

Comment

LEGAL MARKETING OF ENVIRONMENTAL LAW

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“Nature, to be commanded, must be obeyed.”

- Francis Bacon
Novum Organum

“Marketing sells a product; Law sells a mode of conduct.”

- Anonymous

I. INTRODUCTION

Law is a tool of understanding by which human society conducts itself. The goal and objective of the law is the betterment of the general public, the public interest, or the common good. However, the provisions of the law, per se, are ineffective unless the target market of the law—the consumers, so to speak—is aware of the law’s provisions. More importantly, the consumer of the law must be convinced of the need for such law and must be “sold” to the policy objective of the law, i.e. the reason behind the law, the *ratio legis*.

Under the current legal regime, this “marketing exercise” relies solely upon “enforcement” rather than “voluntary compliance and implementation”. It depends heavily upon sanctions and the use of “force” to coerce, albeit legally, the modification of behavior. For example, to discourage a manner of behavior, criminal penalties are imposed for fishing by dynamite, the burning of forest land, or the indiscriminate dumping of wastes.

The Philippines has one of the most voluminous bodies of law in

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Asia. The presence of these laws however, has not prevented the reduction of the country's forest cover from about 60 percent fifty years ago, to the now critical state of 10 percent. Neither has it prevented the destruction of our coral reefs; presently only 5 percent of our reefs are in good condition. Illegal fishing methods continue as does slash-and-burn farming. Due to the heightened economic pace of the Philippines, industrial pollution is and will continue to be a problem in the country.

The Philippine government has enacted approximately 118 environment-related laws.¹ It would seem that there is sufficient, if not superfluous, environmental law in both substance and form in the Philippines. The primary legal basis for this environmental protection may be found in the 1987 Constitution. Article II, section 16, provides that "[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."²

Underlying these laws is the "trust doctrine" which proceeds from the premise that human beings, allegedly the most intelligent beings in the animal kingdom, are the trustees of the earth's natural resources. As a species, we hold these God-given gifts in trust not only for future generations of humankind, but also for the "lesser" forms of animals. Both are, in law, the beneficiaries of our trust. If our generation appropriates for its exclusive use and benefit the natural resources of the earth to the permanent prejudice of future generations and other life forms, we breach that trust.

Such a misappropriation, if done in bad faith and with knowledge aforethought, is tantamount to "generational swindling," i.e., stealing from future generations what rightfully belongs to them. If, by our behavior, we damage the very life-support system of our rightful beneficiaries, generational genocide can result. This behavior violates the highest law of Nature and offends every living being's right of self-preservation and self-perpetuation.

1. The basic environmental laws of the country are the following: The Philippine Environmental Policy, Pres. Decree No. 1151 (1977); The Philippine Environment Code, Pres. Decree No. 1152 (1977); National Pollution Control Law, Pres. Decree No. 984 (1976); Environmental Impact Statement System, Pres. Decree No. 1586 (1978); Fisheries Decree of 1975, Pres. Decree No. 704 (1975); Forestry Reform Code, Pres. Decree No. 705 (1975); Toxic Substances and Hazardous and Nuclear Wastes Law, Rep. Act No. 6969 (1990); National Integrated Protected Areas System, Rep. Act No. 1786; Philippine Water Code, Pres. Decree No. 1067 (1978); Sanitation Code, Pres. Decree No. 825 (1975).

2. PHIL CONST. art. II, § 16.

To repeat, the Philippine environmental law is thorough and complete. The level of implementation, however, suffers in the sickbed of non-compliance. This Article seeks to present an evolving hypothesis for an alternative mode for effective law enforcement. For lack of a better term, it is tentatively called "Legal Marketing."

This Comment will examine the ways and means by which the reasoning behind the law—the *ratio legis*—can be more effectively sold and promoted to the target market, the Filipino citizens. I will try to posit a few theoretical principles distilled from the field of experience. Thereafter, I will present a situational analysis of current environmental flashpoints and suggest a practical approach to addressing them. This "legal marketing" technique is not based on the "force of law," as are most western legal systems; rather, it seeks to use the social and cultural characteristics inherent in Filipinos, and values which they, and perhaps all Asians, hold true and dear.

