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Industry Self-Regulation and Voluntary Environmental Compliance: A Book Review

Randall C. Young*

Industry Self-Regulation and Voluntary Environmental Compliance examines how programs that encourage industry to voluntarily exceed the minimum strictures of existing regulations might be developed.

In setting out the premise of the book, the publisher’s blurb states:

that to be successful, environmental policy must move to the next level, one in which we take advantage of voluntary self-regulation initiatives and focus on environmental improvement. Industry Self-Regulation and Voluntary Environmental Compliance shows you how to create a voluntary self-regulation program that will result in your organization becoming a star company.²

The last sentence is a bit off the mark. Instead of a management primer on implementing systems for maintaining environmental compliance, Dr. Iannuzzi provides information and analysis about four separate programs. From this analysis he offers general guidelines for developing environmental self-regulation programs. The guidance is broad and does not provide specific advice for implementation by individual companies or organizations.

The brief but thoughtful forward by Matthew Arnold of the World Resources Institute sets the tone for the text.³ Mr. Arnold effectively invites readers, even those skeptical about self-regulation, to consider what Dr. Iannuzzi presents with an open mind.⁴

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¹ Alphonse Iannuzzi, Jr., Industry Self-Regulation and Voluntary Environmental Compliance (2001).
² Iannuzzi, Jr., supra note 1, at back cover.
³ Iannuzzi, Jr., supra note 1, at foreword.
⁴ Iannuzzi, Jr., supra note 1, at foreword.
The author's preface continues the in the same tenor as the foreword. Dr. Iannuzzi provides a brief auto-biographical sketch in which he describes his experiences working as an inspector for the New Jersey Department of Environmental Quality. Mistrust or cynicism might impede consideration of proposals for industry self-regulation. By offering his credentials and openly acknowledging that public mistrust of industry exists, Dr. Iannuzzi eases the way for thoughtful consideration of his ideas.

The body of the book begins with a broad overview of the current regulatory model. Scant attention is given to the history of how existing regulatory programs have evolved. Instead, the text leaps quickly to a brief review of flaws of the current regulatory system. This portion of the book relies heavily on references to others who have found fault with the existing system. A weakness is that the indictments are so broad. Specific problems and alternatives are not addressed. Environmental regulations are criticized as unwieldy complex and inflexible.

Identical criticisms can be made regarding virtually every regulatory system in our country. Who hasn't heard complaints that the Internal Revenue Code is too complex, that applying for a subdivision approval is onerous, or that the Department of Motor Vehicles is utterly rigid? These criticisms have the virtue of being unassailably true on the surface. But, general complaints provide little guidance about how to correct problems other than elimination of the program at issue.

The author also criticizes the Environmental Protection Agency [hereinafter EPA] and other agencies for relying on enforcement statistics rather than compliance information to measure the success of their programs. This type of complaint can sometimes

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5 IANNUZZI, JR., supra note 1, at preface.
6 IANNUZZI, JR., supra note 1, at 1-2.
7 IANNUZZI, JR., supra note 1, at 2-12.
8 See e.g. IANNUZZI, JR., supra note 1, at 8.
9 See e.g. IANNUZZI, JR., supra note 1, at 2-4.
10 IANNUZZI, JR., supra note 1, at 3-7.
be rhetorical cover for less stringent application of environmental laws, and some readers may become wary.

The author implies that regulatory agencies have historically focused on enforcement statistics as their only measure of success and that they only recently began to look at other indicators of compliance. The discussion does not provide an explanation of the historic use of compliance information other than enforcement statistics. We are left to assume that enforcement statistics were the only metrics tracked regarding compliance rates.

The book hits its stride with the four case studies dealing with self-regulation and flexible regulatory programs. The first case study deals with the chemical industry's Responsible Care program. Responsible Care began with the Canadian Chemical Producers Association as an attempt to revive their public image following a cyanide release in Bhopal, India which killed two thousand people. The program is now international.

