

ENVIRONMENTAL ENFORCEMENT
IN THE KYRGYZ REPUBLIC:
PROMOTING ENVIRONMENTAL
IMPROVEMENTS AND ENHANCING
GOOD GOVERNANCE

Peer Review Recommendations



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

The Kiev Ministerial Conference of 2003 gave impetus to the “Environment for Europe” process, further developed the corpus of international environmental law, and fostered partnerships to facilitate the achievement of priority regional and national policy objectives. Among other decisions, ministers recommended that countries implement the “Guiding Principles for the Reform of Environmental Enforcement Authorities in Transition Economies of Eastern Europe, Caucasus, and Central Asia (EECCA)”. The Guiding Principles build on good governance practices and provide a reference model for an effective and efficient system of environmental compliance assurance.

By endorsing the Guiding Principles, EECCA countries recognised the need for reform and also established a long-term development target. To bring about concrete results, a peer review scheme was established under the umbrella of the Task Force for the Implementation of the Environmental Action Programme (EAP Task Force) and its Regulatory Environmental Programme Implementation Network (REPIN).

The current document presents the conclusions and recommendations of the first pilot application of the REPIN Peer Review Scheme. The recommendations suggest a number of short- and longer-term steps for reform of domestic compliance assurance instruments, strategies, and institutions in light of good international practice. They also aim to stimulate greater accountability to the general public and international partners. These steps are closely linked with, and support, the implementation of the country’s strategic development objective of adopting a good governance system.

The review was carried out at the request of the Ministry of Ecology and Emergency Situations of the Kyrgyz Republic by an international team of experts. The members of REPIN support unanimously the recommendations of this Peer Review and appreciated the initiative of their colleagues from the Kyrgyz Republic in testing the Peer Review Scheme, as well as the input provided by national experts.

The views expressed in this publication are those of the authors and do not necessarily reflect those of the OECD or its Member countries. Financial support to conduct the Peer Review was provided by the EuropeAid programme of the European Union.

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PEER REVIEW HIGHLIGHTS

The Peer Review of the Environmental Compliance Assurance System confirms that despite the development of an extensive regulatory framework over the last decade there are **serious problems in the design and operation of the environmental compliance assurance system in the Kyrgyz Republic**. *Inter alia*, these include:

- A regulatory framework that favours companies' short-term interests, while disregarding potential negative environmental impacts and the costs of environmental pollution to society, for example, the suppression of air permit systems and restrictions on inspectors' authority to conduct on-site visits;
- The distorted mission of environmental enforcement authorities, which focus on collection of pollution taxes to ensure a revenue basis for their own operation, rather than concentrating on achieving environmental results;
- Frequent reforms of the organisational structure of the environmental authority without a clear vision of how these reforms will help achieve priority environmental objectives. Similarly, working methods are currently applied that lead to inefficient use of resources;
- Confrontational relations with the regulated community due to lack of dialogue between stakeholders, low understanding of compliance problems, unfeasible regulatory requirements, and outdated instruments of compliance assurance and promotion;

- Limited human, financial, and material resources to carry out inspections. In particular, very low operational budgets and no capital investment for monitoring and inspection facilities.

The environmental enforcement authorities in the Kyrgyz Republic need, first and foremost, a substantially improved regulatory framework and institutional capacity to be able to fulfil their mission to protect the environment and human health in a fair and consistent manner. Several major interventions are required:

1. **Seek improvement of the environmental regulatory framework:** As a pre-requisite for effective compliance assurance, the Ministry of Ecology and Emergency Situations (MEES), in co-operation with the legislature, should upgrade the regulatory framework and **enact requirements that are coherent, clear, ambitious but realistic, and well-balanced, with the objectives of economic and social development.** The development of laws and regulations should be **fully linked to environmental policy objectives** and facilitate policy implementation. To this end, the environmental authorities should:

With a short-term perspective (2005-2006): (i) Revise obsolete regulations from the pre-1991 period, in particular those governing environmental standards, and reduce the number of regulations by integrating them whenever possible; (ii) Continue to modernize the law-making process by pursuing stakeholder participation in this process; (iii) Lower the administrative burden of permitting by increasing the validity of permits to 5-10 years in conjunction with better feedback from inspectors to permit writers; (iv) Better integrate the permitting system institutionally and make it open for local community involvement and NGOs; (v) Enact requirements for environmental self-monitoring and self-reporting by industrial operators, with a subsequent disclosure of facility-specific data and public access to these data.

With a medium-term perspective (2007-2011): (i) Ensure the feasibility of requirements by supplementing environmental criteria used to establish Emission Limit Values with technical and economic criteria, and adopt techniques to prevent pollution and

lower its cross-media transfer; (ii) Differentiate approaches and procedures used to regulate large industry and Small and Medium-sized Enterprises; (iii) Revise the system of non-compliance responses and apply them proportionally to the gravity of violation. They should be sufficiently high to bring the offender into compliance and deter other operators from infringing the law; (iv) Introduce a Regulatory Impact Assessment to strengthen quality control of law drafting that, among other things, would help to avoid sectoral and historical legal discrepancies and give opportunities to provide feedback from practice.

