



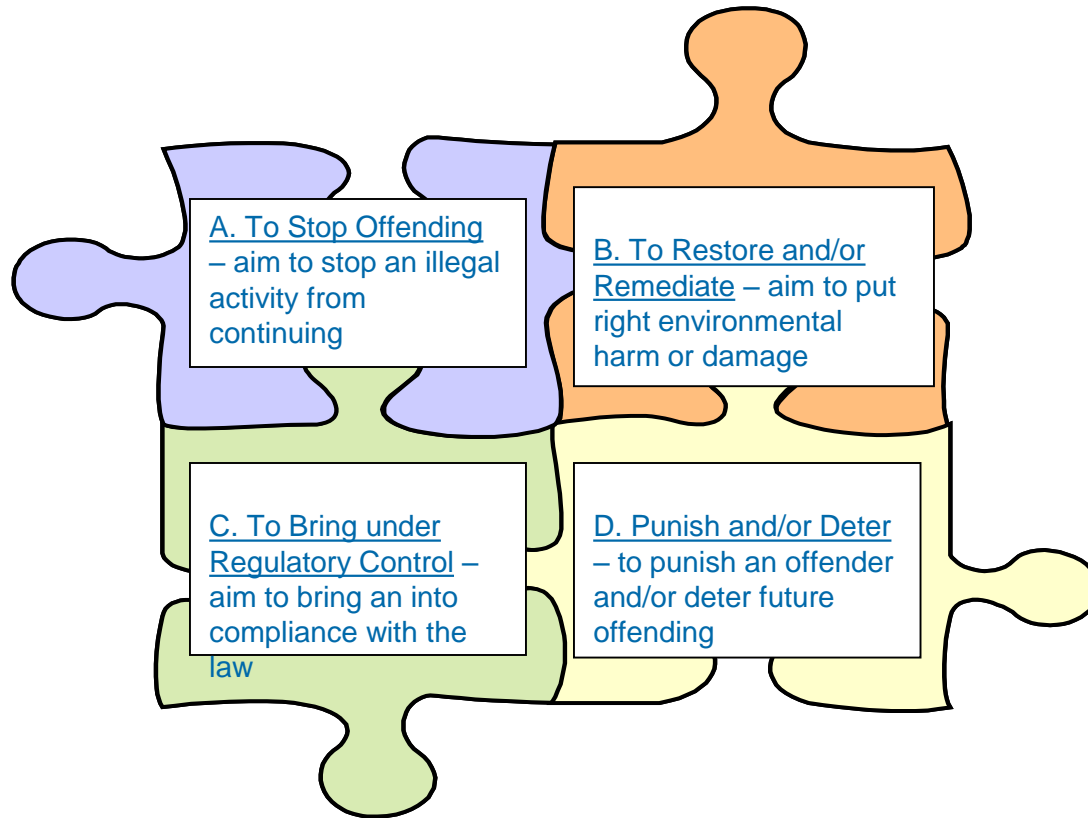
Smarter Enforcement Strategies

Anne Brosnan

Deputy Director (Chief Prosecutor) Environment Agency England

3 November 2014

Outcome Focussed Enforcement



Regulatory Activities: Traditional

- ➔ Issue Environmental Permits
- ➔ Monitor Compliance
- ➔ Take Enforcement Action
 - ➔ Advice and guidance
 - ➔ Issue a warning letter
 - ➔ Issue Enforcement Notice
 - ➔ Prosecution or Caution
 - ➔ Impose Civil Sanction (or accept).

Better Regulation Agenda

- ➔ Help business comply with environmental obligations
- ➔ Maintain and improve environmental standards
- ➔ Reduce unnecessary administrative burdens
 - ➔ Environmental Permitting : flexibility
 - ➔ Waste protocols
 - ➔ Exemptions for low risk activities
- ➔ More mature regulation for good performers
- ➔ Target enforcement on illegal activity

Smarter Enforcement

- ➔ Must be underpinned by Risk Assessment
- ➔ Targeting and Profiling : Intelligence !
- ➔ Prioritisation
- ➔ Retain a formal criminal enforcement route
- ➔ Consider diversion from criminal proceedings
 - ➔ Alternative methods of managing environmental performance
 - ➔ Alternative methods of disposal

Compliance Assurance

- ➔ For trusted operators
- ➔ Part of good Corporate Social Responsibility
- ➔ Hallmark of a professional operator
- ➔ Likely to involve full self monitoring
- ➔ Supply of regular good quality data
- ➔ Good informed decision making by regulator
- ➔ Avoid or reduce impact of prosecution

Compliance Assurance

- ➔ Less routine visits needed
- ➔ Well established relationships
- ➔ Self reporting of minor breaches
- ➔ Influence regulator assessment
- ➔ Properly qualified personnel involved
- ➔ Technical skills and know how to put it right
- ➔ Underpinned by enforceable commitments

A Serious Incident

- ➔ Immediate on site response
- ➔ Well qualified personnel dealing
- ➔ Established documented process
- ➔ Report on causation
- ➔ Explanation and mitigation
- ➔ Foreseeability
- ➔ Evidence of actions to forestall the event

Prosecution

- ➔ Secures Legislative Compliance
- ➔ Prosecute Offences in a public forum
- ➔ Secure Convictions
- ➔ Seek Remediation & Compensation
- ➔ Removes the Proceeds of Crime
- ➔ Deters and Prevents further illegal activity

Diversion from the Criminal Courts

➔ Less serious cases can be dealt with by

- ➔ Enforcement Undertaking
- ➔ Administrative Penalty
- ➔ Stop Notice
- ➔ Clean Up Order
- ➔ Warning Letter/Advice & Guidance
- ➔ Disruption techniques

Imposition of Civil Sanctions

- ⇒ Apply sanctions more quickly
- ⇒ Proportionate
- ⇒ Restores and improves damaged environments
- ⇒ Stops illegal activity quickly
- ⇒ Removes financial gain
- ⇒ Embeds the “polluter pays” principle
- ⇒ Tangible benefits for people and the environment
- ⇒ Does not criminalise unnecessarily

Risk Assessment

- ➔ Alternative enforcement must be underpinned by good risk assessment.
- ➔ Operator performance
- ➔ Type of activity
- ➔ Sensitivity of local environment/community
- ➔ Prioritisation of high risk activities
- ➔ Targeting and profiling of offenders