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NEWS & ANALYSIS

Developing Effective Compliance Assistance Activities and Programs for Small Businesses in India and the United States

by Seema M. Kakade

I. Overview

At first glance, it appears futile to compare environmental compliance in India and the United States. The United States functions on a complex set of federal, state, and local environmental laws and has a strong system of enforcement and implementation. U.S. industries employ environmental managers, develop green technology, and attempt to foster images as responsible, corporate environmental ambassadors. In contrast, most citizens question the mere existence of environmental law in India, and enforcement and implementation of most regulations is considered weak and subject to high levels of corruption. General public opinion in India believes that industry places little or no value on environmental compliance and is able to curtail pollution control regulations with modest effort.

Yet, despite the vastly differing perceptions of environmental compliance in the United States and India, both countries share a surprisingly similar system for managing and regulating pollution. Environmental law in most developing countries is a relatively recent advent, but India developed its pollution control laws in the same time period, and for virtually identical concerns, as the United States. Agricultural developments, public protest, and alarming toxic waste disasters provided the impetus for the major environmental laws in both India and the United States. Today, both countries rely on a command-and-control approach to environmental regulation that imposes legally enforceable constraints on industrial operations for a variety of forms of pollution. Compliance with command-and-control laws in the United States and India is assured through an assortment of enforcement mechanisms, including fines, closures or interdictions in business, and criminal punishment.

Similar systems of law have led to parallel problems in environmental compliance and regulation in India and the United States, particularly with small businesses. Notwithstanding significant differences in national wealth and re-

sources, small businesses in both India and the United States face difficulty in complying with environmental requirements, and government agencies in both countries have trouble regulating and monitoring small businesses. Complicated environmental regulations strain small industries, which often lack the capacity to comply with the dearth of conditions, limitations, and requirements under pollution control laws. In addition, the vast quantity of small industries, each applying for different types of “permits,” “consents,” or “authorizations” under relevant water, air, and waste laws, pose a tremendous burden on government regulators. As a result, small businesses in the United States and India often remain in operation despite considerable problems with environmental compliance.

Nonetheless, small businesses are here to stay. Small businesses are essential to the economies of both countries, providing significant contributions to domestic production and international exports.¹ There are over three million small industrial units in India, which account for 40% of the country’s industrial production and 35% of total exports.² The United States has over 23.7 million small businesses that make up 97% of all identified exports and create more than 50% of non-farm gross domestic product.³ In addition, small industries comprise a large share of employment, especially for part-time or temporary workers, entrepreneurs, and employees at low education levels. Small industry em-

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1. The U.S. Small Business Administration (SBA) defines “small business” as an independent business with fewer than 500 employees; however, other agencies, including the U.S. Environmental Protection Agency (EPA), have defined “small business” as a facility with fewer than 50 people. See SBA, *Advocacy Small Business Statistics and Research Frequently Asked Questions*, at <http://app1.sba.gov/faqs/faqIndexAll.cfm?areaid=24> (last visited Jan. 25, 2005); U.S. EPA, National Environmental Performance Track, *Small Business Criteria*, at <http://www.epa.gov/performance/track/program/smbus.htm> (last visited Jan. 25, 2005). The definition of small business in India is dependent upon the level of investment in plants, machinery, and type of ownership. See Confederation of Indian Industry, *Definition of SMEs in India*, at <http://www.ciionline.org/services/112/default.asp?Page=Definition.htm> (last visited Jan. 25, 2005). Unless otherwise noted, general references to “small businesses” will focus on facilities with limited capability and knowledge to comply with environmental law and with fewer than 100 employees.
 2. Anil Aggarwal, *Small-Scale Industries Drive India’s Economy, But Pollute Heavily—What Can Be Done?*, STOCKHOLM WATER FRONT, Oct. 2001, at 10, available at <http://www.siwi.org/downloads/WF%20Articles/WF%20Small%20Scale%20Industry.pdf> (last visited Dec. 4, 2004).
 3. SBA, *supra* note 1.

employs almost 17 million people in India and provides 50% of all private sector employment in the United States.⁴

There is a growing recognition and effort in the United States and India to find additional methods for coping with small business environmental issues beyond traditional command-and-control approaches. Rather than focus solely on enforcement mechanisms, both countries are experimenting, to varying degrees, with ways to assist small businesses in environmental compliance. Small business assistance programs use a more participatory approach to environmental compliance by encouraging “beyond-compliance” practices, increasing regulatory and technical help, and emphasizing the need for environmental management systems. Yet compliance assistance programs for small businesses are not easy to develop. A number of issues including defining the target audience, gaining access, developing effective communication tools, and ensuring constructive follow-up must be given careful consideration in any compliance assistance program. A comparative look at shared experiences can benefit both countries as each works to further develop outreach and compliance assistance to small businesses.

II. The Traditional Enforcement System of Environmental Regulation

A. Small Business Compliance With Environmental Law: Highlighting Hazardous Waste Regulation

Environmental law in the United States and India is complicated. Air, water, and waste laws in these countries are tremendously long and detailed, and are accompanied by corresponding regulations and guidelines that are difficult to find and even harder to navigate. Environmental law exists at multiple levels of governance including national or central, state, and local levels, and requires extensive specialized expertise in science, technical, and management fields. In addition, because environmental law and regulation is based on the continuing evolution of science and technology, it is subject to frequent modifications, policy changes, and amendments. It is difficult for any regulated entity to keep pace, particularly a small business. In a series of interviews conducted by the U.S. Environmental Protection Agency (EPA), the largest concern small businesses expressed to the Agency was that they do not know what requirements apply to them, whom to contact, or how to comply. If and when they do discover what is required, they are frequently confused by duplicative, overlapping, or conflicting requirements, many of which have been designed for larger entities with no down-scaling options.⁵

In truth, environmental law is confusing for everyone, small and large corporations alike. However, large corporations are typically able to hire entire teams of employees devoted to environmental compliance. Small businesses, on the other hand, are rarely able to employ a single full-time staff member to spend time maintaining environmental performance. In the United States, it is estimated that a small business usually needs a minimum of 30 employees before

it begins to hire staff to deal with environmental compliance.⁶ In addition, unlike small businesses, large companies have the ability to hire expensive outside attorneys and consultants to help explain complexities in environmental regulation and conceive tailor-made solutions to compliance for the particular type of industry or for a specific unit. Similarly, in India, large corporations often attend fee-based training programs on environmental law and regulation that are typically too expensive for small-scale units.⁷

An overview of the basic requirements of hazardous waste regulation in the United States and India provides a good example of the complexity and overwhelming nature of environmental law. In the United States, the Resource Conservation and Recovery Act (RCRA) and corresponding implementing regulations in Title 40 of the *Code of Federal Regulations* govern hazardous waste management.⁸ In India, hazardous waste management is governed by the Environment Protection Act's Hazardous Waste Management Rules (HWM Rules).⁹ Additionally, the Ministry of Environment and Forests (MoEF) has issued several sets of guidelines to help implement the HWM Rules. Authority to implement RCRA in the United States and the HWM Rules in India is shared between the federal or central government and the states. The primary objectives of both RCRA and the HWM Rules are to protect human health and the environment and minimize the use of natural resources.¹⁰

Both RCRA and the HWM Rules impose extensive requirements on regulated entities. In the United States, it is not uncommon to find large manuals, several inches thick, designed to “simplify” one's understanding of hazardous waste regulation.¹¹ In India, hazardous waste laws have