2. **Acquire adequate powers and raise the institutional status:** The government should provide adequate powers for environmental inspectors and elevate the status of the enforcement branch of the MEES, as well as strengthening the position of the main environmental authority. In particular, the following should be done:

With a short-term perspective (2005-2006): (i) Disconnect financing of enforcement authorities operations from revenues raised as a result of inspectors' non-compliance responses, while at the same time ensuring that funding for enforcement activities is provided without interruption in the transition period; (ii) Lift restrictions on access to regulated facilities and frequency of inspection, in conjunction with establishing a more robust and transparent framework for inspection, prosecution, and appeal; (iii) Streamline vertical distribution of responsibilities for permitting and compliance assurance within the MEES according to the category of controlled facilities; (iv) Provide adequate state budget resources that would enable inspectors to control, at a minimum, high-risk facilities; (v) Link the process of budget planning with targeting and activity planning, and investigate means to raise additional financial resources without creating incentives that conflict with the primary environmental protection function or integrity of enforcement; (vi) Reduce the frequency of structural reforms and establish a mechanism that would safeguard institutional memory and retain well-trained staff when such reforms occur.

With a medium-term perspective (2007-2011): (i) Within the governmental environmental agency, establish an autonomous environmental inspectorate with adequate powers and institutional autonomy, specific compliance targets, clear policies and strategies of compliance assurance, and a well-designed organisational structure; (ii) Further strengthen funding of environmental enforcement authorities.

3. **Adopt risk-based and performance-oriented working methods:** Inspection efforts should become proportional to environmental risks, actual human health and the environmental impact of processes, and the compliance history of the regulatees. To this end, the enforcement authorities should:

With a short-term perspective (2005-2006): (i) Better identify the regulated community and create electronic systems to manage data about regulatees as well as other information required for strategic planning; (ii) Define criteria for establishing priorities of inspection; (iii) Increase the transparency of inspection (*e.g.* post the procedures and results of inspection on the MEES web-site); and (iv) Develop and use tools that would promote voluntary compliance, for example, publish guidelines on permitting and methods of achieving compliance. (v) Provide information and training to the regulatees on environmental requirements.

With a medium-term perspective (2007-2011): (i) Elaborate and use systematically risk-based strategic approaches to plan inspection activities, (ii) Develop internal guidance on decision-making in order to avoid inequitable treatment of regulatees; (iii) Encourage a larger use of self-monitoring by industrial operators; and (iv) Consolidate the system of performance assessment and management within the enforcement authorities.

4. **Embrace higher professional standards and foster international co-operation:** Environmental inspectors should develop their professional knowledge and skills and gain self-confidence, stronger motivation, and a constructive attitude. This, in turn, would require an appropriate management framework, including regular

training, staff rotation, performance-based rewarding, and adequate social protection of personnel. In parallel, representatives from other executive and judicial agencies should be trained. International co-operation and networking in the field of compliance assurance could also help to build human capacity. These actions should be an **immediate priority**;

5. **Interact with stakeholders openly and constructively:** The MEES should require and enable inspectors to carry out a regular dialogue with other governmental and non-governmental stakeholders. This involves the following actions:

With a short-term perspective (2005-2006): (i) Allocate staff time and resources in the MEES or its partner agencies to co-operate on inspection and enforcement matters and enact procedures to reduce duplication and overlap in their functions; (ii) Review the role of the Environmental Prosecutors Office and focus its mission on the preparation of civil and criminal cases for courts; (iii) Consult industry during the process of law development and seek their input in determining the technical and economic feasibility of requirements; (iv) Foster existing opportunities to advise industry on “win-win” solutions; (v) Establish a simpler procedure for citizens to file complaints on cases of non-compliance or poor environmental performance of regulatees, and allow NGOs to participate as observers during on-site inspections; (vi) Use mass media as an avenue for raising environmental awareness and increasing the deterrent effect of inspection and enforcement; (vii) Ask the judiciary branch to provide feedback on the quality of court cases developed by the environmental authorities.

Peer Review Highlights

With a medium-term perspective (2007-2011): (i) Gradually delegate more authority to local communities, including the right to inspect the smallest facilities. However this should happen only when sufficient institutional capacity is built at the local level to assume such authority; (ii) Further stimulate the inflow of information from citizens on non-compliance by establishing an environmental telephone “hot line”; (iii) Start a pro-active systematic disclosure of data on environmental performance of facilities and develop performance-rating schemes; (iv) Use more actively citizens’ compliance monitoring and enforcement.

PURPOSE AND PROCESS OF THE PEER REVIEW

The members of the Regulatory Environmental Programme Implementation Network (REPIN) agreed, at their 5th annual meeting in October 2003 in Kiev, to launch a pilot Peer Review Scheme intended to facilitate reforms of compliance assurance in Eastern Europe, Caucasus, and Central Asia (EECCA). REPIN endorsed the objectives and methodology of peer reviews and welcomed the initiative of the Kyrgyz Republic to be the first country subject to this mechanism of inter-governmental dialogue and support. The “Guiding Principles for the Reform of Environmental Enforcement Authorities in Transition Economies of EECCA”¹, recommended for implementation by the Kiev Ministerial Declaration (May 2003), provided a reference framework for the review.

