

OVERVIEW OF THE PRINCIPAL ISSUES AND THEMES

The Cooperative Enforcement and Compliance Workgroup (Enforcement Workgroup) was created to strengthen binational cooperation between institutions in Mexico and those in the United States that are responsible for enforcing their respective environmental laws.

The workgroup seeks to fulfill the objectives of the U.S.-Mexico Border XXI Program through environmental compliance and enforcement activities throughout the border areas of both countries, respecting each country's own resources and sovereignty.

In establishing the workgroup, both countries recognized that effective enforcement of and compliance with environmental laws in the U.S.-Mexico border area are essential to ensuring the accomplishment of each country's environmental goals, as well as preventing transboundary environmental problems.

OBJECTIVES OF THE ENFORCEMENT WORKGROUP AND PROGRESS TOWARD GOALS

Since 1992, the *Procuraduría Federal de Protección al Ambiente* (PROFEPA, or Mexico's Federal Attorney General for Environmental Protection) and the U.S. Environmental Protection Agency (EPA) have collaborated – along with other entities and organizations involved in environmental protection – to promote compliance with the law as a way of solving shared environmental problems.

Over the years, federal, state, regional, and local institutions on both sides of the border have cooperated on a variety of issues affecting the environment. The workgroup has sought to strengthen that effort by establishing subworkgroups of federal, state, and local environmental officials in the United States and Mexico. The subworkgroups focus on strengthening enforcement cooperation, ensuring the efficient use of government resources, and helping the two countries and the border states to develop common enforcement and compliance priorities.

The workgroup developed a plan that addresses seven priority areas. Since 1996, the workgroup has made significant

progress in fulfilling the objectives in its seven priority areas. The projects that implement the workgroup objectives and priority areas are discussed in more detail below. As defined in the 1996 U.S.-Mexico Border XXI Program: Framework Document (Framework Document), the seven workgroup objectives are presented in Table 6-1.

Cooperative Enforcement and Compliance

Objectives
<ul style="list-style-type: none"> ● Continue efforts to achieve enforcement and compliance with environmental requirements in the border area. ● Establish and enhance networks of cooperation among the various federal, state, and local agencies on both sides of the border that are involved in environmental enforcement and compliance. ● As a complement to a strong program of law enforcement, encourage voluntary compliance by industry through environmental auditing, the use of clean technologies, the use of less contaminating raw materials, and other strategies. ● Develop similar systems for reporting on environmental enforcement and compliance, in accordance with the legal framework of each party. ● Promote mechanisms that enhance the evaluation of compliance with environmental law. ● Promote pollution prevention as a mechanism for solving compliance problems. ● Continue to promote public participation within the legal framework of each party.

The objectives listed above may have been paraphrased from the *Framework Document*. For a more detailed description of the objectives, please refer to that report.

The objectives described in this section may be referred to by number. The numbers are intended for ease of reference only and do not imply order of importance.

Table 6-1

Progress Toward Goals Cooperative Environmental Enforcement and Compliance Strategies

The workgroup is developing cooperative enforcement and compliance strategies to improve coordination among local, state, and federal agencies on both sides of the border.

To promote that goal, the workgroup has established subworkgroups along the border. The first three subworkgroups were established for Texas-New Mexico-Chihuahua, California-Baja California, and Arizona-Sonora. In 1998, two additional subworkgroups were established, one for Texas-

Coahuila and the other for Texas-Nuevo León-Tamaulipas. Along the entire border, subworkgroups are now working to fulfill the objectives of the Border XXI Program; they will develop concrete enforcement activities that will control and reduce pollution and protect the environment and its resources.

The subworkgroups meet throughout the year to share information about border enforcement actions and to identify and develop cooperative enforcement and compliance actions to address common priorities.

In addition to forming subworkgroups along the entire border, the Enforcement Workgroup has worked with other Border XXI workgroups, state and local governments, the International Boundary and Water Commission (IBWC), Mexico's *Comisión Nacional del Agua* (CNA, or National Water Commission), and customs and transportation officials to coordinate the targeting of enforcement and compliance activities and to institute joint training and capacity-building programs.