6. Telephone Interview with Andrew Langer, National Federation of Independent Business (Feb. 11, 2005) [hereinafter Langer Interview].
7. Environmental Law Institute (ELI) & Environmental Management & Policy Research Institute (EMPRI), Small Business Needs Assessment Study Workshop (Nov. 5-6, 2004 and Feb. 23-25, 2005, Bangalore, India) [hereinafter Bangalore Project]. All the medium to large industrial units that responded to ELI's needs assessment survey indicated that they had attended workshops or seminars on environmental law and pollution control. This needs assessment study was conducted as part of a compliance assistance training project conducted jointly between ELI and EMPRI. The Bangalore Project was conducted with the support of the GE Foundation, and consisted of two phases. Phase I provided a two-day training course on environmental law. Phase II asked participants to return for a one-day course, three months later, to report on their progress in implementation of environmental requirements.
8. RCRA, 42 U.S.C. §§6901-6992k, ELR STAT. RCRA §§1001-11011; 40 C.F.R. pts. 260-299. For purposes of this Article, general reference to “RCRA” will denote either the RCRA sections found in 42 U.S.C. or the corresponding regulations at 40 C.F.R. pts. 260-299.
9. India's HWM Rules are available at India Ministry of Environment & Forests, *Legislations on Environment, Forests, and Wildlife*, at <http://www.envfor.nic.in/legis/legis.html> (last visited Aug. 31, 2004).
10. See 42 U.S.C. §6902; Central Pollution Control Board (CPCB), *National Policy on Hazardous Waste*, at <http://mpcb.mah.nic.in/images/NationalPolicy.pdf> (last visited Mar. 11, 2005).
11. See Al Iannuzzi, *Self-Regulation—Has Its Time Come?*, 33 ELR 10917 (Nov. 2003).

Is there anyone in the environmental field who can honestly say they understand all the requirements listed in the state and federal environmental codes? For example, I just received a five-inch-thick book about RCRA, which is designed to help simplify compliance. The book covers what amounts to a single regulation. Even after reading guidance books like this, I wonder if I have overlooked something or didn't interpret the regulation properly.

4. See Confederation of Indian Industry, *supra* note 1.

5. U.S. EPA, UNIFYING EPA'S SMALL BUSINESS ACTIVITIES: A STRATEGY TO MEET THE NEEDS OF SMALL BUSINESSES (2003), available at http://www.smallbiz-enviroweb.org/html/pdf/Strategy_Final_062703.pdf (last visited Feb. 1, 2005).

been amended three times in the past 15 years, and twice in the past 5 years, making it virtually impossible for regulated entities to keep abreast of requirements. Determining which, when, and how each requirement applies is no easy feat.

1. Determination Requirements

All industrial facilities that deal with waste in any way must first determine if the waste is “hazardous” under RCRA or the HWM Rules. Not all wastes are subject to regulation. In India, only items listed in the “Schedules” are regulated under the HWM Rules.¹² The HWM Rule Schedules list both *categories* of wastes and *processes* used in handling wastes. In the United States, wastes are subject to RCRA requirements if they are a “solid waste” and either appear on an enumerated list established by EPA or display ignitability, corrosivity, toxicity, or reactivity characteristics.¹³ U.S. states can also add their own lists or add new characteristics to broaden the scope of regulated hazardous wastes.

RCRA and the HWM Rules exempt several different types of wastes. Both RCRA and the HWM Rules exempt certain wastes that are already regulated under other environmental laws, such as wastewater regulated under the U.S. Clean Water Act (CWA) and India’s Water Act.¹⁴ The HWM Rules exempt wastes covered by five other statutes, requiring a regulated entity to understand the distinctions between multiple definitions of “waste.”¹⁵ In addition, RCRA’s exclusion provision lists almost 40 wastes and processes that are either “materials which are not solid wastes” or “solid wastes which are not hazardous wastes” for purposes of RCRA regulation.¹⁶ Several of RCRA’s exclusions have multiple subparts, reference other parts of RCRA regulations, and contain exceptions within the exclusion, thereby further complicating the definition of “hazardous waste.”

Assuming waste is “hazardous” for purposes of RCRA or the HWM Rules, an industrial unit must then determine its *relationship* to the waste. The HWM Rules impose requirements on persons engaged in the handling and recycling of hazardous waste as well as persons who operate a facility used for the collection, reception, treatment, transport, storage, recycling, or disposal of hazardous wastes.¹⁷ RCRA imposes specific requirements on generators, transporters, and owners/operators of treatment, storage, or disposal (TSD) facilities.¹⁸ Generators are treated differently under RCRA based on their classification as a large quantity generator (LQG), small quantity generator (SQG), or conditionally exempt small quantity generator (CESQG).¹⁹

Failure to characterize waste and determine the entity’s relationship to waste is one of the largest compliance problems amongst small businesses in the United States and India. Many small businesses in the United States fail to notify regulatory agencies of their status as a generator or underes-

timate the amount of waste generated.²⁰ For example, a compliance study done in New Hampshire found that 15 out of 69 facilities that reported their status as a CESQG were in fact generating wastes at LQG or SQG levels.²¹ In India, small businesses have trouble identifying and categorizing hazardous waste, and waste generated from the unorganized sector usually remains completely unclassified.²² In addition, many industries in India fail to separate hazardous waste from municipal solid waste, further complicating waste characterization.²³

2. Permit or Authorization Requirements

Both RCRA and the HWM Rules require regulated entities to obtain a permit or authorization for certain hazardous waste activity. Applying for a permit or authorization can be a lengthy, costly, and confusing process. As a first step, an industrial unit must obtain any required identification numbers. RCRA requires that every facility register for an identification number. Although the HWM Rules do not currently require identification numbers, some State Pollution Control Boards (SPCBs) are beginning to establish monitoring requirements that will require every industrial unit to register for an identification number.²⁴ The HWM Rules do require recyclers and refiners of scheduled, non-ferrous metal waste, used oil, or waste oil to register with the Central Pollution Control Board (CPCB).²⁵

Upon obtaining any required identification numbers, an industrial unit must then determine where and how to apply for the appropriate permit or authorization. In the United States, RCRA permits are issued from EPA unless the state is authorized to implement the RCRA permitting program. In India, industrial units must apply for an authorization with the SPCB. Information required in a permit or authorization application involves an incredibly wide range of detailed financial, technical, and business data. RCRA and HWM Rule applicants must provide, among other things, a list of activities that require a permit or authorization; the location and products provided by the industrial unit; descriptions and visual aids for the processes used in waste generation, transport, storage, and disposal; a list of approved or applied-for permits or site clearances under other environmental laws; and descriptions of mitigating and pollution prevention techniques.

RCRA and the HWM Rules also contain a complicated renewal process for permits or authorizations. Industrial units must comply with conditions placed upon permits and authorizations and keep track of permit or authorization renewal, suspension, and cancellation timelines.²⁶ RCRA im-

12. HWM Rule 2.

13. 40 C.F.R. §§261.2, 261.3.

14. *Id.* §261.4; HWM Rule 2(a).

15. HWM Rule 2.

16. 40 C.F.R. §261.4.

17. HWM Rule 5(2).

18. 40 C.F.R. §§260-270.

19. *Id.* §§261.5, 262.

20. E-mail Correspondence with Kevin Snowden, Region 7, U.S. EPA (Feb. 17, 2005) [hereinafter Snowden E-mail].

21. NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES & U.S. EPA, NEW HAMPSHIRE COMPLIANCE MEASURES PROJECT 6 (2003), available at <http://www.complianceconsortium.org> (last visited Jan. 3, 2005).

22. C.D. Kumar, Keynote Address at the National Seminar on Advanced Technologies in Industrial Hazardous Waste Management, Dec. 6-7, 2004, Mysore, India.

23. *Id.*

24. *KSPCB to Go Online*, HINDU BUS. LINE (Internet Edition), Feb. 11, 2003, at <http://www.blonnet.com/2003/02/11/stories/2003021100741700.htm> (last visited Feb. 15, 2005).