II. PRINCIPLES OF EFFECTIVE ENVIRONMENTAL LAW IMPLEMENTATION

If one carefully examines the innumerable provisions of formal and informal laws, the potential for creativity to make sustainable development work effectively are contained in, or in between, the very lines of the law. Since voluntary compliance is more socially desirable than coerced compliance, the best form of law enforcement is that where the law does not need to be enforced. In the course of years of environmental law practice, both in the public-interest and private sectors, several principles of effective environmental law implementation have been gleaned.

First, recall that a law is an agreement of minds, a social contract. Because the law is an agreement, the participants must fully understand and appreciate the reason behind, and the need for, the law. In legal language, this is the *ratio legis*, the reason for the law. In sociological terms, this is the "social product" and the "common good" which the law seeks to promote. Voluntary compliance is possible only when those whose conduct is sought to be regulated or modified fully understand the reason for the law and thereby appreciate its value. If they understand that the social product and policy is desirable, then a mental and emotional agreement is reached.

Second, legal marketing, or selling the law, may be used to promote voluntary compliance. The legitimacy and effectiveness of a law is in large part dependent on publicizing the law. As business marketing sells a product, law sells a mode of conduct. Thus, just as

in commercial marketing, where advertising and promotions are techniques used to sell a consumer product, so must creative legal marketing use proactive methods to sell the social good and the mode of conduct desired.

Third, the manner of implementing the law must be socio-culturally sensitive. Implementation must take into account the particular social and cultural characteristics of the people who are the target market of the law. This is particularly true in regions such as Asia that may have some commonalities in their socio-cultural traits.

Fourth, the law must contain an aspect of punishment in order to modify behavior and to serve as a deterrent. People must be aware that deviating from conduct which promotes social good carries a penalty. Penal law, however, must be reserved only for the particularly hard-headed. Furthermore, penal law is effective as a deterrent only if its application is swift, painful and public.

Human conduct is such that it responds to the stimuli of pleasure and pain. To promote behavior therefore, the law must promise a pleasure, and to discourage behavior, the law must present the possibility of pain. This idea is known as the "incentives-and-disincentives", or the "carrot-and-stick" approach. For this discussion, however, more graphic terms shall be used: "candies-and-needles." Candies are so irresistible that unless one has severe dietary restrictions, they are quickly and easily taken and ingested. Needles, on the other hand, are so inherently unpleasant and invoke such a prospect of pain that the mere appearance of one would make an individual actively avoid it. The following will illustrate some approaches and examples by which the candies-and-needles technique may be applied to address environmental law non-compliance.

III. CANDIES AND NEEDLES APPLIED

In the application of this approach to several Philippine environmental problems, care must be taken to consider the socio-cultural characteristics of the target market. Among Filipinos, as among many Asians, the following cultural attributes are significant:

1. *Highly Personal.* Filipinos are a highly personal people. When people have problems with one another, they would rather "talk things over" privately than issue or receive written orders.
2. *Debt-of-gratitude.* One value Filipinos hold dear is the

debt-of-gratitude. If a favor is owed, refusal to requite it is a source of great shame.

3. *Face Value Sanction.* "Loss of face" is a sanction of the highest order, higher than an ordinary legal sanction. A man can pay a large fine quietly and be done with it, but a small fine, if well-publicized, will inflict much greater pain. The pain extends not only to himself, but also to his family—the strongest social tie and ultimate psychological crutch of the wrongdoer.

A. Illegal Commercial Logging

One of the problems that has hounded the Philippine government is the issue of illegal commercial logging. The laws on the matter have existed since the inception of government in the Philippines. The consolidated Forestry Code lays out permissible cutting methods and silvicultural and protection techniques, prohibits slash-and-burn farming, and provides heavy penalties of up to twenty years imprisonment for the violation thereof.³

Fifty years ago, the Philippines, an archipelagic country of 7,100 islands with a land mass of 30 million hectares, was estimated to have a virgin forest cover of 16 million hectares, comprising more than 50 percent of the land area. Being of volcanic geology, the islands generally have central highlands that gradually slope down to sea level. The law requires that all lands with at least 10 degrees in slope, i.e., 18 percent slope, must be devoted to forest land and kept in "vegetative condition sufficient to prevent erosion and adverse effects on the lowlands . . ."⁴ The topography of the Philippines is such that at least 50 percent of the land area will be devoted to forest lands as a result. However, by 1988, the virgin forest cover had been reduced to 800,000 hectares, 2.6 percent of the land area. From 1970 to 1985, notwithstanding the strict laws on the matter, forest degradation was at its most severe. Among the catalyst culprits is illegal commercial logging.