Among the cooperative enforcement and compliance activities performed by the regional subworkgroups, the prominent activities in which binational cooperation was involved included the development of enforcement strategies related to investigations and inspections. For example, the subworkgroups, working with the Hazardous and Solid Waste Workgroup, use national data bases to establish potential enforcement targets to which to apply legislation related to the illegal transportation of hazardous wastes. The subworkgroups are also exchanging information about recycling, treatment, and disposal facilities in the United States and Mexico. The shared information allows each respective country to determine whether hazardous waste is being properly and legally recycled or treated and disposed of.

Likewise, the subworkgroups have made efforts to strengthen institutional cooperation with the United States Department of Transportation, Mexico's *Secretaría de Comunicaciones y Transportes* (SCT, or Secretariat of Communication and Transportation), Mexico's *Secretaría de Hacienda y Crédito Público* (SHCP, or Secretariat of Treasury and Public Credit), and Mexico's *Secretaría de Comercio y Fomento Industrial* (SECOFI, or Secretariat of Commerce and Industrial Development). The purpose of this work has been to address issues related to the use of labels and identification placards on shipping containers used for hazardous waste.

Cooperation in Specific Enforcement Cases

The workgroup has also worked to cooperate on specific enforcement cases that have transboundary implications. To advance this process, EPA, PROFEPA, and the U.S. Department of Justice (DOJ) have begun identifying various mechanisms to facilitate coordination of specific matters. Coordination will focus specifically on matters related to law enforcement and compliance with environmental standards.

In 1997, EPA, PROFEPA, DOJ, and the Canadian authorities analyzed legal issues pertaining to the exchange of information. The analysis was completed under the auspices of the North American Law Enforcement Workgroup in support of enforcement cooperation. The effort has provided a solid basis for developing guidelines for the exchange of information within the Enforcement Workgroup. In 1998, PROFEPA, EPA, and DOJ agreed to issue a joint communication to inform field personnel and the subworkgroup members about international and binational mechanisms that assist law enforcement officials in Mexico and the United States in obtaining information that might help them better cooperate on case-specific matters. Currently, that communication is in draft form, and it should be completed by late 2000.

A variety of specific cases resulted from binational cooperation within the subworkgroups. Currently, the subworkgroup members are cooperating on two hazardous waste cases involving the improper shipment of hazardous wastes from Mexico into the United States.

In another case, the state of California worked with the California-Baja California Subworkgroup on a case involving the Alco Pacífico firm in Tijuana, Baja California. In that case, the Alco Pacífico owner fled to the United States after PROFEPA closed his lead smelter for serious environmental violations. The state of California sued both the generator and the owner for violating California environmental laws. The fines from that case were used to help remediate the environmental damage caused by Alco Pacífico. In the case of *Ejido de Jacume* in Tecate, Baja California (an ejido is community-owned land), subworkgroup members representing EPA, California's Integrated Waste Management Board, the U.S. Border Patrol, and the U.S. Customs Service cooperated with PROFEPA and the Servicio de Aduanas (Mexico's Customs Service) to remove tires that had been illegally dumped in Mexico. The tires were returned

to the United States. In another investigation, the United States and Mexico cooperated extensively to determine whether the transboundary movement and use of enhanced soil that had been imported into Mexico complied with the environmental laws of both countries.

Another example of binational cooperation was the EPA-Texas Natural Resources Conservation Commission (TNRCC) used oil border initiative at the Ysleta port of entry in El Paso, Texas, which resulted in enforcement actions for illegal importation of hazardous waste. Cooperation between TNRCC and PROFEPA also resulted in the recycling in El Paso of 50 tons of aluminum slag, which had been stored in the state of Chihuahua. In addition, the workgroup has held informational meetings with Mexican transporters on transportation requirements for the disposal of hazardous waste. The workgroup also has cooperated with Mexican transportation and health officials on shipping labels and poster requirements for the transportation of hazardous waste and materials.