25. HWM Rule 19.

26. HWM Rule 5(4)-5(5); 40 C.F.R. pt. 270.

poses several requirements and duties upon permeates, including proper operation and maintenance of facilities and systems and a duty to furnish any relevant information requested by the regulatory agency.²⁷ Permittees are also required to give notice to the regulatory agency of any planned physical changes to the facility and of any anticipated non-compliance.²⁸ In India, most small-scale industries manage to apply for authorizations properly, but upon receipt of the authorization, ignore any attached conditions. Small industries in India also have trouble with renewal requirements since renewal is dependent, in part, on submission of annual returns by the occupier or operator of a facility, and most small businesses do not have the time, resources, or know-how to file annual returns properly.²⁹

3. Storage and Disposal Requirements

In addition to permit and authorization requirements, RCRA and the HWM Rules also contain requirements for the treatment, storage, and disposal of hazardous waste. Generators may accumulate hazardous waste on-site for a specific statutory period of time (or less) without a permit.³⁰ Because the statutory period of time under RCRA is dependent on a wide range of factors, including the amount of water generated and the distance for ultimate transportation to a TSD facility, simply determining the relevant time period can be quite difficult.³¹ RCRA also requires specific methods for storing accumulated waste during the statutory time period, including type and size of storage containers, labeling requirements, and inspection timetables.³²

If a generator stores waste for greater than the statutory period, the generator becomes an *operator* of a storage facility and must comply with additional regulations, including obtaining an operating permit or authorization. Under both RCRA and the HWM Rules, generators that do not have an on-site TSD facility must send all hazardous waste to an authorized TSD facility.³³ Under the HWM Rules, generators are also responsible for helping to identify potential sites for common TSD facilities.³⁴ In addition to disposal at a TSD facility, RCRA and the HWM Rules also authorize the recycling of certain hazardous wastes such as non-ferrous metallic wastes and used oil.³⁵ Recyclers and re-refiners under RCRA and the HWM Rules must adhere to additional and distinct requirements.

Disposal and storage requirements pose large compliance problems for small businesses in both countries. In the United States, small facilities often engage in illegal treatment of hazardous waste, store waste for longer than the al-

lowed statutory number of days, and dispose of waste illegally.³⁶ For example, regulators in Minnesota recently charged an electroplating facility with illegally storing hazardous waste in violation of RCRA.³⁷ The facility, operating without a RCRA permit to store waste, allegedly allowed hazardous industrial wastes and sludges, including liquids from plating tanks, to fall through the floor and pool in open lagoons in the facility's basement. In addition, regulators in Georgia recently shut down another electroplating company that had been operating for 37 years due to the illegal dumping of untreated oil.³⁸ India has a tremendous shortage of TSD facilities; thus, facilities, small and large, are forced to store large quantities of hazardous waste for extended periods of time. Small-scale facilities lack adequate space for storage and, as a result, illegally dispose of hazardous waste in open cesspools, drains, and rivers.³⁹ India has more than 40 illegal hazardous waste dumpsites in the single state of Gujarat.⁴⁰

4. Packaging and Labeling for Transportation

Most small businesses in the United States and India do not treat hazardous waste at an on-site facility. Thus, at the expiration of the statutory period for on-site waste accumulation, regulated entities must adhere to RCRA and HWM Rule requirements for transporting waste to an authorized TSD facility. First, RCRA and the HWM Rules require that the generator prepare a manifest, or shipping document, for the waste. RCRA requires that the manifest designate at least one facility that is permitted to handle the hazardous waste.⁴¹ The manifest must include two copies each for the generator, all transporters, and the owner or operator of the designated facility, with one copy for their records and the other copy to be returned to the generator. The HWM Rules require an owner or occupier of a TSD facility to prepare six copies of a hazardous waste manifest form, signed by the transporter, that provides the reader with information about the waste.⁴² Additional copies of the manifest are needed if the waste is likely to be transported across state borders.

RCRA and the HWM Rules on packaging and labeling are difficult to find since both cross-reference U.S. and Indian transportation laws. Before transporting or offering hazardous waste for transportation off-site, a generator must label and package waste in accordance with applicable U.S. Department of Transportation regulations on hazardous materials.⁴³ Similarly, the HWM Rules require that generators

27. 40 C.F.R. §270.3.

28. *Id.*

29. HWM Rule 5(8).

30. 40 C.F.R. §262.34; Pre-Requisite for Issuing Authorization by SPCB/PCC to Waste Generator §5.2.2(1), at <http://mpcb.mah.nic.in/images/PrerequisitesforHW.pdf> (last visited Mar. 5, 2005) [hereinafter Pre-Requisite for Issuing Authorization]; see also U.S. EPA, MANAGING YOUR HAZARDOUS WASTE: A GUIDE FOR SMALL BUSINESSES 13 (2001), available at <http://www.epa.gov/epaoswer/hazwaste/sqg/handbook/k01005.pdf> (last visited Mar. 4, 2005).

31. See 40 C.F.R. §262.34.

32. U.S. EPA, *supra* note 30.

33. *Id.*

34. HWM Rule 8.

35. HWM Rule 19; 40 C.F.R. pt. 279.

36. Snowden E-mail, *supra* note 20.

37. U.S. EPA, *EPA News Brief* (Jan. 13, 2005), at <http://yosemite.epa.gov/opa/admpress.nsf/b1ab9f485b098972852562e7004dc686/72117d388499788385256f880074696c!OpenDocument> (last visited Mar. 6, 2005).

38. John Oxford, *Business Shut Down*, MOULTRIE OBSERVER, Jan. 29, 2005, available at <http://www.moultrieobserver.com/content/1/7855/Business+shut+down.htm> (last visited Feb. 2, 2005).

39. See *Fundamental Problem of Waste Generation and Disposal in Delhi*, TERIVISION (Energy and Resources Institute 2001), available at <http://www.teriin.org/news/terivsn/issue38/main.htm> (last visited Mar. 9, 2005).

40. REPORT OF THE HIGH-POWERED COMMITTEE ON MANAGEMENT OF HAZARDOUS WASTE, EXEC. SUMMARY xvii (2001), available at <http://www.cpcb.delhi.nic.in/hcreport/index.htm> (last visited Jan. 25, 2005) [hereinafter HIGH-POWERED COMMITTEE REPORT].

41. 40 C.F.R. §262.2.

42. HWM Rule 7(4).

43. 40 C.F.R. §262.31.

package and label hazardous wastes in accordance with the Motor Vehicles Act.⁴⁴ The HWM Rules also provide general standards for packaging and labeling, requiring that packaging be based on the composition of the waste; in a manner suitable for handling, storage, and transport; easily visible; and able to withstand physical conditions and climatic factors.⁴⁵ MoEF's Guidelines for Transportation of Hazardous Wastes contain additional guidance on packaging and labeling.⁴⁶

5. Facility Requirements

Some of the most resource-intensive facility requirements under RCRA and the HWM Rules involve recordkeeping, emergency preparedness, and job training for owners and operators of TSD facilities. Both RCRA and the HWM Rules require regulated entities to keep all records available for inspection by authorized government personnel.⁴⁷ While this requirement seems simple enough to follow, it is a large area of noncompliance with small business owners. Many small business owners in the United States keep their records at home, away from potential facility robberies, floods, fires, or other emergencies, instead of on-site for unannounced inspections.⁴⁸ In India, many small business owners view recordkeeping as burdensome and time-consuming and thus fail to maintain required HWM Rule information.

