

Performance of Public Agencies in Safety and Environmental Regulation

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Industrial safety and environmental regulation are major recent additions to the external activities affecting enterprise organizations. The advent of these programs continues the trend for organizations to bear increasing administrative costs for such programs. Management studies indicate that the relative rank of executives dealing with such matters equals the rank of executives concerned with principal production activities, yet none of the legislation gives attention to the impact of the program on individual enterprise. Both public agencies and enterprises must make preparations for better performance in regulation if the growing needs of public policy are to be met. Public agencies should in turn improve their capacities for the inevitable conflict and its resolution. A key step in this direction is the use of discovery procedures by independent research institutions. Enterprise should systematically measure the total impact of public policy on its organization by means of the social audit so that the costs and benefits to the enterprise of all public policies can be computed. The social audit should be supported by a financial statement and a management audit. Self-reporting is recommended as a means of achieving these audits.

Transportation enterprise, whether public or private, must solve two major problems if it is to survive in the world. It must produce its technical output in an efficient manner, and it must solve the host of problems thrust upon it from the operating environment. In the first case, enterprise must deal mainly with internal factors, but, in the latter, the influences are external, usually beyond its control.

Safety and environmental regulations, such as the National Environmental Policy Act, the Environmental Protection Act, the Federal Water Pollution Control Act, and the Clean Air Act, are among the latest additions to the many external forces that enterprise encounters. These major additions highlight what may be a long-term trend. The external challenges to the management organization may be growing faster than the core management concerns with the basic technical production processes. Hugh Hecló, in his recent study of the federal management establishment (1), documents the great increase of mid-level positions to deal with a host of staff and external conditions, even as the total federal work force shows no increase over a considerable period. A study by the Institute of Transportation Studies of the University of California at Berkeley showed that the executive specialists assigned to deal with external operating conditions in mass transit enterprises held comparable rank in the organization to those specialists dealing with the core production processes (2). And this factor held, regardless of the size of the organization or the type of technology used.

The same California study, drawing on the research methodologies of Joan Woodward and the Tavistock Institute of London, showed that the production-oriented management structure could be rationally related to measures of technology employed by the firm (3). But there was no such limit on the organizational problems concerned with external forces, such as labor relations, regulation, safety, and environmental safeguards. And it is these problems that are the fastest growing over the long term. Many of these external problems—epitomized by safety and environmental affairs—are important issues of public policy.

It is vital, therefore, that students of management

and public policy become aware of a two-fold concern: the efficient attainment of public policy goals and the efficient performance of both enterprise and public agencies in dealing with such goals. These have become a growing management problem. New tools must be forged if these needs are to be met. Research has a vital role in improving both enterprise and public agency performance in such areas as safety and environmental safeguards.

An unfortunate feature of recent legislation dealing with safety and the environment, along with other similar external problems, is that the burden on the enterprise has not been considered either by legislators or by administrators (4). This condition has led to a mindless confrontation between public interest groups and managers of enterprises. The public interest groups see vast conspiracies by enterprises trying to avoid clear moral duties, while enterprisers voice loud and persistent complaints about the burdens capriciously imposed on them. The outcry over the Occupational Safety and Health Act (OSHA) on all sides demonstrates this confrontation, but the environment supplies equally valid examples.

More recently the dilemma has been dramatized by the energy crisis. Alternate energy supplies may have to be purchased at the price of less environmental protection, but the rules for this trade-off are not established. Unless better assessment of performance in social policy areas can be determined, the important public policy actions related to our productive activities will be subject to episodic and unsystematic treatment as one crisis after another takes place.

The goal of our enterprise should be better performance in both its core activities and its externally imposed responsibilities. Despite the pressures of industrial interests, we cannot curtail these responsibilities; we must make them manageable. Improved industrial performance must be paralleled by improved public agency performance. This dual problem has not been addressed; there has been little research in this area; and, consequently, there is ambiguity, ignorance, misunderstanding, and disagreement about both enterprise and public agency performance.

Neither the enterprise nor the public agency can solve this problem alone. The agency needs broader criteria to discharge its management responsibilities, while the enterprise needs assistance in economizing its efforts to meet public obligations imposed externally.

