionally been vested with legal authority to require industrial and commercial establishments to secure permits for the installation and operation of pollution control equipment, and to conduct announced and unannounced inspections and sampling for compliance with standards and other regulations. These powers are reiterated in the recent amendments to pollution laws. EMB field personnel are responsible for the conduct of inspections of all regulated companies in their jurisdiction.

Under both the Clean Air and Clean Water laws, the DENR can require regulated companies to keep records and monitoring data. These records are made available to inspectors when asked for during an actual inspection. Under recent regulations, the DENR requires the submission of self-monitoring reports as a condition for renewal of permits.

A recent study assessing environmental enforcement and compliance reported that the EMB is able to monitor and inspect only about one-quarter of the regulated establishments in its database. This number is estimated to be less than five percent of total registered industrial establishments nationwide.¹² The study found that “the proportion of the regulated community under the inspection-monitoring system is small. The universe of regulated establishments has not been established. And there is no prioritization of facilities to be inspected. Various factors have contributed to delay of the enforcement process. These factors include the uneven implementation of inspection, the involvement of regional enforcers in other tasks, the ambiguous guidelines on the duration of the permit to operate (PTO), the practice of unannounced visits, and the resistance of firms to inspection and other regulatory processes.”

A recent pilot study in Region VI developed and tested the use of industry-specific checklists, and made two important conclusions: 1) consolidating all inspections [potentially separate, by media] into a single multi-media inspection designed for the particular industry type proved to be a much more efficient approach given limited office manpower and resources; 2) industry-specific checklists guided both the experienced and inexperienced inspector to gather the appropriate data and assess potential violations. This much needed guidance is critical to the agency since the majority of the currently assigned field inspectors do not possess the proper academic background for pollution inspection; most are foresters coming from other DENR units rather than engineers.

The Laguna Lake Development Authority--a special regulatory body managing the Laguna Lake--used to face a similar logistical problem. In response, it has developed a system of processing permits by sub-area; all permits in one sub-area expiring and being renewed at a certain month. The agency is then able to focus only at a certain sub-area for permitting renewals per month, rather than the entire region. A similar method of targeted enforcement was tried in at least two EMB Regions but was met with resistance from industry. The planned nationwide shift to targeted enforcement has since been shelved.

Challenges

- ***Inspection by subject-specific law enforced (air, water, hazardous waste, EIA) inefficient, exacerbating already serious logistical problems***

The usual orientation within EMB is to enforce each law separate from the others. Offices are also organized this way, with sections on EIA, air and water quality, hazardous wastes. It is difficult, from both the perspective of the regulator and the regulated firm, to keep up with separate issue-specific inspections. It is also a very inefficient use of meager resources that the

¹² REECS, 2003. Strengthening Environmental Enforcement and Compliance Capacity Technical Assistance (SEECCTA) Project Main Report, Vol. 1. p. 70.

EMB provides to support the inspection activities. A multi-media inspection conducted by an individual inspector or group of inspectors, may be more effective, giving a more complete review of the company's operations and compliance records.

- ***Inspection procedures are not standardized, existing procedures not strictly followed***

Each regional office of the EMB has its own strategy and procedure for the conduct of monitoring and inspections. Several attempts have been made to provide a guidebook or checklist for the conduct of inspections. To date, however, these efforts have not gained wide support due to difficulty in use, unsuitability to actual situations on the ground, and a no official orders requiring the use of the manuals or checklists. In the case of forms that PAB requires for its own reporting, experience in Region VI shows that inspectors have not been correctly or completely been filling-out the required data.

- ***Inspectors need more technical training, wide disparity in capabilities of inspectors nationwide***

Many of the experienced inspectors have been promoted to administrative positions and may only be involved in inspecting major establishments or when there are serious complaints. The majority of the inspectors are either newly hired or newly transferred. There are few field personnel who have the academic background (generally, engineering) to become inspectors. Many are foresters who come from other DENR units and reassigned to EMB. These new inspectors are unfamiliar with the technical and procedural aspects of conducting inspections and have to be trained on the legal, technical and proper conduct during inspection visits.

