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LEROY PADDOCK, DAVID L MARKELL & NICHOLAS S BRYNER, EDS., *COMPLIANCE AND ENFORCEMENT OF ENVIRONMENTAL LAW*
(ELGAR ENCYCLOPEDIA OF ENVIRONMENTAL LAW VOLUME IV)

Reviewed by : Kakoly Pande, Student, LLM in International Law, SOAS, London

BOOK REVIEW



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Leroy Paddock, David L Markell & Nicholas S Bryner, eds., *Compliance and Enforcement of Environmental Law* (Elgar Encyclopedia of Environmental Law Volume IV)

Environmental regulation has become an increasingly global issue. Individual countries are adopting comprehensive environmental laws within their own territories in order to meet the international demand for the protection of the environment. Still, the challenge remains in achieving sustainable results and practical problems persist in relation to compliance and enforcement programmes. 'Volume IV of the Elgar Encyclopedia of Environmental Law, Compliance and Enforcement in Environmental Law' seeks to bring together the wealth of literature on environmental compliance and draw upon the opinions of several editors who include international academics and policy makers to create varied and high-level approaches to achieving effective compliance and enforcement programmes. The different backgrounds of the editors and contributors provide international perspectives on the development of enforcement strategy, promoting voluntary behaviour, enabling variations in private governance and the use of management systems to make compliance more attainable. The book is also inclusive of the alternatives such as common law based remedies and deterrence based strategies for non-compliance such as criminal law.

The volume is densely worded but benefits from a bullet point structure at the outset of each chapter, providing an introduction to the broad subject followed by a number of defining issues within the topic. Some concepts are helpfully explained with diagrams such as the Deming cycle¹ used for regulatory compliance and the role of the public supervisor and a diagram to explain the levels of work imagined when using management systems in public environmental supervision.² The use of diagrams in an otherwise 'word heavy' book is a welcome break and assists the reader to visualize the policies being described. There is a detailed bibliography at the end of each chapter rather than at the end which creates an immediate and accessible reference.

Woven throughout the edited volume is the message that, without effective compliance and enforcement programmes, environmental laws will have little impact upon the biggest contributors to environmental degradation. In its introduction, the volume refers to 'Five key components of effective regulation' which include norm clarity, norm achievability, compliance verifiability and an appropriate mixture of sanctions and rewards. This is dealt with in detail in Chapter 8 of the volume. The volume looks at the types of regulations available to the governments of the USA, Mexico, the Netherlands, Canada and Australia, the challenges towards ensuring compliance, their relative success and the innovative methods that are now deployed in order to achieve effective regulation, such as 'compliance, compliance promotion and beyond compliance'.³

Each of these non-regulatory compliance methods is studied in 'Part 1' in terms of the theory, the challenges, criticisms and their practical application. For example, there is Chapter 2 on industry based management standards which deals with how big private companies should be regulated. Big companies are difficult to monitor, a reason being that it requires a large inspection and enforcement staff and is impractical to fully fund by a government. Therefore, companies can self-regulate with industry compliance codes. Punitive sanctions are considered to be counterproductive given that companies in reality need help rather than punishment. However, there is significant criticism of this approach for 'relocating the problem from outside to inside the firm'⁴ which may not be the best place to solve the problem and may contribute to unreliability of codes of conduct and societal damage.

The concept of environmental management systems (EMSs) (Chapter 3) follows and sets out its role in enabling private actors to meet government requirements with flexibility. It brings to bear the issue that compliance is essentially intertwined with the demands of a competitive global marketplace such that, in some instances, multilateral companies are instrumental in the implementation of EMSs and make it a requirement of doing business.

1 At page 31 of the Book.

2 At page 32 of the Book.

3 See section 2.4 of the Introduction on page 7 of the book.

4 Page 31 of the book; Gunningham (2007).

Civil enforcement is dealt with in detail within 'Part 2' of the volume which not only looks at common law remedies in environmental law enforcement such as using property rights violations, tort law, trespass and nuisance to gain compensation for violations of environmental law but also considers the most effective enforcement strategies such as utilising 'responsive regulation' which is dynamic and deliberate ('tit for tat') and 'smart regulation' which is pluralistic. They are concepts that build on the strategy of persuasion and coercion. This enterprise is suggested as being more effective in achieving better results because it assumes that those regulated are rational actors who respond well to incentives rather than the harsh sanctioning for rule breaking behaviour. Thus, the theory is that good regulation means adopting different responsive enforcement strategies depending up who one is dealing with.

Criminal enforcement is tackled over three chapters in 'Part 3' (Chapters 14, 15 and 16) and wrangles with a number of topics including the controversial use of the mental element necessary to establish a criminal violation suggesting that the law is still in flux (examples being awareness of the conduct, results and circumstances set out in the act or material element of the crime; some are satisfied with proof that the actor should have been aware of such risks or the possibility of risk; some require mental states beyond those focused on the factual elements of the offence and some environmental crimes require no mental state at all) and organisational liability for environmental crimes. It concludes that, as with prosecuting humans for environmental crimes, to effectively enforce environmental laws on organisational offenders, regulatory agencies must have a full array of enforcement mechanisms and sanctions available to them. Intelligence-led environmental enforcement is introduced as a way of enhancing protection of the environment and acknowledging the transnational nature of environmental crime.

'Part 4' of the volume deals with 'Special Issues in Compliance and Enforcement' which discusses the growing literature that quantitatively measures the deterrence effects of environmental monitoring and enforcement activity. It includes examples of how transformative the inclusion of measurement can be when providing compliance and enforcement decisions

and suggests that effective measurement can lead to achieving higher compliance rates, improved fairness, enhanced understanding of government priorities and actions and higher return on investment.

In addition, the book also provides an insight into non-regulatory approaches to compliance and environmental self-monitoring and self-certification (Chapter 1 and Chapter 9), for example, citizen monitoring and voluntary self-policing under the USA's Environmental Protection Agency's Audit Policy. The Audit Policy works on the basis that civil penalties are reduced for regulated entities that voluntarily disclose and correct violations of environmental regulations. The theoretical justification for self-policing is explained in terms of the policy improving and increasing compliance and in turn, the amount of remediation that occurs. However, there do appear to be flaws in the system which enable those being regulated to strategically avoid compliance thus making the overall efficacy of the system modest. There is also an explanation of why self-policing in other countries is rare, namely that there is no authority for regulators to reduce penalties for violations.

In conclusion, the book is a very detailed guide to compliance and enforcement of environmental law from a legal and a policy perspective. It is not as global in its remit as it might have been in that it could have benefited from the inclusion of analysis of international institutions or other international players such as the UK or European Union. However, the book, in omitting this aspect, has compensated by achieving a high level of analysis of innovative concepts which seek to promote compliance or pursue enforcement with consideration of the practical reality of implementing these regulations. It also tackles the concept of making regulation more palatable for the industries or institutions least likely to comply. The book is therefore useful for lawyers and governmental policy makers and strategists.

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