Information Sharing on the Results of Enforcement and Compliance Activities

EPA and PROFEPA also share information about their enforcement and compliance activities. Such exchange helps the workgroup better inform the public about activities in the border region. To help achieve this objective, the workgroup has been tracking compliance and enforcement indicators identified by PROFEPA and EPA. The workgroup members have also shared information about Mexican annual reports, including descriptions of more serious cases of violations. These indicators are discussed in more detail later in this chapter.

The subworkgroups also have exchanged information about specific environmental problems, such as the cases discussed in the previous sections. With such information available, workgroup members are better able to target enforcement and compliance efforts to areas in which there are serious threats to human health and the environment or in which a strong enforcement presence is needed to deter future violators.

Workgroup members have cooperated extensively on a binational basis to ensure compliance assistance to the transportation sector. The subworkgroups have held various meetings with Mexican transporters to provide information about legal requirements in both countries, partic-

ularly those related to insurance policies and financial assurance for transporters of hazardous waste.

Training

EPA and PROFEPA have supported a cooperative training program designed to build institutional capacity in various aspects of environmental enforcement and compliance. In the United States, the work is done with the states, with the support of the Western States Project and the Southern Environmental Enforcement Network. The courses are designed for federal, state, and local officials involved in environmental enforcement and compliance matters. Inspectors from the U.S. and Mexican customs services have participated in the courses and have received training on the laws and regulations governing the transboundary movement of hazardous wastes, ozone-depleting substances, chemicals, and pesticides and illegal trafficking in flora and fauna. Since 1996, the subworkgroups have participated in and staged various training courses in both English and Spanish on a variety of topics, including:

- Principles of environmental enforcement
- Pretreatment inspections
- Field investigations and sampling
- Hazardous waste laws and definitions
- Transboundary hazardous waste and chlorofluorocarbon (CFC) shipments
- Comparative analysis of U.S. and Mexican legal structures
- Illegal trafficking in flora and fauna
- Air and pesticide enforcement issues

These courses have trained hundreds of government personnel, along with a significant number of people in the private and nongovernmental fields.

Technical and Legal Consultations

EPA and PROFEPA have worked to improve technical and legal consultations to build enforcement and compliance capacity. EPA and PROFEPA, with the assistance of the Environmental Law Institute and participation by nongovernmental organizations, sponsored a workshop on the legal challenges of transboundary environmental enforcement. EPA and PROFEPA also exchanged information about methods used to determine the amount of sanctions for infractions of the law. In addition, in 1988, PROFEPA officials observed a demonstration of EPA's economic benefit model, or BEN. BEN

is a computer program used to determine how much a violator profited by not complying with environmental laws. BEN is used to calculate an appropriate penalty, which helps to ensure that a violator does not gain an economic advantage over competitors who comply with the law.

Environmental Auditing and Voluntary Compliance Programs

EPA and PROFEPA have worked together to promote voluntary environmental compliance programs and environmental auditing and pollution prevention techniques in the border area.

Several efforts undertaken between 1996 and 1999 have produced tangible results in this area. In the 1996–1997 period, as part of PROFEPA's *Industria Limpia* (Clean Industry) program, 18 *maquiladoras* performed environmental audits, and another 30 formalized their action plans. In March 1997, TNRCC, PROFEPA, and EPA met in El Paso, Texas to present their voluntary compliance programs. In September 1997, EPA and PROFEPA participated in a conference in Washington D.C. on environmental auditing and voluntary compliance programs for the industrial sectors. EPA also produced a video on the use of environmental auditing as a tool to assure compliance and to identify opportunities to prevent environmental pollution.

In 1998, EPA and PROFEPA developed and distributed bilingual materials promoting compliance in the *maquiladora* industry. The two agencies also worked together to disseminate information about PROFEPA's *Programa de Auditoría Ambiental* (Environmental Audit Program).

In 1999, EPA and PROFEPA sponsored the Environmental Auditing and Pollution Prevention in the *Maquiladora* Industry: Toward a Public/Private Partnership Conference. The conference helped establish a public-private partnership focused on improving environmental and economic performance in the *maquiladora* industry. The conference provided a forum for dialogue between representatives of *maquiladoras*, senior officials from U.S. and Mexican federal and state environmental agencies, and environmental groups on how voluntary programs and environmental auditing can help prevent pollution and achieve environmental compliance.

