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Voluntary Initiatives in the Mining Industry

Do They Work?

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The number, range and foci of voluntary initiatives have been growing rapidly over the last decade, but there is still debate as to whether they work 'on the ground'. The paper begins by defining voluntary initiatives and considers their relative strengths and weaknesses. The main factors contributing to their effectiveness—monitoring, transparency, enforcement, content and compulsoriness—are discussed and are then reviewed in light of an Australian case study of a mining industry initiative. Interviews with mining industry executives and other stakeholders are used to offer insights into the ways in which the efficacy of voluntary initiatives might be improved. It is here that a paradox emerges: the voluntary initiatives with the most potential for success appear to be those that are, effectively, compulsory. The paper concludes by discussing the key ways in which 'compulsory' voluntary initiatives might differ from command-and-control regulation and the broader implications of this apparent movement towards the privatisation of regulation.

- Voluntary initiatives
- Codes of conduct
- Self-regulation
- Command and control
- Regulation
- Governance
- Mining industry
- Environmental management
- Environmental performance
- Sustainable development

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VOLUNTARY INITIATIVES IN THE MINING INDUSTRY ARE A RELATIVELY RECENT phenomenon. They began to emerge around the mid-1990s and their numbers have increased substantially, particularly from 2000 onwards. This paper examines the phenomenon of voluntary initiatives as a form of regulating the environmental performance of the mining industry. In particular, it seeks to answer the question: do voluntary initiatives in the mining industry work?

A simple question, but reaching a definitive answer is not easy. Many voluntary initiatives are still in their infancy, so rigorous empirical research into their functional effect is sparse. It may, in fact, take many years for a voluntary initiative to have a measurable impact on environmental performance. It is also difficult to separate out individual voluntary initiatives as a single cause of change from other relevant factors at institutional and societal levels.

In this paper, we begin by defining ‘voluntary initiatives’ and considering some of the strengths and weaknesses of a voluntary approach. We place the emergence of voluntary initiatives as a form of regulation within a broader and evolving context of environmental governance. Next we summarise the published research into the effectiveness and impacts of voluntary initiatives across a range of industry sectors, including the mining sector. This allows us to identify the ‘key effectiveness features’ of voluntary initiatives.

We then focus specifically on the mining industry. Drawing on qualitative interviews conducted between 2003 and 2005, we examine the development, adoption and implementation of voluntary initiatives and how they might be improved. Our analysis centres on a voluntary initiative that was developed specifically for addressing environmental performance: the Minerals Council of Australia Code for Environmental Management (MCA Code).

The concluding section returns to the issue of voluntary versus compulsory approaches to the regulation of environmental management. The essential difference appears to concern the privatisation of regulation, which taps into wider debates about the changing nature of regulation in contemporary capitalist societies.

Voluntary initiatives as a form of regulation

It is difficult to define ‘voluntary initiatives’ without using some form of caveat. Their ‘essential characteristic is the “course of voluntarism” ’ (Cunningham and Clinch 2004, citing Baeke *et al.* 1999; Clinch 2000), but a range of internal and external forces can mean that their voluntarism is not absolute (Gunningham and Sinclair 2001: 3). They are ‘private or public efforts to improve corporate environmental behaviour beyond existing legal requirements’ (Paton 2000), but they can become enshrined in law. To add to the confusion, Cunningham and Clinch (2004: 30-31) reviewed a range of literature and found that terms such as voluntary approaches, self-regulation, self-commitments, environmental accords, private agreements, voluntary initiatives, industry initiatives and public voluntary schemes are often used interchangeably and inconsistently.

Voluntary initiatives are usually discussed in comparison with, and as an alternative to, traditional government-directed ‘command-and-control’ regulation. Potoski and Prakash (2005a) provide evidence of the effect of command-and-control approaches in significantly reducing industrial pollution. However, command and control has been criticised for being expensive to comply with, monitor and enforce (Coglianese and Nash 2001) and for cultivating an adversarial culture between business and government (Webb 2006b). Others have observed that companies prefer not to be subject to legally binding regulation that may create liability for damage by their operations or subject them to criminal law (Clapp 2003).

