SUMMARY OF WORKSHOP 2A1: ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT INDICATORS: GETTING STARTED

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GOALS

To strengthen capacity to measure and manage the effectiveness of the participants' compliance assurance and enforcement activities by launching new environmental compliance and enforcement (ECE) indicator pilot projects.

1 INTRODUCTION

The facilitators began by raising two key questions to help focus the discussion.
1. What are the challenges to starting ECE indicator pilot projects?
2. How can INECE help?

The difficulties with result-oriented measures should not dissuade programs from beginning to measure environmental outcomes in more limited ways. Output indicators with measures such as inspection numbers or the number of regulated entities are a necessary component of indicator systems, despite their limits in showing the environmental results. However, even though the data may be difficult to collect and manage, limited outcomes measures should be sought. Agencies should not be afraid to make mistakes; they should be encouraged to be creative and to experiment with indicators. Care must be taken not to create measures that create perverse incentives, such as increasing the number of insignificant inspections or cases to show greater activity, or by indicating the lack of violations as a success rather than as an indication that compliance status is unknown. Indicators must be developed early in the management process and be used to guide resource dedication and strategies. Indicators should be examined in light of the expectations of the programs and may help explain why regulators act as they do towards the public and other stakeholders, who may have other expectations.

INECE could play a key role in the following areas:

— Working with Regional Networks to promote global use of ECE indicators and continue to promote the issue to help the networks connect with funders.
— Sharing information between countries and standardizing definitions and terminology to develop a common language on the subject.
— Develop training and guidance on the development and use of basic components, including some specific indicators with which they can begin.

2 DISCUSSION SUMMARY

Several countries have begun to measure performance and outcomes in different ways, and have different experiences in developing environmental compliance and enforcement indicator programs. Mr. Dave Pascoe began by relating his experience in Canada as they developed a performance measurement system. They began by choosing only a selected number
of indicators from a menu referenced in a larger list of measures (from the INECE publication “Performance Measurement Guidance for Compliance and Enforcement Practitioners”). The biggest lesson learned was that in a pilot, you should not discount any indicators, even if you only begin with a more limited set. If some measures do not work, it is acceptable to make mistakes and then discard a particular measure, but programs should not begin a pilot by leaving anything out of future consideration.

Many countries have advanced systems, which may rely on the internet or other tools, to collect and publish information on environmental releases and activities, such as timely and appropriate response to violations or other activities. These systems may do a great job of capturing data, but often do a poor job at measuring performance and results. Differences in performance of industry toward compliance or effluent releases are not always adequately linked to environmental performance such as stream quality.

In The Netherlands, a new law requires yearly environmental data reports for public release from the environmental authority. The decree described criteria for data and presentation of information to ensure adequacy of the data presented to the public. Information was in two parts:

1. Effect of pollution on surrounding area around plant.
2. Information about monitoring system and data management system.

For some items, such as methane, polluters can calculate the exact emissions, but for some other pollutants such as fugitive benzene, it can be much harder to directly measure. Therefore, the authorities had to establish uniform data collection methods and reporting mechanisms. They also had to get agreement on responsibilities of government and industry regarding data systems.

The development of indicators must not be done too much in isolation of other parts of the compliance monitoring. Some well-meaning indicators can create perverse incentives, if not done with a wider perspective. For example, indicators that compare the work of subnational units can create motivation for units to perform to meet the measure, rather than to perform to meet the ultimate goal of the measure, leading to inadequate or incomplete compliance.

Finland first investigated processes and how they work, and then developed measures on work outputs and schedules to show how work proceeds. The development of indicators should go hand in hand with development of work processes to improve work flow and efficiencies. Indicators should help to put work in positive light and should not be designed as a method to criticize. Program evaluation should be designed to improve programs, not to justify tearing them apart or eliminating programs that do not adequately fit the measures.

The INECE Internet forum on indicators highlighted a system to capture key data from inspection reports. The goal of the system is to take all the necessary data for the indicators from inspection reports, rather than requesting more data from the inspectors or additional forms for inspectors to complete. Inspectors already have too much work to add additional data collection or reporting demands.

The goal of indicator systems is to measure the effectiveness of compliance work. In Canada they broke the indicators into two parts. The first measure is compliance with the rules and outputs such as the amount of fines, the number of inspections, and the number of cases. It is fairly easy to report and collect information of this type, and to measure the effectiveness of industry compliance. However, it requires a small leap of faith to believe that compliance will reach the goals of the rules. But, if there are limited resources, this may be enough. The second measure is the efficacy of the rules. It can be very difficult to figure out if rules themselves are working, but we can assume that if people not following rules, it is impossible for the rules to reach the expected outcomes. Once compliance occurs, then we can measure the outcomes and ultimate results.
In one pilot, Canada first started an initiative with measurement of things like awareness of the environmental obligations. They then did one year of compliance promotion to the targeted industrial sector. Awareness went up to 70 – 80%. They then measured targeted enforcement, and subsequently found 90 – 95% compliance. The dual track measurement helped them see if they could measure the effects of compliance promotion vs. enforcement, and showed that both tools are most effective when used together. It required some trial and error on which indicator worked, but better results occurred when different indicators were tested.

Indicators should be designed and used to define compliance and enforcement strategies and allocate resources to best achieve goals. Define the baseline indicator, measure the current state, then perform the activity and see if it worked. Many countries start work before they have measures and do not know how to adequately direct the resources in the most productive way.