1. *The Candies.* In a democratic system of government, participation in the law-making process by the sector concerned is

3. Forestry Reform Code, Pres. Decree No. 705, §§ 22, 68 (1975).

4. *Id.* § 15.

essential. Thus, the requirements of due process, public hearings, and investigations in aid of legislation have been provided as an outreach mechanism of the legislative process. When the law has been made and all it lacks is enforcement, the participatory technique can be applied to creative implementation.

The first step is to identify and invite all lumber and wood dealers, loggers, and others involved in the industry to individual meetings.⁵ These persons all have a stake in the sustainability of the supply of trees. They are the so-called "stakeholders."⁶ Top-level inter-agency officials and citizens' groups (NGO's) must also attend this meeting. The agenda of the meeting is to enlighten, to excite, and to enact.

The critical nature of our present forest resources must be explained with great patience and clarity. Then, an appeal must be made to them as fellow Filipinos and as fellow human beings. After all, they, too, are concerned with the future of their country and of their own children.

Other top officials from the Department of Environmental and Natural Resources (DENR), the National Bureau of Investigation (NBI), the Department of Justice, the Bureau of Internal Revenue (BIR), the Multi-Sectoral Forest Protection Committee, non-governmental organizations (NGO's), local government unit (Governor or Mayor) (LGU), and the media must attend the meeting. It is a subconscious message and an exhibition of political will, not only of government, but also, and importantly so, of the citizenry—the people. With the presence of these personages, the message is sent, subtly and most powerfully: These are the people with whom they will have to contend. The medium is the message.

The stakeholders must be enticed with incentives that answer the question, "what's in it for me?". Human nature is such that self-interest is higher in rank than public interest. The mark of a good negotiator is when one can find the right blend between self interest and public interest to achieve the desired end.

The DENR can offer many different incentives, such as organized and profitable tree-planting. The lumber and wood dealers can form

5. The mere fact that they are identified should be enough to cause the necessary psychological tension.

6. The invitation to sawmillers, lumber dealers and other persons engaged in the industry is not premised on the suspicion that they are "illegal loggers". Rather, it must be premised on the fact that more than anyone else, they are in a better position to assist in the effort to curb illegal logging.

a consortium and can be given an Industrial Forest Management Agreement (IFMA) over several thousand hectares of denuded land. Under this tree-farm concept, the planters will be given the privilege of harvesting the planted trees. With the growing awareness of the profitability of tree-planting, many are already considering such a venture. However, bureaucratic requirements act as a primary hindrance to taking full advantage of the venture.

Administrative assistance must be extended and must include the facilitation of a long-term soft loan to cover heavy capitalization needs. Also, the DENR can help register the project with the Board of Investments for other fiscal incentives. The idea behind this is that since the lumber dealers want to cut and sell wood, let them take care of their supply. There will be no substantive debate on this basic point and everyone will be in general, if not unanimous, agreement. This option is so attractive that it will be difficult to refuse.

The DENR can offer a grace period for "ecological reconciliation." The target market must be allowed to manifest a gesture of its sincerity and commitment to the common goal. Within thirty to sixty days, the lumber dealers should be allowed to report and surrender, and thereafter dispose of, their illicit inventory at a public auction supervised by the DENR. With a public auction, the lumber "surrenderers" are assured of the best prices. After the sale, the government will receive its 25 percent share in forestry charges, and the dealers are allowed to begin anew with a clean slate—a *tabula rasa*.

The DENR can also offer technical assistance in mapping or surveying the area allotted for utilization by the lumber dealers. Moreover, the DENR can advise them as to what trees are most compatible with the soil and topography of the area and even the cultivation and harvesting system appropriate to the locality.

2. *The Needles.* For those who fail or refuse to modify their behavior, there are many suggested sanctions, actual and imaginary. It may be suggested to the lumber and wood dealers that within the grace period allotted and thereafter, monitoring and surveillance will be conducted by a joint task force of the NBI, DENR, BIR and NGOs. Good faith compliance is better advanced when "one speaks softly yet carries a big needle."