Given the history of large-scale hazardous waste disasters in the United States and India, it is no surprise that RCRA and the HWM Rules require preventative and preparedness plans and emergency procedure plans at each TSD facility. RCRA requires that all units be equipped with a variety of emergency items including internal communications or alarm systems; portable fire, spill, and decontamination control equipment; and adequate water for emergencies.⁴⁹ The owner or operator must maintain aisle space to allow the unobstructed movement of personnel and emergency equipment.⁵⁰ Each owner or operator must also have a contingency plan for his facility that describes all relevant persons to contact in emergency situations and the actions facility personnel must take in response to an emergency.⁵¹ Under the HWM Rules, generators and operators of TSD facilities must take adequate steps to contain contaminants and prevent accidents.⁵² Further guidelines on emergency preparedness issued by MoEF suggest that facilities possess internal communications or alarm systems; incorporate adequate aisle space to prevent personnel and equipment obstruction; and develop contingency plans that include prear-

ranged agreements with local police and fire officials and lists of emergency equipment at the facility.⁵³

RCRA and the HWM Rules also require training of facility personnel to ensure that they are able to respond effectively to emergencies by familiarizing them with the emergency procedures, equipment operations, and communication or alarm systems.⁵⁴ Under RCRA, TSD facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste requirements.⁵⁵ Under the HWM Rules, generators and operators of TSD facilities are required to provide personnel with information, training, and equipment necessary to ensure their safety.⁵⁶ In India, because most personnel at small business facilities have had very little education, training on worker safety can be extremely difficult. For example, in one case, a small business owner found several employees dipping their uncovered hands into large containers of trichloroethylene, a toxic sweet-smelling liquid, used in certain industrial operations.⁵⁷ The employees, not understanding the serious harmful nature of the chemical, simply wanted to "perfume" their hands with the liquid.⁵⁸

B. Government Regulation of Small Businesses: An Impossible Task?

Regulatory agencies, in addition to small businesses, face significant limitations working under command-and-control laws. Under the command-and-control system, regulatory agencies are required to include all eligible entities in their regulated universe, inspect 100% of the facilities, discover 100% of all violations, and successfully compel a return to compliance in all cases.⁵⁹ No environmental agency, whether in the United States or in India, can manage a "full coverage" model, particularly given the vast quantity, highly dispersed nature, and limited likelihood of returning to compliance for small businesses. Regulatory agencies simply do not have the resources needed to police small businesses under an inspect-discover-penalize-reinspect process required by the full coverage model.⁶⁰

Small businesses are extraordinarily numerous in India and the United States. Determining the quantity of small business facilities that are subject to environmental regulation is an enormous task. In India, because existing data is provided by facilities and is not based on inspection or verification by SPCBs, the data often lacks credibility.⁶¹ In addition, inventories of hazardous waste often completely leave

44. HWM Rule 7(2).

45. HWM Rule 7(1).

46. CPCB, *Guidelines for Transportation of Hazardous Waste*, Guidelines 3, 4, at <http://www.cpcb.delhi.nic.in/Hazardous/Hazardouswastemain.htm> (last visited Mar. 6, 2005).

47. 40 C.F.R. §264.74; HWM Rule 9.

48. Telephone Interview with Ron Lockwood, Region 2, U.S. EPA (Feb. 11, 2005) [hereinafter Lockwood Interview].

49. 40 C.F.R. §264.32.

50. *Id.* §264.35.

51. *Id.* §264.52.

52. HWM Rule 4.

53. See Pre-Requisite for Issuing Authorization, *supra* note 30, §§5.1(12)-(17).

54. *Id.* §5.1(13).

55. 40 C.F.R. §264.16.

56. HWM Rule (4)(a)(ii).

57. Vilas Datar, Lecture Presented at Small Business Needs Assessment Study Workshop, Bangalore Project, *supra* note 7.

58. *Id.*

59. ELI, BEYOND ENFORCEMENT? ENVIRONMENT, COMPLIANCE ASSISTANCE, AND CORPORATE LEADERSHIP PROGRAMS IN FIVE MIDWEST STATES 10 (2003), available at <http://www.eli.org> (last visited Mar. 9, 2005).

60. *Id.* at 12.

61. See HAZARDOUS WASTE MANAGEMENT IN INDIA (Energy & Resources Institute 2003), available at <http://www.teriin.org/seminar/waste.pdf> (last visited Mar. 11, 2005).

out facilities that exist in the unorganized sector.⁶² Small business data is cumbersome to gather and even more difficult to maintain, especially because the survival rate for new small businesses is relatively low. For example, a data cleanup project conducted by the New Hampshire Department of Environmental Service Hazardous Waste Compliance Section to identify and confirm the status of New Hampshire sites with an active EPA identification number identified 1,257 duplicate sites and 967 inactive sites, removed or corrected 406 geographic information systems (GIS) points, and added 650 GIS points, resulting in a reduction of the total number of listed active sites by 18%.⁶³

The highly varied nature of small businesses also contributes to the difficulty in regulating small facilities. Small businesses vary tremendously in operation, geography, and size. In the United States, one of the major difficulties in the regulation of small automobile salvage yards in Florida is the fact that these facilities display significant differences in the type of scrap materials accepted, recycling options employed, use of best management practices to minimize the threat of potential spills to the environment, and general disposal practices. This variability creates significant difficulty in determining sampling strategies and assessing the magnitude of environmental liability under the law.⁶⁴ In India, the SPCBs regularly inspect large facilities, but due to the wide geographical dispersal of small-scale facilities, are unable to maintain strict schedules of inspection for small-scale facilities.⁶⁵

Regulation of small businesses remains a priority in the United States and India, despite the significant difficulty in executing a traditional command-and-control model with small-scale facilities. Small businesses, individually, often do not pose a significant environmental threat. Most very small businesses in the United States are conditionally exempt generators, producing less than 100 kilograms of hazardous waste per month.⁶⁶ Yet the collective impact of the small business environmental footprint in the United States and India is significant. In India, the bulk of hazardous waste generated in the country comes from small and medium sized facilities.⁶⁷ The unorganized sector, which consists almost entirely of small businesses, likely represents an even larger percentage of hazardous waste generated.

Policing small businesses requires a tremendous amount of government resources. Yet regulatory and enforcement agencies in both countries operate under significant financial and staff constraints. In the United States, EPA's enforcement budget has experienced drastic reductions while the number of regulated facilities is becoming larger and more dispersed.⁶⁸ In addition, very few enforcement agen-

cies have sufficient staff to inspect more than a fraction of regulated facilities, nor the ability to pursue more than a small percentage of violations in enforcement or administrative hearing processes.⁶⁹ For example, the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health regulates over 150 LQGs, 1,200 SQGs, over 10,000 CESQGs, 35 TSD facilities (14 of which are permitted), and 100 transporters with a staff of only 8 inspectors.⁷⁰ In India, many SPCBs are unable to collect enough money in fines and fees to operate and, thus, are heavily dependent upon government grants.⁷¹ The SPCBs that maintain surpluses often face significant spending restrictions imposed by their state governments that prevent them from using extra money on needed infrastructure and research and development.⁷² Furthermore, an SPCB's "sanctioned staff strength" is based on the number of polluting units and the geographical dispersion of pollution, both of which are difficult to determine.⁷³ Almost every SPCB operates under a large number of vacancies as per the sanctioned staff strength, with some vacancy numbers reaching into the hundreds.⁷⁴

Repeat violations with small businesses also drain limited government resources. Enforcement actions often do not take into account realities of small business knowledge and capability and, therefore, fail to act as a permanent fix for compliance problems in small businesses. Leslie Carothers, former director of the Connecticut Department of Environmental Protection (CDEP), points out: "I found that in suing dozens of small players, it would be like shoveling sand because they would fall back into noncompliance."⁷⁵ In one example in the United States, a small business failed to repair a leak in a piece of machinery as required by an enforcement action because the owner did not "see" a leak.⁷⁶ The small business owner did not see liquid on the floor and, therefore, did not think that a leak existed; the owner did not realize that the piece of equipment had a gas leak and thus remained noncompliant.⁷⁷ In India, enforcement orders often require facilities to install specific pollution-abatement equipment that do little to bring small-scale facilities into compliance. Small business owners, however, are either unfamiliar with the new required technologies or view required installation as a regulatory harassment mechanism. In a discussion with a group of small facil-

62. *Id.*

63. See NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES & U.S. EPA, *supra* note 21, at 4.

64. ANDREW A. DZURIK, ENVIRONMENTAL IMPACTS OF AUTO SALVAGE FACILITIES AND THEIR REGULATION 1 (Florida Center, Rep. No. 00-111, 2000), available at <http://www.floridacenter.org/publications/dzurik00-11.pdf> (last visited Mar. 4, 2005).

65. ELI ET AL., FROM POLICY TO ACTION: STRENGTHENING THE IMPLEMENTATION OF ENVIRONMENTAL LAW IN INDIA 43 (1999).

66. Lockwood Interview, *supra* note 48.

67. See CPCB, *supra* note 10.

68. Clifford Rechtschaffen, *Deterrence Versus Cooperation and the Evolving Theory of Environmental Enforcement*, 71 S. CAL. L. REV. 1214 (1998).

