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ADB

***STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN
THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW
CHAMPIONS
22-26 August 2016***

SESSION FIVE: ENVIRONMENTAL PROTECTION LAW
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LEARNING OUTCOMES OF SESSION 5

Session Topic

- Understand the scope and content of environmental protection law
- Understand the institutions, tools and enforcement mechanisms of environmental protection law
- Understanding the relationship with natural resource management law and EIA law.

Teaching Methodology

- Tutorial problem – demonstration of traditional tutorial format and problem based learning



INTRODUCTION TO ENVIRONMENTAL PROTECTION LAW

- History and scope of Environmental Protection Law
- General versus Specific Laws
- National versus Sub-national Laws
- Institutional Arrangements
- Tools: Standards, Permits, Licenses, Orders
- Enforcement Mechanisms
- Teaching Tips



HISTORY OF ENVIRONMENTAL PROTECTION LAWS

- Over the past four decades, most countries have developed environmental protection laws
- These laws have been enacted at the national and sub-national levels to protect air and water quality and prevent pollution
- Most countries have established environmental regulatory agencies to monitor compliance and enforce the legislation



THE SCOPE OF ENVIRONMENTAL PROTECTION LAWS

- Environmental Protection Law is often taught as a separate and distinct course from Natural Resource Law
- Environmental Protection Law generally focuses on pollution and includes the following topics:
 - air quality
 - water quality
 - waste management
 - clean-up of contamination
 - chemical regulation (pesticides and toxic chemicals)
- Environmental Impact Assessment Law may also be covered in the course



THE PURPOSE OF ENVIRONMENTAL PROTECTION LAWS

The underlying **purpose** of environmental protection laws is to protect human health and the environment from air pollution, water pollution, and exposure to toxic chemicals and hazardous wastes.

By contrast, the underlying purpose of natural resource management laws (see session 7) is to minimize the environmental impacts of natural resource utilization (land, water, forests, minerals, petroleum, fisheries)



GENERAL VERSUS SPECIFIC LAWS

- Some countries (for example, USA) have adopted specific statutes with distinct regulatory approaches to address problems of air quality, water quality, chemical safety, waste management, and clean-up of contamination.
- Other countries (for example, China) have attempted to integrate their environmental legal framework by enacting a general environmental protection law and then adopting additional laws to address specific environmental problems



NATIONAL VERSUS SUB-NATIONAL LAWS

- National environmental protection laws are important because air and water travel across sub-national borders, and states and provinces cannot regulate sources of pollution outside their borders
- National legislation also prevents states and provinces from competing with each other for industry by adopting lenient environmental controls (known as the **“race to the bottom”**)
- In many countries, national environmental protection laws are supplemented by sub-national laws or implemented by sub-national entities
- In the USA, for example, states enforce national air, water, and waste management laws, but may adopt more stringent requirements within their own borders and may regulate environmental problems not addressed by national legislation



INSTITUTIONAL ARRANGEMENTS

- The implementation of environmental protection laws is usually accomplished by government agencies at the national and sub-national levels;
- Government agencies translate statutory mandates into regulatory standards, issue permits and licenses, and are responsible for ensuring compliance;
- In some countries (Brazil, for example), prosecutors play a prominent role in enforcing environmental protection laws;
- In other countries (USA and India, for example), citizen suits against polluters or against government agencies are significant enforcement tools.



REGULATORY APPROACHES

- Although the goal of environmental protection laws is to improve environmental quality, specific statutes and regulations generally employ one of the following major approaches:
 1. **health based** (adopt requirements that protect human health regardless of cost)
 2. **technology-based** (require industry to adopt the best available pollution control technology)
 3. **balancing** (compare the health benefits of a proposed regulation to its economic costs)



REGULATORY TOOLS

- **Ambient air quality or water quality standards** specify the permissible level of pollutants in air or water
- **Emission limitations** restrict discharges of pollutants from specific sources in order to achieve applicable air and water quality standards
- **Licenses and permits** authorize the operation of polluting facilities or the manufacture and sale of pesticides and other chemicals subject to effluent or emission limitations and/or other regulatory requirements
- **Bans or limitations** prohibit or restrict the manufacture and use of certain pesticides, chemicals, food additives, and other dangerous products



REGULATORY TOOLS (cont'd)

- **Design standards** specific how certain industrial facilities or pollution control technology should be designed
- **Information disclosure or labeling requirements** require public disclosure of product ingredients or facility emissions
- **Marketable allowances** allocate marketable pollution credits to industry and reduce these credits over time to improve environmental quality
- **Liability rules** (Ex: US Superfund statute) may impose strict, joint and several liability for environmental clean-up costs



ENFORCEMENT MECHANISMS

- **Monitoring, reporting, and record-keeping requirements** are often imposed on regulated entities to promote compliance
- **Inspections** enable government agencies to verify compliance
- **Compliance orders** may be issued to address violations
- **Civil penalties** are often imposed by government agencies or by courts for violation of permit or license requirements or violation of compliance orders
- **Criminal penalties** consisting of fines or incarceration are also available for more serious violations of environmental protection laws



CITIZEN SUITS AS ENFORCEMENT TOOLS

- To enhance environmental protection despite limited resources, some countries permit private citizens to sue to enforce the environmental protection laws
- Citizens may sue the polluter and recover civil penalties or sue government agencies to compel them to enforce the environmental laws
- Citizen suit provisions in environmental statutes typically liberalize standing requirements (allow suits to promote collective interests in environmental protection without the need to show direct injury or loss)
- Citizens may also be permitted to recover attorney fees and expert witness fees



“Command-and-Control” versus Economic Incentives

- The first generation of environmental protection laws relied heavily on central government imposition of emission limits and other pollution control technologies enforced by civil and criminal penalties
- The second generation of environmental protection laws introduced economic incentives, such as pollution taxes, emissions trading, product labeling, compliance assistance (training), and rewarding companies that voluntarily discover, disclose, and promptly correct environmental law violations
- Additional innovations include integrating environmental concerns into all policy sectors with the participation of other government ministries (energy, agriculture, transportation)



TEACHING TIPS

- Environmental protection law can be taught as a stand-alone pollution course or can include EIA Law and Natural Resources Law;
- Transboundary pollution problems may also raise issues of regional and international environmental law (e.g. Trail Smelter Arbitration between the US and Canada)
- Problem exercises involving air and water pollution can introduce students to statutory interpretation, administrative procedure, permitting, and civil and criminal enforcement.