For the willful violators, lightning raids must be conducted after the grace period. These special operations can be carried out by a composite elite team from the above-mentioned sectors (i.e., DENR,

NBI, Media, NGO's). It has been proven that legal proceedings such as an immediate inquest may be done with almost surgical precision. For example, in the unprecedented raid of the Super Mahogany Plywood Corporation in Butuan City on August 13, 1992, a raiding team of the DENR, DOJ, NBI, NGO's and the media struck with pinpoint accuracy and conducted an on-site inquest armed with a notebook computer, printer, and photo-video equipment. Instead of taking the arrested suspects to the investigating magistrate, legal proceedings were conducted on site. No more than five hours after their arrest, the violators were legally taken to jail. Their picture, taken behind bars, was widely published in national newspapers.

Multiple criminal charges may be filed for illegal logging,⁷ tax evasion,⁸ and anti-fencing.⁹ Administrative sanctions may include the cancellation of the lumber dealer's license, the cancellation of the Mayor's permit to do business, and the revocation of the business license or corporate franchise (with the Bureau of Domestic Trade/Department of Trade and/or the Securities and Exchange Commission) on the ground of violation of law. In addition, civil suits may be brought by the government, NGO's, or both, seeking multi-million dollar environmental damages for the loss of wildlife habitat, loss of the water and carbon dioxide absorption, erosion, siltation, loss of agricultural productivity, loss of marine productivity, aggravation of the greenhouse effect, global warming, and climate change.

The DENR can make arrangements with government and private media networks to block off a short period of time or newspaper space to publicize illegal logging offenders on a regular basis, perhaps three times a day for three months. As previously discussed, Filipinos dread the loss of face. The constant repetition of one's name and the publication of one's picture is more than enough to cause the utter loss of face. Truly, the prospect of the series of penalties inflicted wholesale or in seriatim, can make one writhe in his desire to avoid its occurrence.

3. *Advantages of the Proposal.* Three important social and cultural values come into play in this exercise: (1) inter-personal

7. Forestry Reform Code, Pres. Decree 705, §§ 68, 69 (1975).

8. For failure to pay forestry charges, there is an internal revenue tax equivalent to 25 percent of the value of the wood. Local Government Code of 1991, Rep. Act. No. 7160 (1991).

9. Anti-Fencing Law, Pres. Decree No. 1612 (1979) (addressing the acts of selling or otherwise dealing in things that were the products of a theft of government property, i.e. forest products from the national and natural patrimony).

relations, (2) face-to-face consensus, and (3) the face value sanction.

The use of non-adversarial and non-confrontational methods in the resolution of societal issues is a reality in Asian culture and must be played up for maximum utility. We are a highly personal people and would rather talk than fight. Conflicts are resolved with mediation, conciliation and informal arbitration by and among members of the extended family and friends. However, because of the super-imposition of the American legal system into the Philippines, adversarial litigation has become pronounced in the more recent history of the country. With the tendency of "students" to surpass their "teachers," the Filipinos are now probably the most litigious people in Asia.

However, the adversarial litigation model cannot be used with optimum effect for environmental law issues in the Philippines. The judicial system is still relatively weak. Litigation is time-consuming as well as emotionally and financially aggravating. Even Americans, the teachers of the litigation model, are beginning to consider alternative dispute resolution (ADR) methods, especially for addressing environmental issues.

There is a Filipino saying that some things are better done sitting down than standing up.¹⁰ The Filipino way of face-to-face negotiation to arrive at a consensus, *ang pinag-uusapan*,¹¹ must be used. As a highly personal people, Filipinos value face-to-face agreements more than impersonal written legal documents.

Corollary to this belief in face-to-face negotiations is the loss of face (*napapahiya*) that results from the non-compliance with what has been agreed upon. In Filipino, this loss of face is called *hiya*, or shame. Indeed, it is generally considered better for a person to lose everything else than lose his face, honor, or name.