69. *Id.*

70. Joe Schieffelin, RCRA Compliance Data: We Collect It; We Should Use It—A Colorado Case Study, Presentation at the RCRA National Meeting (Jan. 15-18, 2002), available at <http://www.epa.gov/epaoswer/osw/meeting/pdf02/schieffe.pdf> (last visited Mar. 4, 2005). Joe Schieffelin stated that the SQGs were the most difficult to regulate and monitor: "We can't get around often enough to keep them on their toes." Telephone Interview with Joe Schieffelin, Colorado Dep't of Public Health and Environment (Mar. 7, 2005).

71. INDIA PLANNING COMMISSION, EVALUATION STUDY ON THE FUNCTIONING OF STATE POLLUTION CONTROL BOARDS ch. 4 (2000), available at <http://planningcommission.nic.in/reports/peoreport/peo/peostatpoll.htm> (last visited Mar. 4, 2005).

72. *Id.*

73. *Id.* ch. 3, ¶ 4.

74. *Id.*

75. ELI Associates Program Seminar, What's Next for Environmental Law Enforcement? (Nov. 4, 2004) (RealAudio available at <http://www2.eli.org/seminars/pastevent.cfm?eventid=4>) [hereinafter ELI Seminar].

76. Lockwood Interview, *supra* note 48.

77. *Id.*

ity representatives in Bangalore, the owner of an electroplating company stated that he installed a wholly ineffective air filter simply to “keep inspectors happy.”⁷⁸

Despite significant staff and financial constraints within environmental agencies in the United States and India, the level of regulator responsibility continues to increase. Although no new major environmental statutes have been passed in recent years in the United States, a variety of new work has emerged, including Title V permitting under the Clean Air Act (CAA) Amendments, total maximum daily loads under the CWA, and nonpoint source regulation.⁷⁹ In India, as environmental issues become a larger priority, new rules are added to the list of SPCB responsibilities. For example, the central government is currently considering legislation regarding the cleanup of hazardous waste sites in India, similar to the U.S. Comprehensive Environmental Response, Compensation, and Liability Act. During the development of the HWM Rules in India, SPCB officials stated that they did not welcome the additional burden of implementing the HWM Rules because they had enough difficulty implementing more than 10 other environment-related laws and notifications.⁸⁰ There is little reason to expect today that SPCB representatives feel any more secure in taking on any additional responsibilities of the HWM Rules.

III. The Compliance Assistance Approach to Environmental Regulation

Small business compliance with environmental law is not likely to improve under the traditional command-and-control approach to regulation:

Those [small businesses] that were still around when I left [CDEP] really needed something different . . . I became very unhappy with using a traditional enforcement and fine approach with relatively small entities who needed a lot of assistance if they were going to comply and also stay in business.⁸¹

Certainly, enforcement plays a vital role, but a balance needs to be struck between traditional command-and-control approaches and more cooperative, participatory, compliance assistance-based approaches.

Scholars in the field tend to vary considerably in their opinions on which model is most effective in assuring environmental compliance. Some argue that socially responsible changes in corporate attitude and increases in corporate internal regulatory systems such as self-regulation, auditing, and environmental management systems (EMS) render little need for traditional command-and-control approaches to environmental regulation.⁸² Others argue that it is a mistake to wander too far from direct enforcement and that there are many examples where industries provided no response until the threat of an enforcement action became real.⁸³ Re-

gardless of the exact position, most agree that compliance assistance, to some degree, is a necessary tool in compliance assurance for small businesses.

The fundamental problem with regulating small businesses under the command-and-control model is that it assumes that regulated entities have the *capacity* to comply with environmental regulation. Capacity consists of: (1) understanding regulatory requirements; and (2) possessing the knowledge, ability, and resources to remedy deficiencies.⁸⁴ Under the traditional command-and-control approach, if a regulated entity cannot comply it is shut down. The command-and-control approach does not take capacity issues into account. Under this “survival of the fittest” type system for compliance assistance, small businesses are unlikely to succeed.

In reality, the command-and-control approach is used with much more flexibility than theory would suggest.⁸⁵ Enforcement actions in the United States and India try to bring noncompliant facilities into compliance instead of simply forcing closure. In India, courts have ordered a wide range of actions to occur within noncompliant facilities, including shifts to specific types of technology, installing pollution abatement equipment, contribution toward the construction of a central effluent treatment plant, and relocation.⁸⁶ In the United States, most instances of noncompliance are met with only minor or informal sanctions, and most enforcement activity is aimed at bringing violators back into compliance rather than punishing or deterring.⁸⁷ For example, in one situation, an enforcement action against a “mom and pop” dry cleaning business resulted in a negotiated settlement whereby the facility agreed not to sell their facility with its leaky perchloroethylene (PERC) machine, and in the meantime, place a pan underneath the faulty machine to collect the PERC.⁸⁸ Although the 80-year-old owners of the dry cleaning facility needed a new PERC machine, they could not afford it and it did not make sense to require that they purchase a new machine given their ages and the likely life-span of the facility.⁸⁹ Thus, participatory, cooperative, compliance assistance-type approaches occur within the existing traditional command-and-control model.

One of the primary goals of compliance assistance, however, is to *prevent* compliance problems before they necessitate enforcement action. Compliance assistance builds capacity, thereby placing small businesses on a more level playing field in the “survival of the fittest” command-and-control regime. Compliance assistance activities or programs can include providing plain language regulations and guidance, transferring technical information, conducting compliance assistance training workshops, or explaining possible ways to correct deficiencies.⁹⁰ Assistance offered to small businesses involves both creating and making

comments by Steven Herman and James Strock, ELI Seminar, *supra* note 75.

78. Discussion with small business owner at the compliance assistance training program conducted jointly between ELI and EMPRI. Training conducted with the support of the GE Foundation.

79. See ELI, *supra* note 59, at 11-12.

80. See HIGH-POWERED COMMITTEE REPORT, *supra* note 40, at xxviii.

81. Leslie Carothers, ELI President and former Director, CDEP, ELI Seminar, *supra* note 75.

82. See generally Iannuzzi, *supra* note 11; Rechtschaffen, *supra* note 68.

83. In India, the real threat to industries is not necessarily enforcement actions brought by the SPCB, but judicial orders for facility closure due to environmental noncompliance. For a U.S. perspective, see

84. See ELI, *supra* note 59, at 15.

85. See Rechtschaffen, *supra* note 68, at 1189-90.

86. Nandini Dasgupta, *Environmental Enforcement and Small Industries in India: Reworking the Problem in the Poverty Context*, 28 *WORLD DEV.* 954 (2000).

87. See Rechtschaffen, *supra* note 68, at 1189.

88. Elizabeth Loeb, Lecture Presented at Small Business Needs Assessment Study Workshop, Bangalore Project, *supra* note 7.

89. *Id.*

90. See ELI, *supra* note 59, at 15.

readily accessible user-friendly materials and resources, and providing outreach activities to ensure the productive use of available materials and resources. The hope in compliance assistance activities is that small businesses learn and recognize that compliance reduces their legal liability and can also result in tremendous cost savings through waste minimization, pollution prevention, and energy-saving techniques.

India and the United States both have recognized the need to use compliance assistance as a preventative tool to compliance problems in small businesses. In 1996, the U.S. Congress passed the Small Business Regulatory Enforcement Fairness Act,⁹¹ requiring all agencies to publish easy-to-understand “small entity compliance guides” for all federal rules, and mandated in the 1990 CAA that states establish compliance assistance programs for small businesses.⁹² EPA also combined its enforcement and compliance assistance program in the mid-1990s into a single “Office of Enforcement and Compliance Assurance” and developed several sector-specific compliance assistance centers that are web and telephone hotline-based.⁹³ Several states have developed strong compliance assistance programs as well. In India, the CPCB has published sector-specific booklets on potential technological changes.⁹⁴ The National Productivity Council’s “waste minimization circles” program also focuses on waste minimization techniques in small businesses.⁹⁵ India’s Small Industries Services Institute offers various courses in pollution control, waste minimization, and energy conservation.⁹⁶ In addition, with the help of the Danish government, two SPCBs in India have been able to establish training arms that devote significant attention to compliance assistance-related efforts for small businesses.