Purpose of the Peer Review in the Kyrgyz Republic

The Ministry of Ecology and Emergency Situations (MEES) of the Kyrgyz Republic approached the OECD/EAP Task Force Secretariat with the request to assess the national system of environmental compliance assurance in light of good international practice and identify priority actions for its reform. In response to this request, which was also voiced during the 2003 REPIN meeting, the Network members supported the Kyrgyz Republic’s initiative to be the first country to test the Peer Review Scheme.

A peer review involves a systematic examination and assessment of the performance of a state by other states, with the ultimate goal of helping the reviewed country adopt best practices and comply with established standards and principles. The peer review mechanism is free of any threat of non-

¹ This document is available on the Internet at the following address: www.oecd.org/env/eap

Purpose and Process of the Peer Review

compliance sanctions arising from the findings of the review: its impact relies on the influence and persuasion exercised by “peers” (equal partners in the review process). The review serves the following purposes:

- To provide international peer support for institutional reform of enforcement authorities;
- To enhance their transparency, accountability, and visibility, at national and international level;
- To extend opportunities for inter-government policy dialogue and support capacity building.

The benefits and high policy profile of peer reviews have been demonstrated due to a vast practical experience, including regular (economic, regulatory, and environmental performance) reviews undertaken by the Organisation for Economic Co-operation and Development (OECD)², environmental performance reviews carried out in the EECCA region by the United Nations Economic Commission for Europe (UNECE), as well as the reviews of environmental funds carried out by the Task Force for the Implementation of Environmental Action Programme (EAP Task Force) in Central Europe and lately in EECCA. The IMPEL³ Review Initiative, established in 2001 by the Member Countries of the European Union (EU), provided another example of a successful application of the peer review concept.

The current review of the environmental compliance assurance system in the Kyrgyz Republic provides recommendations for improvement of its major building blocks, such as:

- The regulatory and institutional framework for environmental compliance assurance;
- Enforcement strategies and tools, and the necessary infrastructure to implement them;

² See “Peer Review: an OECD Tool for Co-operation and Change”. OECD, 2003.

³ IMPEL is the EU’s Network for the implementation and enforcement of environmental legislation.

- Co-operation with key stakeholders, domestically and internationally.

The Peer Review focuses on the institutional performance of environmental enforcement authorities and does not aim to review the environmental performance of the country in general. The latter was the subject of a review carried out in 2000 by the United Nations Economic Commission for Europe (UNECE). The current document takes into account the outcomes of the UNECE work and extends them through a deeper analysis of issues related to the environmental governance system and enforcement.

Key activities within the review process

The preparatory phase of the Kyrgyz Peer Review consisted of preliminary analysis carried out in the period November 2003 to February 2004. The analysis was based on available background reports, national policy and legal framework, the UNECE Environmental Performance Review of 2000, and a self-assessment report prepared by Kyrgyz counterparts. Prior to the review mission, the MEES disseminated the Guiding Principles among all stakeholders at the national level, which contributed to a better understanding of the reference framework for the review among stakeholders.

The review mission was carried out from 15-20 March 2004 by a team of seven experts from OECD, Central European and EECCA countries, and the Secretariat⁴. The mission included a series of interviews with political leaders, managers and experts representing the Ministry's headquarters and regional departments, other governmental organisations, as well as NGOs and the regulated community. In total, more than 70 people were consulted during these meetings. At the end of their mission, the review team members presented and discussed initial findings at a meeting with MEES staff. A press conference was held jointly by the Secretariat and high level officials from the MEES, on the objectives, outcomes, and follow-up of the review mission.

⁴ The review team included the following experts: Julietta Glicyan, Armenia; Toomas Liidja, Estonia; Hans-Roland Lindgren, Sweden; Nurlan Yeskendirov, CAREC; Henk Ruessink, The Netherlands; Angela Bularga, OECD Secretariat; Krzysztof Michalak, OECD Secretariat.

Purpose and Process of the Peer Review

Subsequently, the draft review report was prepared by the Secretariat. This report was discussed during the REPIN annual meeting in Yerevan (26-29 September 2004). The final set of conclusions and recommendations were adopted by consensus.

The review report will be disseminated to regional and international networks of environmental policy makers and regulators (such as IMPEL, the Balkan Environmental Regulatory Compliance and Enforcement Network, and the International Network for Environmental Compliance and Enforcement), and made available to the general public, network NGOs, and Regional Environmental Centres. It is available on the OECD web site (www.oecd.org/env/policy) and the web site of the MEES (www.mecd.gov.kg). The availability of the report on Internet helps to increase the accountability of the Kyrgyz Republic towards international partners and helps to mobilise further support.

MAJOR ACHIEVEMENTS AND CHALLENGES

The Republic of Kyrgyzstan has developed an extensive environmental management system with particular instruments, working methods, institutions, and communication interfaces in place to implement environmental policy objectives. Command-and-control instruments, including permitting, compliance monitoring and non-compliance response, were introduced in the late 1970s. In the mid 1990s, they were complemented by economic instruments. These were mainly pollution charges, and to a lesser extent non-regulatory, information-based instruments, such as environmental information provision and awareness-raising activities.