The agreement thus reached by the stakeholders must be preserved in printed memory, documented in both print and photo-video, as a public gesture of commitment of all the parties to abide by its terms in good faith. This news must be widely disseminated to local and international networks. The public dissemination will serve two functions: (1) it is a public declaration after which there is no turning back (otherwise face is lost), and (2) it is a subtle act of contrition not

10. It is a Filipino saying that goes, "Kukunin sa pa-upo, imbis na sa patayo." This saying literally means to take or do things sitting down rather than standing up. Figuratively, it means using persuasion and consensus instead of confrontation.

11. Meaning "to talk things over."

only by the parties but also by the Philippines as a country.

The ultimate objective of this exercise and campaign is to get the target market to move and act of its own volition. When people understand and internalize the purpose and the reason for the desired course of action, they will act on their own steam. Information, education and consciousness are not enough. The target market must take the necessary action to buy the product. With all the irresistible and attractive benefits of the "packaged product," only the very stubborn will refuse. For these persons is reserved the special operation of legal surgery.

B. Soil and Water Conservation

The marketing of environmental law may also find application in land tenure problems. In this case, the product to be marketed is the social good of soil and water conservation and the afforestation of denuded mountains. The Forestry Code mandates that lands of 18 percent slope must be kept in sufficient vegetative condition to prevent erosion.¹² Nonetheless, the country is losing an estimated 1 billion tons of topsoil every year.

1. *The Candies*. It is a psychological reality that people do not make long-term investments on land for soil and water conservation measures unless they have secure land tenure. If one is insecure about being evicted from the land he is working on, he is less likely to plant long-term trees or to spend time and effort configuring the land in a manner that will best protect the topsoil from erosion. This psychological reality can be used for ecological advantage.

Assistance can be extended by expediting the surveying and issuance of appropriate land tenure instruments, such as certificates of title, fifty year certificates of stewardship, and tree farm leases. Much can be done by the DENR's logistical resources, especially with the new surveying means using the Global Positioning (GPS) and the Geographic Information Systems (GIS). These tenure instruments must however contain an ecological encumbrance or an environmental lien, an "eco-lien." Using the innocuous provision of the law requiring lands 10 degrees in slope or higher to be in sufficient vegetative condition,¹³ a provision can be included in the tenure instrument mandating that the appropriate portion of the land be afforested

12. Forestry Reform Code, Pres. Decree No. 705, § 15 (1975).

13. *Id.*

and/or subjected to the sloping agricultural land technology (SALT) and contour farming. Like a mortgage lien, the state must have an eco-lien on the land over and above all liens and encumbrances.

Support can also be offered in the propagation of seedlings and a food-for-work program utilizing the "bayanihan" system to undertake area-wide SALT or afforestation activities. The bayanihan system is a Filipino social practice of community action and mutual help. In rural areas, the practice is common especially when someone's house is being transferred to another place. In such a case, all the men in the village physically carry the house on their shoulders to the point of destination. It is lifted by tens of working men without compensation except for a simple meal of rice, beans and fish provided by the houseowner. The prospect of using the bayanihan system in afforestation and land contouring activities presents many positive possibilities.

Another incentive is a tax exemption from real property taxes on the planted trees. Under the present state of the law, each and every tree standing on private land is levied a realty tax on the theory that it is an "improvement" on the land in much the same manner as a house or a building.¹⁴ This is contrary to the articulated public policy of encouraging tree planting. It is proposed that the DENR, in coordination with the local government units and the Department of Finance, work for the abolition of this burdensome and ineffective tax. Instead, these trees should be granted a tax credit or rebate applicable to, but not to exceed, the realty tax due on the land. Such a policy would reward consumers for their compliance with the mode of conduct being encouraged.

Given the popularity of lotteries and other games of chance in the Philippines, the government could also conduct regular raffles in order to promote the goal of soil and water conservation. For example, the government could assign numbers to trees or to lands which have been well-vegetated. These numbers could be periodically raffled and the winners will be given very valuable prizes. Thus, individuals would have a greater stake in the preservation of their trees because each tree would be of greater value to the planter than just its seemingly unseen ecological benefits.