Despite increased efforts and attention toward small business issues in the United States and India, compliance assistance activities and programs remain limited in scope. Compliance assistance providers are confronted with a wide range of barriers when attempting to develop a new compliance assistance activity or maintain an existing compliance assistance program. Organizational issues include defining the recipients of the assistance and assessing how best to access and communicate with the intended audience. Substantive issues involve discovering the type of assistance needed, be it managerial, regulatory, or technically related. Resource issues revolve around deciding how best to allocate limited government funding and staff time and expand outreach efforts. Identifying the key issues that arise in the development of compliance assistance activities and programs is essential to the improvement and expansion outreach efforts to small businesses in the United States and India.

91. 5 U.S.C. §§801-808.

92. See Rechtschaffen, *supra* note 68, at 1235.

93. *Id.*; see also Mark Stoughton et al., *Toward Integrated Approaches to Compliance Assurance*, 31 ELR 11266 (Nov. 2001).

94. See Dasgupta, *supra* note 86, at 958.

95. See generally National Productivity Council website available on the Internet at <http://wmc.nic.in/index.asp> (last visited Mar. 4, 2005).

96. See generally Small Industries Service Institute Karnal, *Training Programme*, at <http://www.sisiharyana.org/sisitraining.html>; Small Industries Development Organization, *SISI Jaipur (Rajasthan)*, at <http://www.smallindustryindia.com/sido/sisi/14.htm>; and Indian Export Import Portal, *SISI Jammu (J&K)*, at <http://exim.indiamart.com/sisi-network/sisi-jammu.html> (last visited Mar. 6, 2005).

C. Defining the Audience

The first requirement of any compliance assistance program is to determine the audience. A compliance assistance program cannot simply target “all small businesses.” Small businesses in both India and the United States vary tremendously in size, output, financial stability, geography, and production capability. Therefore, determining the audience for any compliance assistance program requires a significant amount of planning and attention. The three most important factors to examine in determining the audience include the classification of the audience, the feasibility of working with the audience, and the relationships between members of the audience.

A compliance assistance activity or program can select a target audience according to any number of varying classifications including, among others, sector, need, compliance history, or job position. A compliance assistance activity or program may include participants across a process chain; for example, hazardous waste generators, transporters, recyclers, and owners of TSD facilities. Or, a compliance assistance activity or program could include participants at varying levels of decisionmaking authority; for example, the Environmental Management and Policy Research Institute (EMPRI) in Bangalore has had positive results from including medical as well as para-medical personnel in a single workshop on India’s Biomedical Waste Rules. Compliance assistance activities or programs that target small businesses that are all experiencing similar compliance problems can focus on particular areas of need and offer a tremendous opportunity for collaboration. On the other hand, compliance assistance activities or programs that include small businesses at varying levels of compliance can offer a strong learning experience for businesses at lower levels of compliance.

Feasibility of working with a particular audience is also an important consideration in determining the audience for a particular compliance assistance program. A compliance assistance program that uses a sector-based approach may not be effective if the small businesses in the particular sector are so geographically dispersed that it makes organization and logistics impossible. In addition, compliance assistance programs may be ineffective if the targeted audience speaks a foreign language. For example, compliance assistance programs for the dry cleaning industry in the United States were adjusted to take into account the fact that Koreans owned many of the existing and noncompliant dry cleaning businesses.⁹⁷ In India, a compliance assistance program that targets the unorganized sector may be impossible to structure because of an inability to locate the audience.

Relationships between potential members of an audience can significantly affect the success of a compliance assistance program. Small businesses that compete against each other may not want to attend the same compliance assistance training workshop. One of the difficulties identified in the National Productivity Council’s “waste minimization” program was that participants were hesitant to discuss their compliance-related problems because of the presence of competitors.⁹⁸ In the United States, part of the reason the

97. See Press Release, U.S. EPA, EPA Cracks Down on Dozens of Area Dry Cleaners (Feb. 22, 2002), available at <http://www.epa.gov/region02/news/2002/02008.htm> (last visited Mar. 6, 2005).

98. Dasgupta, *supra* note 86, at 961.

U.S. government chose to work with the metal finishing industry under its “Strategic Goals” program in the 1990s was because the metal finishing sector is diverse enough that participants in the program would be able to open up to each other without worrying that they were sharing too much information.⁹⁹ In addition, positive relationships between participants in a compliance assistance program can be extremely beneficial in building resource-sharing initiatives. In India, for example, small businesses may come together to purchase a common effluent treatment plant or shared piece of pollution control equipment.

D. Accessing the Audience

Once a decision has been made as to the target audience, a compliance assistance program needs to determine how to access that audience. The key issue with accessing small businesses is trust. It is extremely difficult to convey to small business managers that the goal of a compliance assistance program is to assure compliance through assistance rather than enforcement. In India, small business participants in compliance assistance workshops often avoid identifying themselves and their businesses for fear that they will be identified as potential violators by a representative from an SPCB or from the CPCB.¹⁰⁰ On the other hand, trust building efforts between the regulatory agencies and small businesses can create an atmosphere in a compliance assistance workshop that is honest and open to constructive dialogue.¹⁰¹ Even if a regulatory agency explains to the targeted audience that the results from or information discovered at a compliance assistance program will remain confidential, small businesses often still believe that compliance assistance efforts are a covert effort to inspect facilities or discover violations. Elsa Bishop, of EPA’s Small Business Division, states: “Lack of trust has always been an issue. Small businesses fear being singled out and prefer to ‘fly under the radar screen.’”¹⁰² Thus, a compliance assistance program must determine whether and how to build trust with the targeted audience or instead attempt to gain access through an entity that has already developed trust with the targeted audience.

Building trust with a targeted small business audience requires a significant amount of time. People who work in government are not small business owners, and small business owners do not work in government. Both groups need to invest time in understanding each other’s objectives, resource capabilities, and strengths and weaknesses. Small business owners must have confidence that regulators know business needs, understand substantive information,

and are affiliated with other resources.¹⁰³ Regulators need small businesses to understand that their objective is to achieve compliance assurance and not to collect unnecessary penalties or harass business owners. The question is, of course, *how* to build trust between small business owners and regulators.

One strategy to develop trust between small business owners and regulators is to focus broadly on the way an agency conducts compliance assistance activities or programs. Efforts to decrease the apprehension that small businesses feel regarding enforcement activities during compliance assistance activities can be alleviated by separating the two functions within a regulatory agency. For example, under Illinois’ Clean Break Program, agency inspectors provide technical assistance to facilities but do not have the routine inspection responsibility for the facilities that they assist.¹⁰⁴ In Arizona, state employees who conduct hazardous waste and other types of facility assessments are employed by a special Office of Customer Service that is completely segregated from the traditional enforcement and inspection staff.¹⁰⁵ In India, with the help of the Danish Department of Foreign Aid, the states of Karnataka and Tamil Nadu were able to develop training institutes that are separate entities from the SPCBs. Now, Karnataka’s EMPRI conducts roughly 200 training programs each year—120 to 130 of which are focused on small facilities.¹⁰⁶

A second strategy to develop trust between small business owners and regulators is to focus on building trust within a specific compliance assistance activity. For example, a compliance assistance workshop conducted by the Bangalore EMPRI and the Environmental Law Institute (ELI) (the Bangalore Project) incorporated SPCB inspectors as participants in the course instead of as speakers. Participants from the small business community engaged in a half-hour discussion with the participants from the SPCB. At the end of the day, the small business owners felt as though they understood the precarious position of the inspector, and the inspectors felt that they were made “personally aware of the difficulty faced by the industries toward complying to the provisions of the environmental laws.”¹⁰⁷ Incorporating inspectors as participants in the course rather than as speakers fostered the image that inspectors were also open to learning more about the industry perspective.