3. Compliance Assistance and Data Management

In recent years, DENR has put greater emphasis in encouraging industry groups to police their own ranks and come up with self-monitoring programs. There are existing programs to facilitate partnership with industry groups as well as regulations to require self-monitoring reports. The Philippine Environmental Partnership Program (PEPP) was designed to promote industry self-regulation. DENR provides technical assistance to help industries comply with regulations. For companies that have a strong compliance record, DENR provides incentives by relaxing reporting requirements or easing requirements for ECC, recommending preferential credit rating with partner government banks and even providing financial incentives, such as tax credits, where allowed by law. For companies that are not in compliance but are committed to comply, DENR enters into an agreement with them laying down a concrete plan and timetable to follow to come into compliance. According to representatives of one sugar mill¹³ which has had problems complying with water and air standards, participation in the PEPP helps them not only set a clear direction towards compliance but also projects a good image for the company, which in turn makes it easier for them to deal with creditors and investors as they undergo financial rehabilitation.

Data management is an area that needs improvement within EMB. The raw data gathered from inspections and monitoring are seldom analyzed and used for planning future enforcement targets, except to keep watch on the particular firm where the data was gathered. It is hoped that, with industry-specific data gathered from the Region VI inspections checklists, the information will be more useful in looking at industry trends or practices or comparisons across industry types. Having industry-specific data will also make inspectors more familiar with normal operations of a particular industry, and thus be more sensitive to possible violations or data tampering.

¹³ Interviews with officials of the Victorias Milling Company, Victorias Negros Occidental.

Challenges

- *Compliance promotion program needs to be focused*

Compliance promotion is seldom a priority among EMB field offices because it entails a lot of investment in developing a campaign strategy as well as the materials needed to wage it. In many instances, it is only through industry groups or NGOs that organize forums where DENR officials, acting as resource persons, are able to inform the stakeholders about new regulations or compliance procedures.

- *Unsystematic data collection for use in agency planning and future strategy*

Monitoring data contain valuable information about trends across industries or geographic areas that may then be used for planning. But little secondary analysis of gathered data is being done except to develop summary figures for national reporting. But even the numbers collated may not reflect the actual situation. For example, reports of the number of regulated industries do not account for the percentage of companies which are supposed to be covered by regulations but have escaped DENR's radar. The SEECCTA study shows that the number of undetected, and therefore unreported firms, is as high as 95 percent.

4. Enforcement Response

EMB keeps watch over the firms that have come under its regulations. It monitors these firms through periodic inspections and report submissions during the permit renewal process. When a violation is detected during inspections, the EMB office issues a notice of violation and invites the company to a "technical conference" to discuss the incident of violation. Within a period of 90 days, the company is watched closely and if there are no further incidences of violation, the case is elevated to the PAB for imposition of fines for the period it was in violation. If the violation continues, the EMB moves for the issuance of a "cease and desist order" which effectively shuts down the operations of the company. The PAB may decide to issue a "temporary lifting order" if the company is able to show a satisfactory compliance plan. The temporary order allows the company to operate for a limited period in order to test new procedures or equipment that it employs to come into compliance with the standards. If the test is successful, then the PAB makes the lifting order permanent and imposes a fine for the days in which the company had been caught violating the standards. Continued non-compliance even after the temporary lifting order may result in permanent closure of the company. However, this rarely happens unless the company itself deems that its operations (if forced to comply with regulations) is no longer economically feasible.

The PAB is unique in that it is a specialized "court" composed of top DENR officials and (currently) representatives from labor and industry. The composition of the Board recognizes that the imposition of penalties for environmental violations has a huge impact on the economy. Non-DENR membership in the Board also depends on the Secretary of DENR. Over the past decade of its existence, the membership in the Board constantly changes (as new DENR officials come in) and affects the consistency in the actual decision-making in the cases brought before it.

Challenges

- *Ineffective use of inspection reports for building cases for adjudication (data is inadequate to establish violation or is being challenged)*

The most serious problem with enforcement actions is the ease by which accused polluting firms question the integrity of inspection reports and sampling data. Inspection reports often lack crucial information to build a tight case or sampling procedures are questioned because of the perceived bias of inspectors or lack of technical credentials of inspectors. What invariably happens is that the PAB requires a re-sampling of effluent or emissions, which can be very costly to an agency perennially cash-strapped.