Current institutional capacity and impediments to development

The main environmental authority was established in 1989 and went through several structural reforms, particularly frequent after 1999. Presently, the Ministry of Ecology and Emergency Situations (MEES) has full executive authority in environmental protection. The MEES is the successor of the former Ministry of Environment Protection but, unfortunately, has so far been unable to keep as high an institutional profile for environmental protection as it has for emergency response.

Compliance with, and administrative enforcement of regulatory requirements is ensured by 185 environmental inspectors employed by the MEES and its regional branches. Their scope of activity covers mainly industrial pollution control with around 2 200 large installations under national and sub-national jurisdiction. Other members of the regulated community are not yet well identified, especially among Small and Medium-sized Enterprises (SMEs), whose number has now reached 30 thousand.

Major Achievements and Challenges

Given the absence of SMEs in the centrally planned economy, this is rather an impressive growth of the regulated community.

Over the last few years the attention of environmental inspectors has been placed primarily on enforcing the payments of pollution charges as the way to compensate for the limited funding of environmental authorities. This focus has reached the point of distorting the very mission and integrity of compliance assurance system and eroding the self-confidence and public credibility of enforcement officers.

The need to change radically the focus of environmental enforcement activities

For the above-mentioned reasons, the major challenge for environmental enforcement authorities in the Kyrgyz Republic is to shift their operation away from pursuing revenue-raising goals towards focusing on ensuring compliance with environmental requirements in order to achieve environmental results, as stated in Principle 1 of the “Guiding Principles for Reform of Environmental Enforcement Authorities in Transition Economies of Eastern Europe, Caucasus, and Central Asia”. Preventative actions should be used more systematically and frequently and the regulated community should be treated with consistency, in a transparent and proportionate manner (Principles 2 and 3).

The credibility of enforcement actions should be ensured by establishing feasible and enforceable compliance objectives and working in a transparent, accountable manner (Principles 4 and 5). Also the value of the enforcement authorities will be elevated if policy makers and the general public are better acquainted with the potential benefits of a fair and firm enforcement, including decreased social and economic costs of environmental pollution and degradation, enhanced rule of law and a guaranteed level playing field for industry.

Five major development objectives

Fulfilment of their core mission to ensure compliance thus protecting the environment and human health will require environmental enforcement authorities of the Kyrgyz Republic to:

1. Seek improvement of the environmental regulatory framework;
2. Acquire adequate powers and raise the institutional status;
3. Adopt risk-based and performance-oriented working methods;
4. Embrace higher professional standards and foster international co-operation;
5. Interact with stakeholders openly and constructively.

The necessary measures under each of these five key areas are discussed hereafter. It is important to mention that the country's economic and social context is not completely favourable for better environmental management, although the Country Development Framework targets more effective state governance and secure conditions of life for all members of society. Unfortunately, the political support for environmental improvements is largely declarative. The government emphasises the economic recovery of the country without taking due account of external environmental costs imposed by current production patterns. The air permit system has been suppressed for some time as part of a wider process to encourage entrepreneurship and foreign investment. A very low percentage of the Gross Domestic Product (GDP) is devoted to environmental purposes: in the Kyrgyz Republic, only 0.03 per cent of the GDP is allocated to the environment compared with one to 1.5 per cent in OECD countries.

IMPROVING THE REGULATORY FRAMEWORK

In the late 1990s significant progress was achieved in enacting key environmental laws in the Kyrgyz Republic. This primary legislation is considered sufficiently developed although some requirements are not yet in line with the norms of a democratic, market-based economy. Too often, secondary legislation is missing or the outdated Soviet-time regulations apply. A positive development that should be pursued is the adoption of systematic and participatory law-drafting procedures.

Overhauling obsolete regulatory requirements

As a matter of urgency, authorities need to cease enforcing “dead rules”. The obsolete regulations should be revised and primary and secondary legislation should be developed that would establish clear, realistic, and enforceable requirements. In order to achieve the latter objective, particular attention should be given to laws and regulations that govern permitting, self-monitoring, and non-compliance responses.

Reforming the environmental permitting system

The existing permitting system is largely unreformed, with separate permits being issued for air, water, and waste. In 2001-2002, the requirement to have a permit for air emissions was temporarily excluded from the legislation. Such kind of “deregulation” is in contradiction with good international practice.

The validity of permits is short compared to most of the developed industrialised countries (for air only one year; and between one and five years for water). The approaches used to set permit requirements, combined with a short validity of permits, result in “end-of-pipe” treatment instead of

enterprises exploring and applying innovative measures (“cleaner production”). Sometimes excessive “end-of-pipe” requirements tie industry’s resources that otherwise could be invested in modernising existing technologies.

Given these and some other facts, permitting needs to be streamlined and used as a tool to achieve environmental targets that are well balanced with economic development objectives and interests of local communities. To attain this, the MEES will need to:

- Differentiate permitting approaches and procedures used for large industry and Small and Medium-sized Enterprises (SMEs), with a maximum simplification of permitting for SMEs;
- In parallel, conduct an institutional differentiation of regulatory responsibilities: major industry should fall under the jurisdiction of the central authority; and the SMEs under the jurisdiction of the MEES’ regional departments;
- Introduce an integrated permitting system, open for public and local community involvement. This will imply procedural changes and a stronger institutional integration;
- Increase the validity of permits to 5-10 years and formulate permit conditions more precisely, with a possibility to review them whenever significant changes are introduced in processes, production volumes, or regulatory requirements;
- Ensure the feasibility of permit requirements by bringing in the concept of “best available techniques avoiding excessive costs”, and use this criterion for setting the Emission Limit Values in combination with Environment Quality Objectives.