This paper advances two hypotheses to deal with the issue of improved performance—represented most dramatically by safety and environmental concerns—by public agencies and enterprises in public policy areas.

1. The public agency is concerned primarily with conflict resolution where better performance demands a wider use of the legal concept of discovery. In discovery processes we have an effective interface between research and conflict resolution.

2. The enterprise must be provided with a basis for total economy in the discharge of its external responsibilities. The tools of this total economy must

be related to the regulatory process. The concept of the social audit seems to be the most effective approach to such an economy.

CONFLICT RESOLUTION AS A FOCUS OF PUBLIC AGENCY ACTIVITY

Controversy is not unique to environmental and industrial safety issues. The newness of the emphasis in these fields, however, has caused controversy and confusion. At least three kinds of controversy—over interests, values, and facts—seem inherent in the confusion.

1. Controversy over interests: In industrial safety, the worker and manager have separate views on the scope of programs. In environment, industry and public interest groups have similar divergencies. Conflicts of interest take place over specific points and numbers. The approach to conflict of interest is the well-known process of conflict resolution that has been applied in many fields.

2. Controversy over values: Among the principal factors generating new values are rising income expectations. Values differ among various groups in society, and these groups may change their values over time. The value dimension often involves different groups than the issues over conflict of interest. The only solution to the value problem is the political process. A piece of legislation, whether it be an environmental or a safety statute, requires constant reconsideration to accommodate value issues. Research can elucidate the cost and benefits of changing values.

3. Controversy over matters of fact: Not all safety or environmental issues are well researched, and some of the available information on these subjects is ambiguous. Some research is not available to wide sectors of industry, and in other cases the source of the research information is suspect because of the interest of the sponsoring agency. The solution to the fact problem is objective research performed in institutions having no interest in the outcome.

The administrative agency cannot focus on political issues and perforce must concentrate on what it can do best: resolve conflicts. Not only does the agency need a program design that is feasible and uses all the major incentives for attaining the objectives of the program, but it also needs objective research results that are credible to the parties. A principal difficulty with all present regulation in every field is the dependence of the agencies on the parties for most of the evidence. This dependence has weakened the credibility of the regulatory process and is at the root of the major criticisms of regulatory ineffectiveness.

Discovery is a process used in courts and administrative bodies to set the standards and dimensions of the evidence to be used. Discovery lends credibility to evidence and enables all parties to pool their evidentiary effort for more effective conflict resolution. In a field of extreme controversy, such as environmental or industrial safety affairs, discovery must be assisted by the special creation of an objective public research agency. Several states have created such agencies to assist in their enforcement of pollution control laws (5).

In the Transportation Act of 1940 a board of investigation and research was established to assist Congress and the Interstate Commerce Commission to revise and extend transportation policy from research results. The failure of the agency to survive led to several decades of frustrating search for the basis for a trans-

portation policy. The want of adequate research data was a primary cause of this frustration.

Unless formal arrangements to incorporate research results into the evidentiary process are made, conflict resolution cannot be successful in such controversial fields as environment and industrial safety. The need for evidence to establish the bases of conflict resolution far surpasses the more popular concerns about the scope of regulation and its method.

Discussion of regulatory processes frequently contrasts direct regulatory rules with reliance on market forces, on initiatives in the courts, or on decentralization to other levels of government. None of these methods can be considered to exclude the others. A well-designed set of regulations utilizes all of them in a coordinated process (6) that entails the following.

1. Economic incentives: Internalization of costs through taxes, effluent charges, performance standards, and cost penalties utilizes normal economic incentives as a means of accomplishing regulatory objectives.

2. Liability management: Self-regulating mechanisms, whereby injured parties and groups use the legal system to protect themselves, are a well-recognized branch of legal practice. Liability management can also be used in conjunction with insurance and with well-designed policies, examples being workmen's compensation and no-fault auto insurance. A more sophisticated application in liability management is the recent growth of class action litigation.

3. Regulatory options: Direct regulation can be used to reinforce economic incentives and liability management. In other cases well-designed regulations can be limited to filling in areas outside the reach of other methods. The best approach to coordinating regulatory actions with economic incentives and liability management is rule making.