- *Centralized adjudication delays resolution of cases and is costly for parties*

At present, the PAB is based in Manila and so cases from all over the country have to be heard in Manila. On certain occasions, the PAB holds hearings in the provinces, but this is more the exception rather than the rule. The PAB may delegate its functions to the regional officers of the DENR. It is now in the process of pilot testing the decentralization process.

5. Public Participation in Environmental Compliance and Enforcement

The Philippines has a very strong and vocal civil society, especially in the environment sector. Local and national NGOs usually keep a very close watch of proposed projects that may pose serious dangers to the environment. Public participation in the EIA process is significant not only in the process of consultations prior to securing the Environmental Compliance Certificate needed before the project can start, but also in monitoring compliance with conditions in the ECC after the projects starts regular operations. A provision in the EIA regulations requires the convening of a multi-partite monitoring team for major development projects, to ensure that the operations of the company are in compliance with environmental standards and other conditions in the ECC.

Public participation is also evident in monitoring major polluters by creating negative publicity for these firms. A private sector initiative to list and publicize major polluters has been adopted by the DENR in its EcoWatch Program, where firms are “color-coded” according to their record of compliance with environmental regulations. A favorable rating (e.g. gold, silver) entitles the company to incentives such as technical assistance or relaxation of certain reportorial requirements, while an unfavorable rating (black) means that the company will be under strict agency scrutiny.

The Clean Air Act introduced a mechanism to further protect public participation by allowing the filing of a SLAPP suit. The “strategic legal action against public participation” suit allows double award of damages in favor of the public complainant if the company he is complaining of files a baseless countersuit intended mainly to harass the public complainant into withdrawing his complaint. This is a fairly new concept and has not yet been tested. But it remains a potential deterrent to companies to muzzle complaints of violations of air pollution.

Challenges

- *Adversarial rather than cooperative stance among industry, government and civil society*

Traditionally, the relationship among industry, government and environmental NGOs has been more adversarial than cooperative. This is perhaps due to the fact that they meet only in cases of environmental conflict. There are less opportunities for interaction for education, compliance promotion or strategic planning for prevention of pollution incidents.

- *Inadequate public access to information*

Access to information is guaranteed under various laws. However, what is difficult is the public has little information as to what data or records are being kept, or where they are kept. Government offices, especially in the provinces and far flung communities, have very poor record-keeping facilities or systems.

6. Indicators to Evaluate Program Success

Each year, DENR sets targets for certain activities that are supposed to be met within the year. At the end of the year, each unit reports what percentage of the target was achieved. Invariably, this is close to or even over 100 percent. But scientific studies continue to show the worsening pollution problem, which suggests that the data gathered by the agencies are not the appropriate indicators of efficiency or success.

An example of a successful program evaluation is the case of pollution charges imposed by LLDA. Studies before and after the imposition of the regulation clearly indicate that there were quantitative (amount of wastewater discharged by companies) and qualitative (changes in processing technology initiated) impacts of the regulation that lead to a decrease in effluent discharges.

Challenge

- ***Insufficient data collected to accurately measure improvement***

Hardly any data is collected and kept to track the performance or effectiveness of enforcement actions or programs. For example, DENR does not track basic information about the number of regulated companies compared to the number of companies registered in other government offices (e.g. the Department of Trade and Industry or the local governments). While the data from other government agencies may not be compatible (e.g. the records of number of businesses operating does not distinguish between firms that may or may not be subject to environmental regulations) such cross-referencing data gives clues about the size and nature of the regulated community. DENR offices, however, do keep records of “key result areas” or annual targets of permits processed, companies inspected, cases filed, etc.

C. CONCLUSIONS AND RECOMMENDATIONS

Short-Term Recommendations

1. *Complete and fully implement the reorganization of EMB*

As EMB settles down into its new role as a direct enforcer of pollution laws, its organizational structure and logistical support has to be strengthened and clarified in relation to the regular DENR hierarchy. There also has to be some permanence in the assignment of personnel so that they can acquire the needed experience and skills to perform their functions competently. This is especially true for the personnel who will conduct inspections.