Working with other entities that have already established a trust relationship with the targeted audience, or who can easily develop trust, can also help to bridge the trust gap between small businesses and regulators. In the United States, industry associations have provided an excellent resource for compliance assistance activities. Small-scale industries are more likely to trust and attend a compliance assistance workshop conducted by their industry association. Industry associations that offer strong compliance training workshops to their members, or to their members at discounted rates, are often able to increase membership in the associa-

99. Telephone Interview with Robin Kime, Metal Finishing Liaison, U.S. EPA (Jan. 18, 2005).

100. For example, at a compliance training program conducted for small electroplaters (the TTZ Project) by the Federation of Indian Chamber of Commerce and Industry and ELI, on October 29, 2004, participants refused to “sign-in” at registration due to the presence of an official from the CPCB. This compliance assistance workshop was supported by U.S. Agency for International Development-India.

101. For example, the Karnataka State Pollution Control Board (KSPCB) has spent several years developing a strong relationship with industry. At the Bangalore Project, participants were comfortable admitting that they did not possess valid water consents under India’s Water Act when asked about facility compliance by a KSPCB speaker. See Bangalore Project, *supra* note 7.

102. E-mail Correspondence with Elsa Bishop, Small Business Division, U.S. EPA (Feb. 8, 2005) [hereinafter Bishop E-mail].

103. U.S. EPA, *Environmental Assistance to Small Businesses Meeting Summary and Highlights* (Dec. 6-7, 1999), at <http://www.epa.gov/p2/programs/summary.htm> (last visited Mar. 9, 2005).

104. See Rechtschaffen, *supra* note 68, at n.231.

105. *Id.*

106. Personal Communication with C.D. Kumar, EMPRI, Bangalore, India (Feb. 25, 2005).

107. Bangalore Project, *supra* note 7, Course Evaluation from S.T. Narayanaswamy, KSPCB (Feb. 23, 2005) (on file with author).

tion. Yet reliance on industry associations can be dangerous because a large number of extremely small businesses in the United States do not belong to industry associations.¹⁰⁸ Industry associations typically do not have the same strong relationships with members in India, but are still used for regulatory and technical guidance, especially in times of enforcement proceedings.¹⁰⁹

An additional access issue that arises in developing compliance assistance programs is targeting the right person or persons within a broader target audience. Each target audience will have a particular way of operating and it is important for any compliance assistance program to create strong linkages with leaders of the targeted audience. For example, virtually all of the small-scale facilities in Mathura, India, use a single consultant to keep track of their regulatory requirements and inner relationships with the SPCB. Therefore, a compliance assistance program in Mathura requires the cooperation and help of the consultant in order to be effective. In the United States, EPA Region 7 has had trouble advertising compliance assistance programs to the right persons within a targeted audience. The facility personnel who receive flyers and pamphlets for EPA's compliance assistance programs are often not the personnel who are responsible for environmental issues or in charge of deciding how company funds are spent.¹¹⁰

E. Communicating With the Audience

Upon gaining access to a targeted audience, deciding how best to communicate compliance-related issues is an important decision. Communication issues arise both in deciding what information needs to be conveyed to the targeted audience as well as the method of delivery. Delivery methods include both written and oral formats, and the most effective delivery will likely use a combination of both methods. In any case, the key with small businesses in India and the United States is to provide direct service and to simplify the substantive information as much as possible.

Needs assessment is a critical step in developing a communication strategy with small businesses. All small businesses do not have the same needs for compliance assistance. Some small businesses have problems with compliance in multiple media types whereas others need help in a specialized area. Some small businesses need help on technically oriented compliance issues, and others need assistance on management- or legal-related questions. Assessing the needs of a target audience can be difficult because small businesses tend to understate their compliance problems to avoid drawing the attention of enforcement officials. Yet, where successful, needs assessments can identify the substantive areas where compliance tends to be a problem as well as any preferred methods of delivery within a community. For example, focus discussion groups with relevant stakeholders in a compliance training program conducted for small electroplaters by the Federation of Indian Cham-

ber of Commerce and Industry and ELI led to the recognition that the targeted audience needed significant help with hazardous waste management and wanted assistance on extremely specific issues regarding chemical recycling, reuse of water, wastewater treatment, and business opportunities in hazardous waste treatment, storage, and disposal.

Any written communication tools for compliance assistance to small businesses must be user-friendly and readily accessible. One- to two-page fact sheets that describe a new law or regulation, a new process, or a new piece of equipment work best.¹¹¹ In addition, if a law requires a specific type of reporting system, it is extremely helpful to have forms released in a disc format that small businesses can simply insert and use.¹¹² In the United States, checklists and compliance calendars that allow small businesses to quickly and easily identify requirements, understand reporting timelines, and calculate emissions, discharges, and waste generated have been one of the most successful written compliance assistant tools.¹¹³ In India, there are currently very few written compliance assistance tools available for small business audiences of any kind.

It is generally common consensus that oral communication tools are the most effective means to educate small business owners on environmental compliance. Given the complexity of environmental compliance, one- to two-page "plain language" fact sheets are extremely difficult to create. In addition, written communication tools do not answer questions, nor do they allow the visual image of hands-on technology demonstration. Oral communication tools can include visits to individual facilities or can incorporate technology demonstrations or field trips as part of a compliance assistance workshop. On-site visits allow small business facility owners to see first hand what is required under various environmental statutes and to then be shown machine maintenance, leak detection procedures, how to maintain important records, and how to calculate the efficiency of their machines."¹¹⁴ Site visits to compliant or "beyond-compliance" facilities as part of a compliance training workshop can provide small business owners with the ability to see how other facilities are actually implementing compliance techniques or new technology. Participants in the Bangalore Project conducted by EMPRI and ELI ranked the site visit to Bharat Electronics as the most useful portion of the course, and many of them incorporated compliance techniques and specific technology seen at Bharat Electronics into their own facilities.

F. Follow-Up With the Audience

Follow-up with the target audience can be just as important as the development of a compliance assistance program. Compliance assistance providers invest significant time and resources into creating fact sheets and manuals for small businesses. However, without soliciting feedback from the targeted audience and making constructive changes after dissemination to the targeted audience, ineffective written communication tools may remain of little constructive use. In addition, one-time visits or single compliance assistance

108. Bishop E-mail, *supra* note 102.

109. During a series of court orders in 1996 that required the closure of several small industries in Delhi, affected small business owners were entirely dependent on the advice of the different Factory Owners Associations in the area. *See* Dasgupta, *supra* note 86, at 953.

110. E-mail Correspondence with Kevin Snowden, Region 7, U.S. EPA (Jan. 28, 2005) [hereinafter Snowden (January) E-mail].

111. Bishop E-mail, *supra* note 102; Langer Interview, *supra* note 6.

112. Bishop E-mail, *supra* note 102.

113. Lockwood Interview, *supra* note 48.

114. *Id.*

workshops are often not enough to create change within a small business. Initial meetings are usually devoted to building trust or setting a tone for open communication. Follow-up is necessary to address substantive concerns as well as behavioral and institutional issues that present barriers to compliance.

One of the most effective ways to deliver compliance assistance is through a series of outreach efforts. For example, compliance assistance workshops are significantly more useful for small businesses if done in phases. In a compliance assistance workshop that is structured in phases, participants are able to address problems that arise as they attempt to make changes within their respective facilities. Participants are also able to develop relationships with other similarly situated persons. Furthermore, follow-up workshops can also give compliance assistance providers an opportunity to measure the results of the compliance assistance program.¹¹⁵

Lack of government resources is a major hindrance to conducting follow-up with a targeted audience. Follow-up requires significant financial and staff resources, both for the small business and the compliance assistance provider. On-site visits, one of the most effective communication tools for small businesses, require an individual person to visit individual facilities one at a time. Compliance assistance workshops require logistical resources that are not always available. For example, one of the largest barriers to compliance assistance programs at EPA is lack of venue for outreach activities and compliance assistance training.¹¹⁶ State small business assistance centers in the United States have an average staff of 2.5, not nearly enough to help all the small businesses in a given state.¹¹⁷ Small business owners must often decide whether it is worth spending money and time to send personnel to a compliance assistance workshop. For facilities with very few employees, it is difficult to devote a staff member to an entire day (or sometimes longer) of training.