Creation of the Border XXI Wildlife Enforcement Subworkgroup

In Mexico, PROFEPA has jurisdiction over the monitoring of compliance with laws that apply to environmental pollution prevention and control, natural resources, forestry, terrestrial flora and fauna, and fishing. However, in the United States, the U.S. Fish and Wildlife Service and state fish and game departments have jurisdiction over wildlife, flora, and fauna issues. Cooperation between the United States and Mexico on these issues currently occurs outside the Border XXI process.

Consequently, at the 1998 National Coordinators meeting (EPA and Mexico's *Secretaría de Medio Ambiente, Recursos Naturales, y Pesca* [SEMARNAP, or Secretariat of Environment, Natural Resources, and Fisheries] serve as National Coordinators), the workgroup agreed to invite representatives of the fish and game departments of the U.S. border states to workgroup and subworkgroup meetings in an attempt to broaden workgroup activities to address wildlife, flora, and fauna issues. The workgroup has decided to assess this effort in the development of the next border program.

ENVIRONMENTAL INDICATORS¹

EPA and PROFEPA have worked together to exchange information about indicators used in each country that address the performance of their environmental enforcement and compliance programs.

Both the United States and Mexico collect information about the number of inspections conducted in the border area. This enforcement activity measures the deterrent presence of regulatory agencies in the border area. Conducting facility inspections is one of the basic enforcement measures used to assure compliance.

In addition to inspection numbers, PROFEPA collects the following information:

- Facilities that were totally or partially closed because of environmental infractions
- Facilities at which minor infractions or no infractions were identified

¹ The classifications of the indicators have been omitted from this section because the indicators for the Cooperative Enforcement and Compliance Workgroup do not lend themselves to the Organisation for Economic Cooperation and Development (OECD) framework for organizing indicators (see Appendix 1). For example, inspections are not necessarily carried out in response to environmental and natural resource pressures. Some inspections are carried out even when there is no indication of an environmental problem.

- Facilities that were fined as a result of environmental violations

Information that EPA collects includes data on the number of enforcement actions by federal and state-delegated programs in the border area, penalties, amounts collected as a result of those actions, and the amount of pollution reduced as a result of those actions.²

**PROCURADURÍA FEDERAL DE PROTECCIÓN AL AMBIENTE
COMPLIANCE INDICATOR:
NUMBER OF INSPECTIONS PERFORMED IN THE BORDER AREA**

This indicator represents one of the basic surveillance activities performed by Mexican environmental authorities to ensure compliance with environmental standards (Table 6-2).

Mexico: Number of Inspections in the Border Area	
Year	Number of Inspections
1996	3,323
1997	3,127
1998	2,308

Table 6-2

**U.S. ENVIRONMENTAL PROTECTION AGENCY
COMPLIANCE INDICATOR:
NUMBER OF INSPECTIONS PERFORMED IN THE BORDER AREA**

This indicator measures the deterrence presence of regulatory agencies in the border region. Conducting facility inspections is one of the basic enforcement measures used to assure compliance. Many factors can affect the number of inspections conducted, including the number of facilities to be inspected, the amount of enforcement resources, and general compliance rates among regulated facilities (Tables 6-3, 6-4, and 6-5).

United States: Clean Air Act Inspections of Federally Reportable Facilities in the Border Area ^a				
State	Total Number of Facilities in 1998	Percentage of Facilities Inspected by States and EPA		
		1996	1997	1998
Arizona	63	79	76	73
California	71	88	51	80
New Mexico	35	32	19	41
Texas	311	29	11	25
Total	480			
Average		51	28	41
National	52,255	46	44	46

^a "Federally reportable facilities" include (a) facilities that emit more than 100 tons per year; (b) facilities with actual emissions less than 100 tons, but with potential to emit more than 100 tons per year; and (c) facilities emitting hazardous pollutants or that are "new sources" of pollution.