The case study provides a brief overview of the elements of the program, an analysis of the benefits of the program, a section regarding criticism of the program and a synopsis that recapitulates the main points of the preceding sections followed by the author's conclusions. All of the case studies follow the format used in the Responsible Care case study. Following this format carries the reader toward to the conclusions reached at the end of each chapter.

The discussion of the program provides a broad overview of its elements. The reported benefits of the program are presented in plausible detail, but specific information about implementation of the program by industry is not provided. Generally, the program is credited with increased safety in the manufacture, transportation and disposal of chemicals.

11 IANNUZZI, JR., supra note 1, at 6.
12 IANNUZZI, JR., supra note 1, at 35-110.
13 IANNUZZI, JR., supra note 1, at 35-52.
14 IANNUZZI, JR., supra note 1, at 35.
15 IANNUZZI, JR., supra note 1, at 50.
The synopsis draws from the criticisms of the program to conclude that improvements in the program could be made, particularly if the program is to gain credibility with the public. Dr. Iannuzzi identifies the key weaknesses as lack of transparency to the public, lack of clear objectives and uniform measurements that demonstrate compliance, and an lack of participation by smaller firms. These weaknesses form a thread running through the other case studies and eventually become part of Dr. Iannuzzi’s guidelines for forming a successful program for self-regulation. But, he seems to view the Responsible Care program as a base upon which improvements should be made.

The second case study reviews the Environmental Protection Agency’s Project XL. Project XL was a pilot program initiated by EPA in May 1995 to encourage innovative approaches to achieving environmental compliance. The goal was to develop innovative alternatives to the current regulatory system. In exchange for regulatory flexibility, each project sponsor was to achieve better environmental results than would have been attained through compliance with existing regulatory programs.

The project allowed regulated entities to develop their own approaches to achieving compliance. The proposals were implemented through site specific agreements for the participating facilities. Reported benefits of the program include pollution reduction, increased public participation, and improved relationships between industry and government.

The terms of several projects are discussed. Among the more interesting was a Lucent Technology project to study its ISO 14001

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16 IANNUZZI, JR., supra note 1, at 50-51.
17 IANNUZZI, JR., supra note 1, at 53-66.
19 Id. at 27283.
20 Id.
21 Id. at 27282.
22 IANNUZZI, JR., supra note 1, at 55-61
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environmental management system [hereinafter EMS]. Lucent’s objective is to determine "what the advantages are to having an EMS and if incentives should be given to those that employ them." Unfortunately, the text does not provide any answer to those tantalizing questions.

The criticisms of the project cited by Dr. Iannuzzi reveal potentially serious flaws that would have to be addressed for the program to expand and endure. Perhaps the greatest weakness of the program is the uncertain legality of the site specific agreements. Dr. Iannuzzi cites two legal scholars who conclude that the site specific rule-making exceeded the EPA’s authority and leaves the program’s participants vulnerable to citizen’s suits. The lack of any analysis of, or even citation to, the relevant laws weakens the book.

Additional criticisms of Project XL included lack of clarity in the criteria for participation, a difficult application process, and a continued emphasis on potential enforcement by EPA. Again, the process favored those who had significant resources, limiting its appeal to smaller entities.

The third case study examines the Occupational Health and Safety Administration’s Voluntary Protection Program [hereinafter VPP]. The VPP is a regulatory program for facilities with excellent safety records based on stringent internal standards. By participating in the program, regulated entities earn recognition and a high level of independence regarding health and safety.

Dr. Iannuzzi examines the VPP program as an example of a well developed government voluntary compliance program. He offers the VPP as a source of information and a model from which environmental regulators and managers might learn. As he explains it: "...an evaluation of the effectiveness of this voluntary program,

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23 IANNUZZI, JR., supra note 1, at 57.
24 IANNUZZI, JR., supra note 1, at 57.
25 IANNUZZI, JR., supra note 1, at 62.
26 IANNUZZI, JR., supra note 1, at 64-65.
27 IANNUZZI, JR., supra note 1, at 67-85.
28 IANNUZZI, JR., supra note 1, at 68.
with its significant history in an area related to environmental protection, should result in relevant information about the potential of industry self-regulation."