4. Political levels for administering programs: State and federal or even local levels of administration do not represent mutually exclusive choices, since most programs show that the various levels must act in coordination. Coordinative mechanisms are both legalistic, where courts have defined coordinate jurisdictions, and financial, where grants-in-aid have supported inter-governmental programs.

IMPACT ON THE ENTERPRISE

Little is known of the total impact of external public interest programs on individual enterprise. So little is in fact available that the most that can be done is to formulate a frame of reference to discuss the problem and possibly form the basis for research into the subject.

In the preceding discussion, it was shown that enterprise and individual initiative have significant roles in the regulatory processes, particularly in the internalization of costs and other uses of economic incentives. The defensive use of liability management by enterprises is also an unrealized source of initiative in many present programs. It is said, for example, that private damage suits are the mainstay of the antitrust laws, despite the publicity given major U.S. Department of Justice cases. Rule making and other devices provide a basis for coordinating economic incentives and liability management with direct regulatory actions. Performance standards form one basis for such rule making, along with prima facie showing of compliance based on discovery evidence.

What is needed is an understanding of the capabilities of various kinds of enterprises for initiative and compliance over an entire range of programs. The administrative burden that the range of social issues places on any given enterprise should also be a factor in the

design of a program. This burden should be assessed objectively through data on the social performance of the enterprise.

There are precedents for this kind of far-reaching evaluation of the impact of programs on an individual enterprise. Reporting requirements for regulated enterprises have been quite detailed and have been used both as a means of control and as a basis for reasonable regulatory criteria. Environmental impact statements for some enterprises require an extensive spread of company data and company plans. Within the enterprise, reports to stockholders provide details on company operations and responsibilities.

Based on what is known about enterprise practices and capabilities, it would seem that appraisals of overall regulatory burdens could be made in three stages.

The first stage is financial reports of enterprise, which should be a base datum around which other reports could be prepared and assessed. The second stage calls for a management audit of enterprise. This audit would relate the activities necessary to accommodate public interest programs. It would reveal the numbers of people engaged in serving the programs, the nature and cost of the internal programs, the need for external assistance such as from consultants, and the relative rank in the organization of executives in charge of the various public interest activities. The last stage is the social audit of enterprise. This procedure goes beyond financial and managerial appraisal and sums up the net costs and benefits to both the corporation and society of the various external programs. The social audit enables the corporation to assess its performance in each area and to assign priorities based on financial and social effectiveness. The data from such a social audit make possible the assignment of responsibility either to the corporation or to society at large.

Following the precedent of the income tax, the various audits would be self-assessed and would be used to shape and modify a company's participation in various environmental and safety programs.

NOTES ON THE ENTERPRISE SOCIAL AUDIT

The social audit and its counterparts, the financial and management audits, are integral parts of the management process, having important enterprise as well as public objectives. The interrelationship with social policy is not a casual, philanthropic gesture. A correct appraisal of benefits and costs of social policies has a bearing on the economy of the firm and its important decisions.

No effort will be made to elucidate the entire range of possibilities for the combined auditing processes. The advantages, however, include anticipation of public policy needs and resulting economies of investment and operation. The unanticipated thrust of a safety program or an environmental matter can lead to crash purchases of systems that may not be the most economical or may be incompatible with present investments. A more timely preparation may also lead to

the selection of a public policy program more in line with business incentives, performance standards, internalized costs, and liability management, instead of a harsh regulatory regime, as in OSHA. Other advantages are more effective decisions in nonregulated areas such as philanthropies, better design of products and better sales revenues, and gain in good will from better planned operations.

Is there precedent for the special treatment of firms based on a documentation of their total performance in a public policy area? There are very general differentials in regulatory standards based on size or classification of firms, as in transportation where we have class 1 rail and motor carriers that appear to be more intensively regulated than those of other designated classes. There are exempt classes of motor, water, and air carriers.

A regulatory regime based on a self-declared set of enterprise audits is a new experience in degree of regulation, which should be entirely feasible where the processes of conflict resolution are well developed, where there is objective research based on discovery, where rule making prevails as the basis for regulatory emphasis, and where the firm's own social performance can be documented to the advantage of both private and public interests.

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