Enacting regulatory requirements to guarantee the disclosure of facility-specific data

The Law on Environment Protection (Articles 17, 18, 31, and 47) requires industrial operators to conduct self-monitoring, this being a very positive feature of the Kyrgyz regulatory framework that corresponds to Principle 12. Unfortunately, self-reporting is not required except for emergency situations and accidents. Companies often refuse to disclose their environmental information on the grounds of confidentiality or unclear (or indeed contradictory) legal acts.

Since good international practices entail open access to self-monitoring data and other environment-related information, unless there is a well-documented legally-based reason for keeping it confidential, new regulations for self-monitoring, self-reporting, and handling confidential industrial data need to be introduced in the Kyrgyz Republic. The confidentiality should be limited only to commercial secrets. Facility-specific information of environmental significance should be publicly available.

Increasing the deterrent effect of non-compliance responses

It will be extremely important to revise the system of non-compliance responses and make them proportional to the gravity of violations (Principle 18). The current system seems to focus on penalising the offenders repeatedly, rather than efficiently bringing them into compliance and deterring future violations. Furthermore, the legally fixed ceiling for the imposed fines does not stimulate enterprises to invest in environmental measures. Too often, paying the penalty is the cheapest option for the offender.

Therefore, a system should be developed in which penalties are more likely to stimulate offenders to take appropriate environmental measures. One option could be that penalties are increased when the violation continues over a given period or is repeated. As an additional lever, a scheme could be considered in which fines can be waived if the offender takes the necessary measures to fix the problem in a certain agreed period of time. In a case where the offender does not respond properly, the fine will still be collected. In the longer term, in order to analyse claims from regulatees as concerns the affordability of penalties, clean up measures, and environ-

mental expenditure in general, the MEES could adapt specialised computer models (such as, for example, the ABEL, INDIPAY, or MUNIPAY models that are used by the United States Environmental Protection Agency). This would help to treat equitably the regulated community.

Continuing the improvement of law-making

Nowadays the environmental legislation of a country reflects its priorities. In the case of the Kyrgyz Republic, this is partially achieved: the existing laws do address priority issues, such as water resources protection, biodiversity protection, management of industrial and domestic waste, and radioactive safety. The legislature and the MEES should continue to apply this strategic approach to law-making, linked to environmental policy development, and at the same time, greater emphasis should be put on the quality of laws, and the law-making process.

In preparing new legal acts, experience accumulated from implementation and enforcement should be used to assess the quality of proposed laws and regulations. Before drafting a new law, the review of all related national legislation and international conventions or guidelines should be standard practice in order to ensure the coherence of the legal framework. Issues such as realism of legislation and implementation costs, including administrative and compliance costs, should be assessed. The number of legal acts, especially secondary legislation, should be decreased through their integration and simplification.

Before passing a new law, the legislature needs to evaluate the consequences of the amendments they introduce in the original draft law by comparing them with the conclusions of the Regulatory Impact Assessment (RIA), where this is readily available, and commissioning an RIA when this is missing. The legislature should modernise the structure and language of laws, and make them easy to understand and follow. Definitions must be clear and unambiguous, and consistent in meaning throughout different laws. If legal collisions occur between secondary and primary legislation, authorities need to ensure that regulations or decrees do not overrule any law. When a new legal act is passed to replace old provisions, the latter should be abrogated to avoid historical collisions.

Improving the Regulatory Framework

More individuals with practical experience should be consulted in the law-making process. In particular, environmental inspectors could support analysis of implementation problems of the current legislation and make recommendations for its improvement. While drafting new legislation, enforcement practitioners and other stakeholders should be involved in examining drafts and commenting on their enforceability and feasibility. This good practice is already legally stipulated but the MEES should establish a concrete mechanism to implement it.

ACQUIRING ADEQUATE POWERS AND RAISING INSTITUTIONAL CAPACITY

In the Kyrgyz Republic, the responsibilities and powers of the enforcement authorities are strictly regulated and prescribed in laws, regulations, instructions, etc. Despite this positive feature, which allows MEES to partly meet Principle 6, inspectors face problems in exercising their mandate due to responsibilities that exceed the legal mandate and the inadequate resources of the enforcement authority. A strong emphasis on the revenue-raising task, and a very low institutional status in the hierarchy of environment protection authorities, and in the government in general, contribute to the low effectiveness of compliance assurance.

Lifting restrictions of access to regulated facilities and frequency of inspection

One of the major institutional problems of compliance assurance in the Kyrgyz Republic originates in restrictions to access industrial sites: any enforcement authority, except for the Tax Inspection⁵, needs to receive permission from the Governmental Commission for Entrepreneurship Development to conduct on-site visits. Only one annual planned inspection is allowed regardless of the risk posed by the industrial site. This results in increased risks of accidents, persistent non-compliance damaging the rule of law, a low understanding of the actual environmental performance leading to imperfect policy-making, etc.