Table 6-3

United States: Total Number of Inspections of Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF) in the Border Area				
State	Number of TSDFs in 1998	Percentage of Facilities Inspected by States and EPA		
		1996	1997	1998
Arizona	7	71	43	57
California	9	79	78	89
New Mexico	4	100	100	100
Texas	33	67	73	70
Total	53			
Average		71	73	73
National	3,128	69	68	67

Table 6-4

United States: Clean Water Act Total Number of Inspections of Active Major Dischargers in the Border Area ^a				
State	Total Number of Active Major Dischargers in 1998	Percentage of Facilities Inspected by States and EPA		
		1996	1997	1998
Arizona	9	38	25	77
California	20	100	94	95
New Mexico	3	67	0	100
Texas	63			
Total				
Average		66	45	61

^a "Active major dischargers" is a term used to characterize facilities, or dischargers, under the U.S. National Pollution Discharge Elimination System (NPDES). Major dischargers are determined on the basis of the quantities discharged and the sensitivities of the receiving waters.

Table 6-5

² EPA's information is taken from data obtained from EPA's Integrated Data for Enforcement Analysis (IDEA) database and on revisions of those data. Information represents EPA's fiscal year - October to September - and includes actions in all counties within 100 kilometers of the U.S.-Mexico border. Unless otherwise noted, any discrepancies between these figures and the figures in the 1997 *United States-Mexico Border Environmental Indicators Report (1997 Indicators Report)* are the result of the date the data were obtained and the fact that the data in the 1997 Indicators Report represented the calendar year. In the 1997 *Indicators Report*, EPA reported on the number of supplemental environmental projects (SEP) that occurred in the border area. A SEP is an environmentally beneficial project agreed to in an enforcement case settlement that goes beyond complying with regulations in exchange for penalty reductions. In this report, EPA is not using SEPs as a compliance indicator, since SEPs are entered into voluntarily by a defendant and do not necessarily measure the deterrence value of the U.S. border enforcement program.

**PROCURADURÍA FEDERAL DE PROTECCIÓN AL AMBIENTE
COMPLIANCE INDICATOR:
NUMBER OF CLOSURES AND PENALTIES IN THE BORDER AREA**

These indicators measure the surveillance activities and sanctions of the Mexican authorities in the border area in the effort to control environmental pollution and protect the environment.

During 1996, PROFEPA carried out 3,323 inspection visits in the border area, of which 59 resulted in partial closures, 18 in total closures, and 2,545 in identification of minor infractions. During 701 inspections, no infractions were identified. As a result of the inspections, 2,622 installations were fined. Regarding compliance with environmental standards by the *maquildadora* industry, PROFEPA noted a reduction in serious infractions in that sector, from 8.31 percent in 1993 to 2.32 percent in 1996, and a decrease of 72 percent in closures of installations. In 1997, PROFEPA carried out 3,127 inspection visits in the border area, which resulted in 61 partial closures, 21 total closures, and identification of 2,469 minor infractions. During 572 inspections, no infractions were identified.

During the period, 2,551 installations were fined. Regarding compliance with environmental standards by the *maquiladora* industry, PROFEPA noted a minor increase in major infractions in that sector, from 2.32 percent in 1996 to 2.6 percent in 1997. In 1998, PROFEPA carried out 2,308 inspection visits in the border area, which resulted in 37 partial closures, 14 total closures, and identification of 1,814 minor infractions. During 443 inspections, no infractions were identified. Fines totaling \$4,972,956 Mexican pesos were assessed (Tables 6-6 and 6-7).

Mexico: Number of Closures in the Border Area			
Closures^a	1996	1997	1998
Total	18	21	14
Partial	59	61	37

^a A partial closure is an administrative order by which a portion of a tourist project or activity is terminated or suspended. A total closure is an administrative order by which an entire industrial or tourist project or activity is terminated or suspended.

Table 6-6

Mexico: PROFEPA's Indicators					
Year	Number of Inspections	Total Closures	Partial Closures	Minor Infractions	Inspections without Infractions
1996	3,323	18	59	2,545	701
1997	3,127	21	61	2,469	572
1998	2,308	14	37	1,814	443
Total	8,758	53	157	6,828	1,716

Table 6-7

**U.S. ENVIRONMENTAL PROTECTION AGENCY
COMPLIANCE INDICATOR:
NUMBER OF ENFORCEMENT ACTIONS AND PENALTIES IN THE BORDER AREA**

These indicators measure legal actions taken and penalties assessed in the border area by the United States. Many factors can affect the number of enforcement actions conducted, including the number of facilities to be inspected, the amount of enforcement resources, and general compliance rates among regulated facilities. During the next year, the workgroup will improve this indicator to better define and explain enforcement and compliance trends in the border area (Tables 6-8 and 6-9).