Indicator programs should not be created just for the measures, but they must be a planning and management tool to learn about the effectiveness of work, not just to measure.

Some of the perverse incentives are evident in Russia. Large countries do not have nearly as many inspections per facility as smaller countries. In Russia, and many other countries, inspectors can not revisit facilities unless a violation is found, so inspectors may invent a violation so they can come back to a facility later to continue to review areas they may not have completely covered the first time. Another perverse indicator is created when penalties add to the inspectorate's funding and budget, creating motivation for higher fines rather than environmental improvements. Many areas do not set objectives correctly because of other causes or influences.

An indicator is defined as an expectation for a particular result. When dealing with the public, experience has shown that the best indicators are found when everyone with expectations in that area are consulted, including governments, auditors, nongovernmental organizations (NGOs), treasuries, the public, etc. Whose expectations are being met? Information used to explain enforcement may not be the same as the information needed to evaluate the effectiveness of the enforcement, but both are important. Are indicators created by the agency or imposed from outside? It is all about “effectiveness”, and effectiveness is in the eye of the beholder. That is, what governments consider a success may not be viewed as such by the public. Indicators are an important source of information on expectations of law enforcement. It is important to know what the public expects, and to understand that it does not always match what the agency is doing based on law, budget, or agency priorities. It is crucial to help define what the public wants, and whether law enforcement can deliver on those expectations.

The hierarchy of preferred indicators often depends on resources and the ability to collect measures. Activity is an important and indispensable indicator. We need activity levels to compare to results to show what we have done with our time and resources. But we also have to look at the entire compliance continuum and compliance strategy. We need to look at the full spectrum of activities and see which is effective in which parts of the continuum. When you look at what you are going to measure, you should also look at the deterrent value of “presence”, even when violations are not found and there is no other direct result from an inspection or other activity. Ideally, all parts of the continuum should be measured, but this may be unrealistic.

One problem with enforcement indicators based on ambient environmental conditions comes from externalities such as transboundary pollution. Do you want to be responsible for quality of environment when some effects are beyond national control? We must “think globally, act locally”. Compliance and enforcement programs can only be responsible for national law. Domestic programs can not monitor a multi-national company’s activities in other countries.
Perhaps this is one way INECE can help? How can we ensure that indicators toward one company in one country are applied equally in others? Different national programs should work together to try to make multi-national corporations globally accountable. There is someone at the top of every company that is responsible, how can we get to them?

Some countries have tried to develop indicator programs, but because of the lack of funding or internal capacity, they have not finished or implemented the required indicators. Can INECE help create mechanisms where donors and requesting countries could come together? INECE can help build networks and push the ideas through regional networks. Donors may be able to help networks work regionally better than individual countries.

Countries are asking about the basic elements of indicator programs, and asking for guidance on what to do and what indicators they should use, not on how to develop measurement systems themselves. But if we create a system for them instead of helping them learn to develop their own, the efforts may not be sustainable. INECE should develop training on the benefits of indicators and why they are useful, then how to develop a system so countries are better equipped to work out their own measures in a consistent way.

There is a success story from Norway where they worked with three countries in southern Africa on how to establish an environmental department, and worked specifically on inspections and enforcement. All three new departments have been successful. This was a result not just of one or two courses, but rather a longer term engagement with back-and-forth visits and intensive capacity building. Any type of sustainable capacity building, particularly on long-term subjects such as indicators, requires a long-term commitment.

The OECD is initiating a similar project in Kazakhstan. In some cases, there may be a possible bilateral agreement for help, and environmental programs may want to cooperate under that frame-work. In other situations, regions may prefer to deal with an outside broker such as INECE or other international organizations.

INECE has successfully connected funders with issues in a couple of instances. In Southeast Asia, INECE has connected funders from the United States – Asia Environmental Partnership (USAEAP) and the Asia Development Bank with experts in the US EPA, the OECD, and elsewhere and will be holding a regional workshop on enforcement indicators in August in Manila. Another example exists in Central America where the Central America Commission for the Environment and Development is working with funding from the US Agency for International Development (USAID) and experts through INECE to start indicator pilot projects in the region.

Russia presents an example of performance-based budgeting that is forcing them to rethink their indicators. There are requirements in the law that the government must report their results to the public, so they are working to strengthen their measurement systems. Currently, they have a great deal of data, but it is not effectively used. They have collected data for the public “State of Environment” report, but do not think about trends, visible display of data, and long-term analysis.

3 RECOMMENDATIONS FOR INECE

INECE could try to develop a tool or guidance with learning lessons on developing and using indicators, particularly on how to creatively develop and use information that already exists based on where it has already been done.

Another role for INECE could be to examine how different indicators, such as compliance rates, inspections, and outcomes are addressed or segmented by different countries. E.g., the number of inspections is not as easily defined as it seems: what is an inspection? How are different levels of inspections counted? How do you count a team vs. an individual inspection? A set of common definitions used across boundaries would help as
countries or other institutions make comparisons.

INECE could also help with defining severe nonconformities. Many different systems exist such as the US definition of “Significant Non-Compliance” or “SNC”, which differentiates between violations based on their seriousness and triggers different responses which are closely tracked to ensure adequate response is taken. What are the most serious ones? What types of violations matter most? While this may differ depending on legal regimes, INECE could share how countries reach their determinations so others could apply the same logic within their regulatory system.