

Enforcing Environmental Law

Policy Instruments: The tools used by governments to achieve
environmental policy goals

Ramani Nadarajah
Canadian Environmental Law Association

OJEN
August 2009

Introduction

- Definition: A policy instrument is a tool used by government to influence the behaviour of individuals, corporations and organizations in order to achieve a particular environmental outcome.

Types of Policy Instruments

- Regulatory instruments
- Economic instruments
- Voluntary instruments
- Public Outreach and Education

Regulatory Instruments

- tool traditionally favoured by Canadian governments to prevent and control pollution
- Legal obligations established through legislation prohibiting certain activities or requiring government permission to undertake certain activities (e.g. s.14(1), *Environmental Protection Act*, s. 34(3), *Ontario Water Resources Act*)
- High penalties for failing to comply with legal obligations

Pros and Cons of the Regulatory Approach

- Very effective in reducing pollution from industrial sources. (e.g. regulations to reduce acid rain and to phase out the manufacture and importation of PCB)
- government's not always committed to vigorously enforcing environmental laws

Economic Instruments

- Taxes or charges and subsidies (e.g. British Columbia's carbon tax, Federal and provincial subsidies for Ontario municipalities to build sewage treatment plants)
- Creation of a market for certain types of activities by establishing a trading system (e.g. US federal Clean Air Act established trading system for reducing sulphur dioxide, Kyoto Protocol established cap and trade system for reducing greenhouse gases)

Pros and cons of Economic Instruments

- Economically efficient and can be used to make more systemic changes in economic activities (e.g. Sweden and Denmark's carbon tax)
- Difficult to predict the level of taxation required to promote the necessary changes in economic activity
- Challenge to calibrate number of permits to actual emission levels for trading systems

Voluntary Instruments

- Voluntary instrument are initiatives which are non-coercive and do not provide direct financial incentives. (e.g. Accelerated Reduction/
Elimination of Toxics (ARET), and Voluntary Climate Registry (VCR))
- Highly controversial and took on greater prominence in the mid to late 90s when there were major reductions to the staff and budgets of government ministries
- No longer a serious option post Walkerton and North Battleford

Pros and Cons of Voluntary Instruments

- Avoids costs to government of developing and enforcing environmental laws
- Regarded as more flexible than the “command and control” regulatory approach
- Non-binding commitments not legally enforceable
- “Free rider problem”- firms which refuse to participate in the voluntary initiative
- KPMG Management Consultants’ 1996 study

Public Outreach and Education

- Serves to encourage certain behaviour through environmental education and awareness initiatives
- Regarded as the least coercive of the policy instruments available to government

Pros and Cons of Public Outreach and Education

- Important to build public support for environmental programs and motivating the public to make behavioural changes. (e.g. Approximately 60% waste diversion from disposal in City of Toronto as result of educating public about the need to sort out household waste)
- Similar to voluntary initiatives in that they only encourage rather than require action and do not provide economic benefit

Conclusion

- Canadian governments have primarily relied on regulations and made limited use of economic instruments until recently
- The regulatory model has been very effective when governments have vigorously enforced environmental laws
- Voluntary initiatives which was pursued actively in the mid to late 90s has largely been discredited
- In contrast to Canada, other jurisdictions have been more willing to deploy a wide variety of policy instruments including regulatory instruments, economic instruments, and aggressive outreach and education programs to achieve environmental sustainability (e.g. California's energy efficiency programme)