⁵ According to the “Regulation on organisation of on-site visits by enforcement authorities in the Kyrgyz Republic”.

Acquiring Adequate Powers and Raising Institutional Capacity

In order to fully comply with Principle 6, the government and the legislature should ensure that inspectors are given adequate access to industrial sites so the regulated community can be inspected with the appropriate frequency. In particular, the government needs to ensure that inspectors have a sufficient mandate to deal with emergency situations that pose a high risk to the environment and human health. In severe and emergency cases, especially when the offender remains reluctant to comply, it might be appropriate to give the inspection authorities the legal mandate to implement the required environmental measures at the expense of the offending company.

Such powers should be given in conjunction with unambiguous, publicly available decision-making policies, especially on matters that involve some level of discretion, as well as with more constructive, transparent, and co-ordinated working methods for inspectors (Principle 5). The internal mechanism for quality control of inspectors' work in the regional departments and at the central level should be strengthened and should complement the existing appeal mechanism (Principle 3).

Putting the accent on environmental performance

Another priority is to gradually phase out the responsibility of environmental inspectors to execute collection of taxes and charges. Nowadays, the legislation allows environmental authorities to retain a large percentage of the pollution charges and damage compensations. This leads inspectors towards concentrating their efforts on maximising revenues instead of addressing environmental problems. The problem could be tackled by shifting the responsibility of enforcing payments, for example, to tax inspectors.

Nevertheless, environmental inspectors should retain the task of checking the correctness of initial data that served to calculate environmental charges and penalties. At the same time, sufficient funding needs to be provided from other sources (*e.g.* state budget, administrative charges, or another financing mechanism that does not hinder integrity of enforcement).

Elevating the institutional status and capacity of the enforcement agency

The MEES needs at least to elevate the status of the Environmental Control Division to a departmental level, if not to create an inspectorate with a greater degree of institutional autonomy and sufficient capacity to fulfil the legally-defined responsibilities of the environmental enforcement authority (see Principle 7). This will help to signal that implementation is becoming increasingly important after a decade of very intensive development of environmental policies and regulatory requirements.

Furthermore, to comply with Principle 8, appropriate assistance (methodological support, staff training, etc.) should be provided to enforcement authorities working at the sub-national level to enable them to cope with functions that were delegated to them. In addition to providing support, the national level authorities should exercise a stricter quality control of inspection and ensure cross-country uniformity and fairness of regulation.

Separating permitting and inspection functions

The MEES needs to continue strictly separating inspection and permitting functions at the level of individuals carrying these out (Principle 6); in the longer term, when more human resources are available, the MEES should target the separation of permitting and inspection at the departmental level, at both national and sub-national levels. With this organisational design in place, an information exchange mechanism needs to be established to ensure feedback between permitting and inspection.

Any internal duplication in carrying out inspections should be eliminated: responsibilities for inspections of SMEs should be delegated to regional departments. Staff from the national level can themselves carry out inspections of large polluters, or support regional departments in carrying out such inspections.

Strengthening the financial basis of enforcement authorities

Limited financial and human resources are one of the greatest problems of the environmental enforcement system in the Kyrgyz Republic. While authorities cannot expect immediate positive changes in this regard, the MEES staff could take concrete steps towards optimising the use of resources (Principle 21) and expanding them, including:

- Linking budget planning with priority and target setting, and making full use of a risk-based approach of inspecting industrial facilities;
- Analyzing thoroughly the most urgent needs for investment in inspection equipment and laboratories, and seeking international support to at least partly contribute to improving infrastructure;
- Making budget proposals clear and robust, supplied with user-friendly annotations;
- Signalling to policy makers when responsibilities do not match resources, and the possible consequences of inspectors not performing certain tasks as a result;
- Providing incentives, including non-monetary, to attract and retain qualified staff.

The MEES needs also to investigate possibilities of introducing temporary means for raising funds for inspectors work, such as recovery of costs of inspections in case of non-compliance, donations, outsourcing, and others. It is very important, however, that these measures do not provide perverse incentives to inspectors to over-enforce and create situations of conflict of interest regarding revenue, *e.g.* those where inspectors provide services conflicting with their regulatory functions (Principle 22). In the longer term, shifting to full public financing of environmental enforcement authorities should be targeted.

ADOPTING RISK-BASED AND PERFORMANCE-ORIENTED WORKING METHODS

The efficiency and effectiveness of the inspection system can be improved when efforts are proportional to environmental risks, actual impact, and compliance history of regulated enterprises (see Principle 14). This implies that enterprises posing substantial environmental and compliance problems are inspected most frequently. Within such a strategic risk-based approach the frequencies of inspections and the methods of compliance assurance will differ between companies or sectors. The enforcement authorities should define sector-specific frequencies of inspection and the methodology that should be followed to adjust facility-specific frequencies.

Improving data management as a precondition for strategic planning

Currently, strategic and operational planning is hampered by lack of a clear and up-to-date inventory of the regulated community, which would contain general information about companies, as well as data on their economic and environmental performance. Therefore, the MEES needs to improve the system for collecting and managing information about the regulated community, as required in Principle 15.