Another promotional technique that could be successfully used would be to assist large landholders in obtaining exemptions of their land from coverage under the Agrarian Reform Law. Under the

14. Real Property Tax Code, Pres. Decree No. 464.

Comprehensive Agrarian Reform Law, all private lands of more than five hectares owned by one person shall be acquired by the government for distribution to the tenant farmers.¹⁵ Under a more recent law, private lands devoted to reforestation or those with a slope of 10 degrees or higher are exempt from the land reform law.¹⁶ Unfortunately, even the Department of Agrarian Reform (DAR) personnel do not seem to be aware of this law. The ignorance of the general population is symptomatic of the failure of the education and communication component of the legislative and legal system.

2. *The Needles.* Even if the land is classified as alienable and disposable and is covered by a Torrens Certificate of Title (TCT),¹⁷ the Forestry Code mandates that it must still be kept in "sufficient vegetative condition" to prevent erosion.¹⁸ This provision, implemented creatively, can be the basis for the above-mentioned ecological encumbrance or environmental lien. It seems to be the general impression of government functionaries that when land is titled to private individuals, the government loses all control of it, but this is not so. Under the provision above-cited, the state retains an ecological encumbrance. The law also provides that "when the public interest so requires, steps shall be taken to expropriate, cancel defective titles, reject public land applications, or eject occupants thereof" when owners of private lands fail to keep their lands in sufficient vegetative condition.¹⁹

C. Industrial Pollution

Industrial pollution should be the easiest environmental issue to address for the following reasons: (1) the point sources and owners of industrial establishments are easily identifiable; (2) industry has some financial capacity; (3) profit enterprises are sensitive to economic incentives and penalties; and (4) the owners and CEO's are highly vulnerable to legal surgery.

The Pollution Control Law of 1976 provides a comprehensive

15. The Comprehensive Agrarian Reform Law of 1988, Rep. Act No. 6657, § 6 (1988).

16. Rep. Act No. 7881 (1995). The scientific basis of the ten degree criterion is that with ten degree slope, land is already vulnerable to water run-off and erosion unless proper soil and conservation measures are instituted.

17. A TCT is a proof of ownership of a parcel of land, the metes and bounds of which are particularly described therein, adopted under the Torrens system of land classification.

18. Forestry Reform Code, Pres. Decree No. 705, § 15 (1975).

19. *Id.*

legal framework on industrial pollution.²⁰ However, the imperatives of fast-paced economic development have overtaken its implementation. Further, the administrative bureaucracy that handles industrial pollution is ineffectual. Along with domestic wastes, industrial pollution is the primary cause of the eutrophication of the rivers of Metropolitan Manila. While a law on toxic and hazardous wastes has been recently enacted,²¹ the waste generators have not bothered to register their establishments or wastes in accordance with the law. There is a near total failure in environmental law information, communication, and implementation.

1. *The Candies.* Candies are to children what money is to business people. To achieve their intended goal, the candies must be economic in nature and must be made irresistibly palatable. With the overall awareness and concern for environmental protection, most, if not all, of the industrial establishments would like to address their pollution. The secret lies in giving them the opportunity to do it in a manner that they will find difficult to resist.

The first step in the socio-culturally sensitive approach is to identify point sources of solid and water wastes. This identification process must include not only the names of the companies and establishments but should also include the names and addresses of the chief operating officers, presidents, and chairmen of the boards.²² These executives are the persons most directly responsible and concerned and have the power and authority to make big decisions. Moreover, they are the most sensitive to the legal needles.

Having thus identified the executives, the top officers of the DENR and the respective Regional Directors may proceed to personally meet with the executives individually or in small industry or sectoral groups. Such meetings will capitalize on the highly personal character of Filipino culture and social relationships. In addition, the meetings will also create psychological tension on the part of the executives. Being personally identified is an honor when one is doing right, and a source of apprehension when one is not.

It is a fact that many small and medium scale industries and those in their infancy will not be able to immediately afford waste treatment

20. National Pollution Control Law, Pres. Decree No. 984 (1976).

21. Toxic Substances and Hazardous and Nuclear Wastes Law, Rep. Act No. 6969 (1990).

22. The owners of industrial establishments, chief executive officers, chairmen of the boards and other persons principally responsible are hereinafter collectively referred to as "executives".

facilities. The executives of these establishments must first be given evidence of their pollution load. It must be impressed upon them that this issue must be addressed. This gesture will also impress upon them the existence of a determined political will on the part of government.