2. *Expand and standardize the implementation of the checklist system for inspections and monitoring*

Standardization of inspections and handling of samples can greatly improve reliability of evidence, even as the EMB struggles to provide the required technical training for its personnel. Nationwide implementation of successful pilot studies on improving inspections and monitoring through the use of checklists would strengthen coordination between EMB and DENR field offices.

3. *Optimize use of self-monitoring reports*

DENR should continue the implementation of the PEPP in conjunction with the self-monitoring reporting regulations. In addition, DENR should provide resources to collate and analyze the information gathered as basis for future agency planning and enforcement actions.

4. *Promulgate feasible and practical implementing rules and regulations of the Clean Water Act*

The new law contains forward-looking provisions that may not as yet be feasible to implement immediately. It is important that a definite but reasonable process is outlined in the implementing rules and regulations so that enforcement can also be realistically accomplished. Several pilot activities may be initiated, such as the concept of water quality management areas, so that some experience may be gained before national implementation is attempted.

5. *Conduct pilot implementation of the decentralization of the Pollution Adjudication Board (PAB)*

Recent baseline studies assessing the performance of PAB recommend procedural changes that can lead to more efficient and fair resolution of environmental cases. Among these recommendations is the decentralization of the PAB and delegating to the regional offices the initial resolution of cases. Decentralization can be tested in one or two areas before expanding nationwide.

Long-Term Recommendations

1. *Improve policies and procedures to clarify roles of national agencies and local governments, consistent with devolution of powers and responsibilities to local government units under recent laws*

DENR is not likely to get a significant increase in budget for personnel or equipment. But it will continue to be given additional duties in existing and new legislations. These duties, as the trend shows, are more policy-oriented, standards-setting or oversight over local governments.

It will be in the best interest of DENR to review its policy on devolution of functions to local governments. The experience with devolution of forest management functions has not been successful - certainly because LGUs were not ready to perform the functions, but also because of DENR's reluctance to affect a systematic, gradual and complete devolution.

Local governments may be in a better position to conduct monitoring and inspections. They have the budget and personnel, and they can tie the enforcement program with their own permitting system. What LGUs lack is training of personnel. This is what a re-oriented DENR should provide - standards, training and oversight.

2. *Develop and implement economic instruments to encourage compliance and generate funds for monitoring and enforcement*

The most recent laws - Clean Air Act and Clean Water Act - have provisions for special funds, sourced from revenues and fines. These funds are earmarked for critical activities and investments in infrastructure or equipment. It is too early to tell if these funding sources will

generate enough revenue to support the needed activities. It is unlikely that Congress will increase the budgets of implementing agencies to meet these requirements.

LLDA has demonstrated the effectiveness of imposing an environmental user's fee (EUF). Data shows a dramatic decrease in BOD loading by monitored firms in response to the potential financial burden of the user's fee. One firm shifted to zero discharge technology after considering the cost of the EUF. DENR has begun implementing a similar fee system to be applied nationwide. The LLDA and DENR user's fee system must be updated in light of the mandate to impose a "wastewater charge system" under the new Clean Water Act.

3. *Expand Pollution Adjudication Board (PAB) jurisdiction to include all types of pollution cases and not only violations of standards*

The PAB was first created to hear all pollution-related cases, although in practice it only entertained complaints involving violations by industrial facilities of effluent or emission standards. Under the Clean Water Act of 2004, the subject matter jurisdiction of the PAB expanded to include toxic and hazardous wastes and dumping of garbage into the sea, among others. It also gained jurisdiction over all aspects of violations of water pollution including operations without permits.

This expanded jurisdiction should enable PAB to look at regulations in a more holistic manner and engage violators (industrial facilities, households, even local governments) in coming up with comprehensive programs to address pollution issues and not just be limited to narrow technological fixes for meeting standards. PAB is currently reviewing its procedures to enable it to take cognizance of these new cases.