OSHA launched the VPP in 1982 to allow selected facilities with exemplary safety programs to achieve working protection beyond OSHA standards because it concluded "... enforcement alone can never fully achieve the objectives of the Occupational Safety and Health Act."

This quote mirrors the author’s contention that self-regulation for environmental compliance is necessary because the country has too many facilities and too few inspectors. In this regard, he seems to discount the ability of inspectors to set priorities and focus on bad actors without the creation of a self-regulation program.

The fourth case study reviews the StarTrack program. StarTrack was a program implemented by EPA Region 1 (New England) in which regulated entities would self-certify environmental compliance through third party audits. The author draws a comparison to the securities industry and its reliance on third party auditors. This book was written before the recent scandal involving the collapse of the Enron Corporation and revelations about the dubious reliability of audits. However, those scandals highlight the dangers of reliance on third party audits. The author’s faith in the auditing systems described seems misplaced in light of Enron’s collapse.

After the larger case studies, several internal initiatives by specific companies such as Ford Motor Company, IBM, Johnson & Johnson and others are examined. These involve corporations that have incorporated so called ‘green’ initiatives in their marketing program. The thrust of the chapter is that exceeding environmental

29 IANNUZZI, JR., supra note 1, at 68.
30 IANNUZZI, JR., supra note 1, at 68.
31 IANNUZZI, JR., supra note 1, at 87-109.
32 IANNUZZI, JR., supra note 1, at 87.
33 IANNUZZI, JR., supra note 1, at 87-88.
34 IANNUZZI, JR., supra note 1, at 111-43.
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standards set by the government can provide competitive advantages.

In the final chapter, the author uses the criticisms of the programs in each case study to form guidelines for development of new programs. If the book had not presented criticisms of the program, it would have come across as unrealistic propaganda. Instead, consideration of the program’s criticisms make it easier to give serious consideration to the possible benefits of developing self-regulation programs using Dr. Ianuzzi’s principles.

Both within the case studies, and within the final chapter, the recapitulation of previously stated matters were distracting. At these points, readers will be tempted to skim or even skip segments of the text. Despite the reiteration, the book is a slim one hundred seventy four pages, including bibliographies at the end of each chapter.

The perspective of the book is that of a business manager. Facts and figures regarding business abound. Details about policy implementation and specific legal requirements are not presented. Therefore, businessmen may find the book more suited to their interests than will lawyers.

The text includes abbreviated citations rather than footnotes or endnotes. Readers interested in finding specific citations will have to cross-reference the bibliography at the end of the particular chapter with the notes in the text. Some of the references in the text are too vague to allow direct correlation to a specific reference in the bibliography. For example, the StarTrack case study includes a citation to "(EPA 1998)." He offers no citation for this assertion.

The reliance on secondary sources at points is also a weakness. In one instance, lack of citation to a primary source may have led to an error. The author comments that current regulations require "best available control technology without considering cost ..." He offers no citation for this assertion.

35 IANNUZZI, JR., supra note 1, at 88.
36 IANNUZZI, JR., supra note 1, at 109.
37 IANNUZZI, JR., supra note 1, at 2.
Best Available Control Technology is a term of art, with at least one specific meaning:

an emissions limitation . . . based on the maximum degree of reduction for each pollutant subject to regulation under the [Clean Air] Act which would be emitted from any proposed major stationary source or major modification which the administrator, on a case by case basis, taking into account energy, environmental and economic impacts and other costs, determines to be achievable for such source or modification...38

That definition provides for consideration of economic feasibility and other factors. Whatever the explanation for the disparity between this definition and the author’s assertion, inclusion of a citation would have eliminated any real or perceived inaccuracy.

Overall, this is an interesting book, even if it is not as compelling as it could have been. This is not a broadside against the existing system, but a thoughtful examination of approaches to programs that could enhance environmental protection. For those interested in the potential of self-regulation, the case studies will be interesting. The dialectic format pulls the reader along an easily followed path to the conclusions offered. The information and analysis would be valuable for anyone working within or attempting to develop a self-regulation or voluntary compliance program.