Promoting EMS and International Organization for Standardization (ISO) 14001 certification provides an excellent way to achieve follow-up goals with small businesses. The ISO 14001 standard requires that a community or organization put in place and implement a series of practices and procedures that, when taken together, result in an EMS.¹¹⁸ Some of the major requirements of an EMS under ISO 14001 include:

Formulating a policy statement that includes commitments to prevention of pollution, continual improvement of the EMS leading to improvements in overall environmental performance, and compliance with all applicable statutory and regulatory requirements;

Identifying all activities, products, and services that could have a significant impact on the environment, including unregulated areas, and setting performance objectives and targets for the management system;

Implementing the EMS, which includes activities such as training employees, establishing work instructions and practices, and establishing the actual metrics by which the objectives and targets will be measured, and establishing a program to periodically audit the operation of the EMS;

Checking and taking corrective and preventive actions when deviations from the EMS occur, including periodically evaluating compliance with applicable regulatory requirements; and

Undertaking periodic reviews of the EMS.¹¹⁹

Establishing an EMS effectively forces a business to examine and keep track of its own environmental footprint. Once a compliance assistance activity or program helps a small business achieve an EMS, or become ISO 14001-certified, the system or certification essentially acts as internal follow-up.

Despite the general impression that EMS is too complicated and expensive for small businesses, the United States, India, and ISO are all encouraging EMS within small and medium sized facilities. ISO Secretary General Alan Bryden remarks: "Small and medium sized enterprises are by far the most numerous in most economies and thus vital to economic wealth and to environmental health. Therefore, it is important to facilitate their use of environmental management systems."¹²⁰ ISO is currently conducting a survey of businesses to develop a "clearer picture of the extent to which small businesses—those with less than 100 employees—are implementing EMS and of their experience. ISO will use the results to make it easier for small businesses to implement and gain benefits from EMS."¹²¹ In the United States, EPA's Sector Strategies Program has developed guides to implementing EMS within specific sectors, including sectors dominated by small businesses such as the metal finishing industry.¹²² In India, ISO 14001 certification can itself be a legal requirement since some SPCBs require very highly polluting units, labeled as "red category" industries, to become ISO 14001-certified as a consent condition. In addition, existing courses on EMS or ISO 14001 are well attended by small businesses in India as most are beginning to recognize that ISO 14001 certification can increase a customer base and may be a necessary business prerequisite to competing in international markets.

Corporate sponsor programs are another way to achieve follow-up goals with small businesses without excessively utilizing government resources. Without a specific incentive, the time required to attend training and work on an

115. In Part II of the Bangalore Project, several participants reported on constructive changes they had made at their individual facilities. For example, one participant had completed extensive employee training as per the HWM Rules. In an effort to go "beyond compliance," another participant started planning to install a biogas generator at his facility for cooking purposes. See Bangalore Project, *supra* note 7.

116. Snowden (January) E-mail, *supra* note 110.

117. Bishop E-mail, *supra* note 102.

118. See U.S. EPA, *Environmental Management Systems/ISO 14001—Frequently Asked Questions*, at <http://www.epa.gov/owm/iso14001/isofaq.htm> (last visited Mar. 4, 2005).

119. *Id.*

120. Press Release, ISO, ISO Launches Online Survey on ISO 14001 and Small Businesses (Feb. 9, 2005), available at <http://www.iso.org/iso/en/commcentre/pressreleases/2005/Ref949.html> (last visited Mar. 4, 2005).

121. *Id.* (quoting Lennart Piper, leader of ISO group responsible for the survey).

122. See U.S. EPA, *Environmental Management Systems*, at <http://www.epa.gov/sectors/ems.html> (last visited Mar. 9, 2005).

EMS can present a barrier to small businesses.¹²³ The “corporate sponsor” approach encourages large original equipment manufacturers to offer training to their supply chain and give preference to their suppliers who attend the training and/or effectively develop an EMS.¹²⁴ Corporate sponsors usually provide direct support for a compliance assistance program by individually contacting potential participants, hosting the training, providing supplies and materials, and incorporating staff as speakers for specific training sessions. Any support, whether direct or indirect, by a large original equipment manufacturer can provide an incentive for small businesses and eliminate the trust issues associated with government-sponsored compliance assistance. The corporate sponsor approach has been effective in EPA Region 1, with large corporations such as New Hampshire Ball Bearings, Pratt & Whitney, and Hamilton Sundstrand, as well as in Bangalore, India, with General Electric-India.¹²⁵

IV. Conclusion

Small business issues will play an increasingly important role in the area of environmental compliance assurance in the United States and India in the coming years. Existing environmental laws will become more complicated and governments will mandate additional environmental requirements that are bound to perplex small business owners. Large numbers of new small business facilities and sectors will come into existence, magnifying the already overwhelming list of entities to be monitored by regulatory agencies. Small businesses and regulatory agencies alike will not be able to fulfill their respective objectives under an exclusively command-and-control enforcement system. Compliance assistance complements enforcement approaches by helping build the capacity of small businesses to voluntarily comply.

Compliance assistance activities and programs should not develop in a haphazard fashion, but instead with careful consideration of ways to ensure success. However, “success” is not easily measured in compliance assistance. Under the traditional enforcement system for compliance as-

urance, “success” is measured by counting the number of enforcement actions and penalty assessments. Compliance assistance results are harder to define because they include ambiguous standards such as how well a small business owner understood a requirement or process or whether the compliance assistance provider made progress in a trust building effort. Ways to constructively measure compliance assistance results may include counting the number of participants in a compliance assistance workshop that successfully implemented an EMS or the number of small business owners in a given target audience that attend a follow-up workshop.

Measurement techniques, if developed properly, can significantly help in the development of small business compliance assistance. As described in EPA’s Report of the Second Compliance Assistance Advisory Committee, publicly supported compliance assistance programs need to demonstrate that they are delivering value for the audience and for the taxpayers (or in India, for the international funding agency).¹²⁶ Compliance assistance providers need to evaluate their own progress so that they can target resources in a way that enables constant improvement of activities.¹²⁷ Furthermore, legislatures and parliaments are more likely to devote additional resources to compliance assistance activities and programs if measurements of success are clearly outlined and described.

Regardless of the outcome of the “enforcement versus cooperation and participation” debate, one thing is clear: small businesses need some degree of compliance assistance in India and the United States. Small businesses in both countries experience similar difficulty in complying with environmental law. Small businesses in both countries are extremely difficult to regulate for environmental agencies. In addition, both countries are working toward strong and effective ways to help small businesses achieve compliance and beyond-compliance goals. Despite the vast differences between India and the United States, small business environmental compliance assistance is an anomalous area of commonality that presents a tremendous opportunity for collaboration and idea-sharing.

123. Telephone Interview with Linda Darveau, Environmental Specialist, Region 1, U.S. EPA (Feb. 17, 2004); *see also* Linda Darveau, New Hampshire Ball Bearings User Group—Final Report (n.d.) (on file with author).

124. *Id.*

125. *Id.*

126. NATIONAL ADVISORY COUNCIL FOR ENVIRONMENTAL POLICY & TECHNOLOGY, REPORT OF THE SECOND COMPLIANCE ASSISTANCE ADVISORY COMMITTEE, RECOMMENDATIONS FOR ENHANCING EPA’S COMPLIANCE ASSISTANCE PROGRAM 7 (2004), *available at* http://www.epa.gov/ocem/nacept/caac/caac_6_14_2004_final_report.pdf (last visited Mar. 7, 2005).

127. *Id.*