Number of Enforcement Actions in the United States Border Area 1996-1998 Fiscal Years					
Media	1996	1997	1998	Total	State/Feder-
Air	29	15	36	80	73/7
Hazardous Waste	11	10	11	32	21/11

^a In 1998, Texas assumed the Clean Water Act National Pollution Discharge Elimination Systems (NPDES) program. From fiscal year (FY) 1996 to FY 1998, EPA took 37 Clean Water Act (CWA) enforcement actions in Texas.

Table 6-8

Penalties Resulting From Enforcement Actions in the United States Border Area with Mexico 1996-1998 Fiscal Years				
Media	1996	1997	1998	Total
Air	\$2,221,685 ^a	\$2,785	\$2,463,771 ^b	\$4,688,241
Hazardous Waste	\$854,088	\$93,417	\$141,420	\$1,088,925
Water	0	0	\$90.00	\$90.00

^a Including EPA settlement against Kelco Monsanto Co. for \$1,857,395
^b Including the State of Texas settlement against Border Steel Inc. for \$2,000,000

Table 6-9

**U.S. ENVIRONMENTAL PROTECTION AGENCY:
AMOUNT OF POLLUTION REDUCED AS THE RESULT OF ENFORCEMENT**

This indicator measures the amount of pollutants not emitted into the environment as a result of enforcement actions in the United States. Although not a direct measure of improvements in ambient environmental quality, the data on the amount of pollutants reduced provide some measure of the contribution of enforcement actions to a cleaner environment (Table 6-10).

Amount of Pollution Reduced in the U.S. Border Area as a Result of EPA Enforcement Actions^a 1996–1998 Fiscal Years	
Year	Pollution Reduction in Kg
1996	1,047,213 ^b
1997	817,000
1998	609,000
Total	2,573,213

^a Based on case conclusion data sheets
^b In the 1997 Indicators Report, EPA reported that pollution in the U.S. border area was reduced by 6,640,000 kilograms (kg) in 1996. A review of the EPA data in July 1999 indicates that pollution was reduced by 1,047,213 kilograms. EPA currently is reviewing the information to rectify the discrepancy.

Table 6-10

OTHER NOTABLE ACTIVITIES

In 1996, with the objective of deterring environmental degradation affecting natural resources and ecosystems, PROFEPA participated in the process of reforming the *Ley General del Equilibrio Ecológico y la Protección al Ambiente* (LGEEPA, or General Law of Ecological Balance and the Protection of the Environment). PROFEPA participated in the process of reforming the *Código Penal para el Distrito Federal* (Penal Code for the Federal District). The modification was designed to strengthen the efficiency of environmental criminal legislation.

Further, in 1997, the *Procuraduría General de la República* (PGR, or Mexico’s Office of the Attorney General) began to participate in the workgroup, specifically in activities resulting in the implementation of technical and legal consultations on environmental law enforcement.

FUTURE PERSPECTIVES

During 1999, the workgroup continued to implement projects focused on the seven priority areas. The projects are updated yearly through conferences and consultations among the various agencies, as well as through the participation of the subworkgroups. In addition, the workgroup seeks the participation of U.S. federal and state wildlife officials to help enforce wildlife laws and to strengthen coordination between the United States and Mexico.

The workgroup will also seek to do the following:

- Develop web-based training.
- Improve tracking of border inspections.
- Ensure accuracy of enforcement and compliance data.
- Further develop indicators of effective enforcement and compliance.
- Better ensure public participation in the workgroup within the respective legal frameworks of each country.
- Consider environmental justice concerns in its actions.
- Finalize joint communication to inform field personnel and subworkgroup members about mechanisms that can assist law enforcement officials in Mexico and the United States.