The data, which are fragmented at the moment, need to be assembled in a single information system. The MEES needs to review and consolidate the monitoring system in order to exclude overlaps, share data, and decrease costs. For this purpose, internal networks should be put in place and monitoring systems should be integrated and optimised. Simultaneously, the government needs to gradually enhance self-monitoring and self-reporting by industrial operators to ease budget pressures on environmental authorities.

Adopting Risk-Based and Performance-Oriented Working Methods

It is necessary to make publicly available the facility-specific information collected through self-monitoring and during inspections, without prejudice to the confidentiality of data and the process of case investigation. To this end, the MEES could use its web site, which currently has very little information of environmental character. This will allow the inspection authorities to justify their activities and the priorities they have defined. This kind of communication will also be beneficial to the credibility and accountability of public authorities.

Extending the aim and increasing transparency of compliance assurance

Where inspections are allowed and carried out, there seem to be clear instructions and rules as to how to plan, prepare, execute, report, and file inspections. It is positive that scheduled as well as unscheduled inspections take place, that complaints of the general public are taken into account and that co-operation with other authorities and experts is sought in relevant cases. Thus, Principle 17 is mainly respected.

However, the system lacks a means for finding solutions to environmental problems in a co-operative manner, as required in several Principles. Inspectors will need to demonstrate a constructive attitude and start by measures preventing violations (Principle 16), rather than overusing punitive measures that in combination with a low feasibility of regulatory requirements leads to a confrontational environment.

Also, the working methods and procedures that inspectors apply should be transparent and must be properly communicated to the enterprises. In this way, the regulated community is aware of what they can expect from inspectors and do not have to fear unreasonable or arbitrary judgments. All these measures should help to lift the current restrictions on inspection frequency.

Developing uniform and coherent compliance assurance policies

In parallel with the above, the national-level enforcement authority should develop uniform and coherent criteria and procedures for priority setting, inspection, and non-compliance response (see Principles 14 and 18). Such compliance assurance policies are necessary for guiding the decision-

Adopting Risk-Based and Performance-Oriented Working Methods

making process and establishing intra-agency discipline and law-abiding behaviour. They should be developed and communicated to each environmental inspector.

With compliance assurance policies in place, most administrative enforcement decisions may and should be delegated to the staff level for quicker action. The higher management at the regional and national levels should establish a procedure for reviewing or auditing case files to assure that actions taken are consistent with policies. The policies themselves also should be subject to constructive revision by the central enforcement authority.

Consolidating performance assessment and management

In order to effectively manage resources and communicate more meaningfully with policy makers and the public, adequate performance indicators are needed (Principle 19). At a minimum, these indicators should reflect targets identified in the compliance assurance strategies, describe the profile of the regulated community, the use and impact of preventative and punitive instruments of compliance assurance, the actual levels of compliance, and time required to bring regulatees to compliance, as well as the institutional capacity to ensure desired levels of compliance. With a long-term perspective, indicators measuring the outcomes of compliance assurances, *i.e.* change in the compliance behaviour or, when possible, environmental results, need to be developed and promoted.

The adoption of performance evaluation and management procedures (Principle 13) is required in addition to the reporting on activities, which presently is carried out without in-depth analysis of data or feedback to managers and political leaders. In the future, reporting and analysis of past inspection activities should be used more systematically for planning purposes, including budget planning. Within the planning framework, an increased intensity of inspection or higher amounts of fines collected should not be established as intrinsic targets, as sometimes is the case nowadays.

EMBRACING HIGHER PROFESSIONAL STANDARDS AND FOSTERING INTERNATIONAL CO-OPERATION

Developing knowledge and skills, and improving attitude

The regulated community reports some positive experiences regarding the professional knowledge and integrity of environmental inspectors. On the other hand, cases are reported where inspectors do not have sufficient experience and knowledge, and show behaviour that nourishes confrontations instead of creating incentives to adopt better compliance behaviour. To improve the situation and meet Principles 7 and 20, the following actions are necessary:

- Develop, publicise, and follow an ethical code of conduct of environmental inspectors;
- Identify clear and professional criteria for staff selection and appropriate measures to keep qualified staff (appropriate remuneration, social protection);
- Set up a programme for continuous training to develop technical, communication, and management skills of inspectors, and invite partners from other executive and judicial agencies to participate in joint training programmes;
- Motivate staff to perform better by introducing measures that reward better environmental performance of regulatees;
- Develop an “Inspectors’ Library” containing full sets of existing regulations, training, and reference materials.

Strengthening the framework for international co-operation

As required in Principle 23, domestic efforts should be complemented by a strengthened framework for international co-operation with inspectors from neighbouring countries to address regional and cross-border priority problems. In order to enable such co-operation, the government will have to include compliance assurance as one of the priorities in regional and bilateral co-operation agreements, in particular with OECD countries and international organisations. Jointly with international partners, the MEES should work towards providing training for inspectors on requirements of Multilateral Environmental Agreements (MEAs), and ensuring that adequate resources are raised to compensate additional burdens of ensuring compliance with MEAs. Among other things, this will require better internal co-ordination of technical assistance programmes relevant to inspection activities.

INTERACTING MEANINGFULLY WITH STAKEHOLDERS

Enlarged stakeholder involvement is likely to increase support for, and effectiveness of, environmental compliance assurance. This refers both to governmental and non-governmental stakeholders, especially those who work in areas that affect or can be affected by environmental regulations.

