Best Practices for Enforcing Lighting Regulations

Nicole Kearney
Outline

- Introduction to enforcement
- Developing an enforcement strategy
- Different components of an enforcement strategy
- Resources for enforcement examples and best practice
What is the ‘E’ in MVE?

- **M - MONITORING** - the collection and analysis of data using agreed test methods to give an accurate picture of programme progress and compliance.

- **V - VERIFICATION** – determines whether a product actually performs according to its claimed energy performance value; often a third-party test.

- **E - ENFORCEMENT** – action taken in response to non-compliance offences with a suite of timely and appropriate actions; built on rigorous testing and yields a high return in terms of market and consumer protection.
Enforcement: Safeguarding the Success of S&L Programmes

- It has been said of national level compliance that:
  - “20 percent of the regulated population will automatically comply with any regulation,
  - 5 percent will attempt to evade it,
  - and the remaining 75 percent will comply as long as they think that the 5 percent will be caught and punished”
    - Chester Bowles, 1971

- Enforcement should pose a credible threat to effectively deter non-compliance
Planning for Enforcement of S&L Programmes

- Establish legal basis for enforcement activities
  - Include enforcement provisions and penalties in the national legislative framework

- Determine who is responsible for enforcement
  - Enforcement body with dedicated staff that report to the policy makers
  - Testing and technical experts
  - Investigators and inspectors / enforcement officers
  - Communications staff
  - Legal staff or input

- Plan and budget for your programme activities
  - Develop strategy for enforcement that matches available budget
  - Forward planning for activities
  - Develop internal procedures
  - Seek input from experts and lawyers
  - Collaborate with testing laboratories

- Communicate enforcement strategy to stakeholders
  - Develop guidance to inform stakeholders of their obligations
  - Set up MoUs with relevant bodies
  - Maintain records of enforcement activities
  - Publish compliance rates or results if possible
  - Identify regional collaboration opportunities

- Carry out enforcement activities
  - Identify proportionate responses to different types of non-compliance
  - Determine level of proof necessary for each action
  - Improve compliance rates by removing or improving non-compliant products on the market
Establish a Legal Framework for Enforcement

- Assess existing regulations, administrative rules and authorities
  - Existing laws – including environmental, consumer protection and product safety - can form basis for energy efficiency enforcement
  - Are these sufficient and appropriate?
  - Are new provisions or legislation required?

- The following elements should be addressed:

<table>
<thead>
<tr>
<th>Legislation</th>
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<tbody>
<tr>
<td>Definitions and responsibilities of all participants</td>
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<tr>
<td>Powers to support enforcement authorities</td>
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<td>Penalties or sanctions</td>
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<table>
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<tr>
<th>Administrative Rules</th>
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<td>Consultation processes</td>
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<td>Public accountability</td>
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<td>Reporting of outcomes</td>
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Determine Roles and Responsibilities

- Stakeholder and agency responsibilities must be clearly defined
  - Identify roles of agencies
  - Enforcement staff should have clear responsibilities and be well trained
  - Enforcement staff should be equipped with sufficient powers
- The programme should be flexible and able to respond to programme requirements

Staff required for enforcement

<table>
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<th>Role</th>
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<tr>
<td>Investigators and enforcement officers</td>
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<tr>
<td>Communications and outreach staff</td>
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<tr>
<td>Testing and technical staff</td>
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<tr>
<td>Legal team and experts</td>
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### Budgeting for Enforcement

**Higher investment = more cost effective + more impact**

- Each programme is different and will require different levels of investment to adapt to market needs
  - Ex. Larger market – more staff; smaller market – less staff

<table>
<thead>
<tr>
<th>Typical costs include:</th>
<th>Potential funding sources:</th>
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<tr>
<td>Establishment costs (communications, reporting, etc.)</td>
<td>Recouping costs from non-compliant manufacturers</td>
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<tr>
<td>Management, administrative and investigator staff costs</td>
<td>Registration costs (where products are registered on the market)</td>
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<tr>
<td>Legal advice and enforcement action costs</td>
<td>Penalties from enforcement sanctions</td>
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There are numerous forms of non-compliance:

- Responsibility of different parties
- At different stages of programme implementation
- Different levels of non-compliance
- Different cases of non-compliance dependent on national programme requirements

Each case requires careful consideration and a proportionate and fair response.

- Missing energy label or energy performance rating information
- Misuse of a voluntary or mandatory energy label
- Failure to register a product
- Failure to provide proof of testing
- Failure to submit product for testing
- Failure to cooperate with authorities
- Inaccurate energy performance information or energy label
Communication of Enforcement Strategy

- Communication from the outset can help suppliers comply from the outset
- Guidance should be provided to stakeholders on:
  - What the requirements are and how to comply
  - What the repercussions of non-compliance will be
- Enforcement activities should be reported regularly to ensure transparency
- Test results can be published: *naming & shaming*
When non-compliance is identified, enforcement officers must consider severity of the case to determine next steps.

- Where unintentional and/or minor infraction
  - Less investment required to prove non-compliance

- Where intentional and/or major infraction
  - More investment required to prove non-compliance
  - Higher burden of proof required with thorough investigations of level of infraction and impact on consumers

The enforcement regime must enable authorities to respond in a timely manner, to minimize impact of the offence on consumers and other market participants.
Responses to non-compliance should start with the least severe action, and escalate to more severe depending on the type of non-compliance and the responsiveness of the transgressor.
Benefits and Risks of Different Actions

- **Most severe – Prosecutions**
  - Most efficient deterrent
  - Higher costs
  - Lengthier process

- **Least severe – Informal actions**
  - Flexible tool
  - Maintain good relations with stakeholders
  - Less costly
  - Not the strongest deterrent for non-compliance
How the UK Approaches Enforcement

Balanced Enforcement Model

Directed Intervention

Sanctioning

Push

Support

Education

Non-directed Intervention

Pull

UNEP-lites.asia MVE webinar, 28 May 2015
Benefits of Regional Collaboration

- Where regional MVE networks exist, enforcement information can be shared between different economies
  - Helps identify non-compliance in other regions for more cost effective market surveillance
  - Learning from each other’s experiences and best practices

- Product registry:
  - Useful tool for storing test results and enforcement follow up actions to track and monitor activities at a national and regional level

For example: Ecopliant
Other Valuable Resources

- en.lighten Toolkit – Section 4 – available on the en.lighten website
- Compliance Counts Guidebook – available on CLASP website
- Efficient Lighting MVE Guidebooks – coming later this year
- CLASP MVE Economy Profiles – coming soon on the CLASP website!
Thank you!

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