The executives must also be informed that it is not the government's intention to close them down. Immediate closures are not only culturally inappropriate because they are confrontational, but they also result in economic dislocation that the country can ill afford. Instead, they should be given time to install the proper equipment or otherwise minimize their wastes. They should be asked how much time they need. If it is one year, they can be given one and a half years or even two years. This will entice them into agreeing into a *modus vivendi*. It will also create a debt-of-gratitude (*utang na loob*).

In order to sweeten the proposal, the concept of a revolving door environmental fund (REFUND) can be introduced. The following are the fundamental premises by which the concept of REFUND operates: (1) application of the "polluter-pays-principle," whereby the industries that discharge pollution must bear the cost of the clean-up that would otherwise be paid for by the government; (2) application of the true-value system in the costing of environmental resources, whereby industries must price their products so as to reflect the true cost of the manufacturing process, including waste disposal; (3) realization that industrial establishments are not immediately able to address their pollution because of technological and financial constraints and therefore should not be immediately penalized, but rather, should be given ample time to comply; and (4) shift of governmental focuses from being regulatory to being developmental. With an insufficient bureaucracy where regulation often results in massive financial investments, gross inefficiency, or corruption, the private sector's resources must be harnessed to address their own pollution problems.

2. *Operational Framework of the REFUND Incentive.* The REFUND will be applicable to present industrial establishments, especially small and medium industries whose emissions, discharges, and wastes are in excess of the regulatory standards. They should be afforded adequate time to comply. The following is the proposed operational framework for REFUND.

First, there must be an identification of common wastes. This identification is important to properly site and design an efficient common waste treatment facility.

Second, there must be an environmental user fee (ENUF) for

every unit of waste emitted in excess of the standard. Every unit in excess of the standard shall be given an equivalent amount. This can roughly be approximated using the methodology of environmental accounting. To make it more attractive, a discount can be given. This is an added *utang na loob* on the part of the industry. The trend of jurisprudential authority indicates that where administrative agencies exist which are better equipped to resolve the technical issues of waste disposal, the courts will generally keep their hands off.²³

Third, the funds collected will be deposited in a trust account. They cannot be paid to the government coffers lest they be lost in the black hole called the National Treasury. The funds should be deposited in a trust account to be held jointly by the industrial firms concerned, a government representative and, for the purpose of transparency, a representative of the Philippine Chamber of Commerce and Industry (PCCI) or a reputable NGO.

Fourth, the funds collected from firms with common waste streams²⁴ shall be used as seed capital for them to put up a common waste treatment facility (CWTF). If the funds are not sufficient, the government can assist the firms with securing a soft loan from financial institutions. The common firms will be responsible for choosing the technology and equipment suitable for their needs. Profit enterprises are often more adept than government in the selection of the appropriate and most efficient means to ensure the viability of the undertaking. To sweeten the pot further, the government can facilitate the use of other investment incentives such as tax holidays and real estate tax exemptions.²⁵

Fifth, the operation of the CWTF will be conducted by the firms concerned. The mode of cooperation may be in the form of a joint venture corporation, a consortium or even a cooperative. The services which can be offered by the CWTF may include the transport of wastes to and from their sites, actual treatment and disposal, environmental consulting, and other like activities. The users of the facility,

23. See, e.g., *Technology Developers Inc. vs. Court of Appeals, et al.*, G.R. No. 94759, July 31, 1991 (the Supreme Court holding that the Environment Management Bureau (Pollution Adjudication Board) with its technical staff is in a better position to examine whether there is in fact pollution in a given situation).

24. Common waste stream establishments are hereinafter referred to as "common firms."

25. Pollution control equipment is exempt from real property tax. Local Government Code of 1991, Rep. Act No. 7160, § 234, (1991). This is a fairly new provision of law hardly known by the sectors concerned. Government can even extend the exemption to the land on which the treatment facility is constructed.

including others of common waste streams, shall pay a corresponding amount. This will ensure the financial sustainability of the enterprise.