The Republic of Kyrgyzstan has already made important progress towards motivating the whole of society to become involved in the promotion of sustainable development. For example, a Country Development Framework (CDF) was formulated and adopted through a participatory process that resulted in the identification of strategic development objectives and responsibilities of various stakeholders. To implement the CDF, participatory approaches will also need to be embraced by government agencies in their routine work.

Seeking better co-operation with other government authorities

Within the system of environmental compliance assurance, it is important that different inspection authorities (e.g. dealing with health, labour, and tax regulation) work together and co-ordinate their activities in order to promote the efficiency of compliance assurance and prevent unnecessary burdens for the regulated community (Principle 9) arising from overlaps, duplication, or poor co-ordination of work, including on-site inspections. To this end, specific legal requirements should be associated with concrete procedures and mechanisms for government agencies to co-operate on related activities, and eliminate any overlaps of responsibilities. Furthermore, political leaders need to encourage their staff to co-operate and

allow staff time to be allocated for information sharing, joint planning, and implementation of actions.

Along with the executive arm of the government, the judiciary should play an important role in ensuring compliance. While interaction with courts was reported to be satisfactory, the relations with the specialised Environmental Prosecutors' Office (EPO) suffer from conflicts over delineation of responsibilities and disputes over the quality control arrangements (sometimes EPO officers are simply redoing the work of MEES officers). To address this situation, the government may want to review the role of the Environmental Prosecutors' Office to focus its work on preparing environmental cases for the courts rather than conducting second-line inspection.

Enabling the participation of local communities

Since landscapes and biodiversity are seen as commodities of international value and a basis to develop tourism, more pressure is likely to be put on local authorities to better protect and inspect their environment. They will be required to take action when problems occur. Presently, local authorities, even large ones, are not entitled to perform inspections although the legislators are considering the decentralisation of administrative responsibilities. This trend to decentralise compliance assurance responsibilities and powers to the lowest level, where issues can be managed effectively should be pursued in the future (Principle 8).

At the same time, it will be important that local authorities have enough capacity to carry out new functions. This should be built before an inspection and enforcement mandate is given. Besides, uniformity of enforcement must be guaranteed and cases prevented where local authorities adopt lax environmental enforcement to favour some members of the regulated community. National supervision and second line inspection will be instrumental to achieving such uniformity of enforcement.

Establishing effective dialogue with the regulated community

The stakeholders' involvement should be supported by establishing effective mechanisms for a meaningful dialogue with the regulated

Interacting Meaningfully with Stakeholders

community (Principle 11). Such a dialogue should aim at discussing the approaches that balance environmental objectives with the need for economic and social development of the country. To this end, the enforcement authority could regularly discuss the feasibility of regulatory requirements and technical solutions to environmental problems with industry. Regular meetings with industry representatives, including branch associations or unions of SMEs, could be an avenue for this work.

During inspections, pollution prevention measures should be considered and recommendations provided to facility managers to begin the introduction of environmentally-friendly techniques. More concrete advice on such techniques should be obtained from specialised institutions, such as Cleaner Production Centres or consultancy services.

In the case of SMEs, the environmental authorities should make a greater effort to explain new requirements during meetings and develop sector-specific guidance documents on ways to achieve environmental compliance. For example, an important target group of SMEs are petrol stations or car repair shops. These guidance documents should stress “win-win” solutions and be simple and clear in order to attract the attention of small entrepreneurs and their scarce financial resources.

Including the general public

Since Soviet times, there has been no tradition of the general public actively contributing to the development of society. Poverty and day-to-day survival are predominant public concerns. Awareness and knowledge of environmental issues is low. This results in limited and volatile support for firm environmental enforcement. However, there are some NGOs that actively back the work of environmental inspectors and the MEES in general.

The low level of public participation should be addressed by increasing the pro-active supply of easy-to-understand information. Such information may include descriptions of successful enforcement cases, data on industry’s environmental performance at the facility level, ambient conditions in certain localities, performance of the inspectorate, etc. Disclosure of information that is highly relevant for citizens, as opposed to non-targeted

dissemination of policy documents, will be an important step towards improving environmental awareness and public participation (Principle 10).

In addition to legally requiring industry to report environmental data, the MEES should develop ways to disseminate information. To inform the public proactively, the MEES will need to collect and display data in an electronic format on the Ministry's web page, and extend and make regular contact with mass media and NGOs. Environmental authorities need to signal clearly what information is available, either free of charge or for a small fee to cover administrative costs of handling and copying this information.

The MEES should also create opportunities for stimulating an inflow of information from citizens, *e.g.* by establishing an environmental "hotline", as well as taking action on, and providing adequate feedback to, citizens complaints or proposals. Creation of a public relations unit would be an institutional measure to help in this regard. Environmental NGOs could be both a target audience and allies to extend public participation.

Citizen compliance control (for instance, independent monitoring of ambient conditions in the vicinity of industrial facilities) and enforcement should be encouraged. The scope of citizens' involvement, however, should not include on-site visits of industrial installation without a government inspector, although voluntary inspectors can accompany government as "watchdogs" to preserve the integrity of the compliance assurance programme.