To illustrate, assume that five companies (A-E) are now in excess of governmental standards in varying degrees. Closing them down immediately is not a viable option because of the unemployment consequences and economic dislocation. Thus, an agreement is reached to comply within a realistic period of time. In the meantime, they will be required to pay a specified amount for every unit in excess of the standard. This is an application of the polluter-pays principle. Thus:

Company	Excess Over Standard	Environmental Cost (e.g. ₱1.00 per mg/liter) ²⁶
A	500 mg/liter	₱ 500/day
B	400	400
C	300	300
D	200	200
E	100	100
Total	1,500 mg	₱ 1,500

Another benefit of having those with greater pollution loads pay more is that they will begin to seriously consider "start-of-the-pipe" waste reduction measures. It must be recalled that pollution is often the result of an inefficient manufacturing process. A few common sense techniques in materials management can reduce the waste significantly.

In a short period of time, the collected funds will build up into a substantial amount which can then be used as seed capital for the construction of a common waste treatment facility. For example, for a period of six months, the industrial firms will be allowed to build up the fund, explore the appropriate technology and financial mecha-

26. The very nominal amount of ₱1.00 is used to simplify the arithmetical illustration. Environmental accounting however, indicates that very substantial amounts can be assessed (₱1.00 = U.S. \$0.38).

nisms, engage consultants for the CWTF design and construction, select and negotiate sites, and undertake such other related activities.

For the purpose of monitoring, a time chart may be made and agreed upon by both parties. Existing DENR regulations allow for a variance of up to twenty-four months. Thus, ₱1,500 x 30 days (or the appropriate number of working days) = ₱45,000 (per month). ₱45,000 x 6 months = ₱270,000. Assuming the cost of the CWTF is ₱1.0 M, the amount to be loaned is therefore only ₱730,000. It may be pointed out that during the construction phase, the amount will continue to accumulate, thus further reducing the financing required.

The needles will be painful when imposed properly. A fine ranging from U.S. \$50-200 per day could be imposed. In addition, imprisonment could be imposed upon the person or corporation responsible for the violation. The concerned industrial establishment could also be subjected to immediate closure. The creative application of the principle of swift, painful and public justice could be used to expose the owners of the industrial firms who persist in environmental misbehavior.

3. *Advantages of the Proposal.* The advantages that arise from this proposition are the following:

- a. The government ceases being a policeman and becomes instead a promoter of responsible environmental management.
- b. The government takes a back seat in the promotion of pollution control and is left with only the monitoring of compliance according to the time frame agreed upon by government and the industrial establishments concerned.²⁷
- c. Funds derived from pollution charges and environmental user fees are directly channeled back to environmental management. Moreover, private funds are harnessed to address a public sector concern. This is important for a

27. To stretch the analogy further, it is as if the government were being driven in a chauffeured car. All the government does is to establish the initial direction, check at the midpoint to determine whether the car is continuing to move in the right direction, and check again at the destination to determine whether the destination has been reached.

cash-strapped economy.

- d. There is less confrontation and more cooperation between government and the concerned sector. This is how Filipino society traditionally operates—by cooperation, “Bayanihan,” lending a helping hand.
- e. Polluters are converted into environmental managers.

The foregoing are some examples of how the approaches of legal marketing can be applied to other environmental issues in lieu of conventional law enforcement. Law enforcement is necessary only when there has already been a violation. Environmental law, however, must apply in a precautionary and preventive manner. This is because environmental damage is often permanent, irreversible, or extremely expensive to remedy. Thus, violations, and their resultant damage, must be avoided as much as possible.

IV. CONCLUSION

It is said that the absence of alternatives clears the mind marvelously. Thus, in the implementation of the law, the candies must be so attractive and so sweet and the needle must appear to be (and be) so sharp and so painful that the consumer of the law is left with no options.

The law is not a dead language that should be understood only by lawyers, judges, legislators and the members of the arthritic governmental bureaucracy; the law and the reason for the law must be popularized. The law must be understood by, and be a common reality for, all of those concerned. The general public is the target market and the consumer of what the law seeks to sell. In environmental law, the social product being sold is the ecological balance that results in general sanitation, food and water security, cleaner waterways, cleaner air, affordable supply of wood, reduced erosion and siltation, and reduced flooding.

It is not enough that the target market is made aware of the product. Awareness without action is not a sale. Thus, the objective of Legal Marketing must not only be to develop an acute awareness, it must also be to create a real need. Only when a real need is

created is information transformed into action. Then, and only then, will the Law become a living reality in the minds and in the hearts of each and every member of the target market—every man, woman and child.