By way of contrast, voluntary initiatives have been said to present a number of advantages as a form of regulation. Voluntary initiatives may provide a means of regulating the activities of companies operating globally (Campbell 2006), allowing for the regulation of local and global environmental impacts in the absence of effective national or international laws. Far from being 'toothless' and 'unimportant', Braithwaite and Drahos (2000) argue that voluntary initiatives play a significant role in the globalisation of standards and the mobilisation of business towards improved performance. The potential of voluntary initiatives for transboundary application may also fill a gap for companies that operate across a number of jurisdictions and seek consistent international standards (Gleckman 2004). Many voluntary initiatives are initiated in order to respond to societal demands for action (Kolk and Tulder 2005: 7) and several international institutions, such as the United Nations and the World Bank, have encouraged their development. Some authors suggest that voluntary initiatives have a better chance of weathering political change than command-and-control approaches (Arnold and Whitford 2006: 4), while others advocate the ability of such approaches to stimulate innovation and respond to newly emerging issues (Paton 2000). Gunningham and Sinclair (2002: 148-49) propose that voluntary initiatives 'provide greater flexibility to enterprises in their response, greater ownership of solutions that they are directly involved in creating, less resistance, greater legitimacy, greater speed of decision-making, sensitivity to market circumstances and lower costs'.

There is no avoiding a caveat, however. These potential advantages are contingent on voluntary initiatives being 'viable' (Gunningham and Sinclair 2002: 149) or appropriate with regard to contextual considerations such as industry structure and capacity, policy context and political culture (Moffet and Bregha 1999: 20-22). Weaknesses of voluntary initiatives are said to include lack of sanctions, limited enforcement, lack of specificity of standards and objectives, and failure to attract the poorer performers within a sector (Brereton 2003). Webb and Morrison (2006) describe the main criticisms of voluntary initiatives as including: 'lower visibility and credibility; difficulty in applying the rules to those who do not wish to participate in the program, the possibility of less rigorous standards being developed, uncertain public accountability and potentially weaker enforcement capacity'.

Despite this ambivalence towards voluntary initiatives, they are increasingly prevalent. They can be seen as a product of a broader sociopolitical environment, characterised by globalisation, the dominance of neoliberal policies and the changing roles of industry, civil society and the state. In relation to the mining industry, a series of mergers and acquisitions has significantly increased the size, financial and social power of individual corporations. There has been a growing public awareness of environmental and social issues; an exponential growth in the number of influential environmental and social NGOs (non-governmental organisations), some of which have targeted campaigns at the mining industry; and an increased use of information technology to scrutinise mining activity and rapidly disseminate information to global networks. Probably a key change of the last decade has been reforms in government regulation of the environment and processes for development approval. Together these shifts have formed a fertile background for the emergence of voluntary initiatives. While focus is increasingly on sustainable development as a whole, we will focus in this paper on those initiatives that relate to environmental management and performance.

Effectiveness and impacts of voluntary initiatives across a range of industry sectors

Measuring the impact of voluntary initiatives on environmental performance is a complicated task. As Paton (2000: 330) observes, there has been scant data on the effectiveness of voluntary initiatives and no standard baseline against which to appraise environmental programmes. Another challenge is to attribute impacts of voluntary initiatives independent from the many other influences on business behaviour. There is also evidence to suggest that many voluntary initiatives concentrate on the space between good performers and great performers (Bass *et al.* 2001). This makes it difficult to determine impact. If companies that are already good performers are adopting voluntary initiatives, the level of *improvement* may be of less import than recognition of existing practices.

One voluntary environmental management initiative, ISO 14001, is a multi-sector case that has been relatively well studied. Potoski and Prakash (2005a) analysed over 3,000 facilities in the US and demonstrated that, even after controlling for external factors (such as regulatory compliance history and the facility's reason for joining ISO 14001), the ISO 14001-certified facilities had reduced their pollution more than non-certified facilities. Schylander and Martinuzzi (2007) reached a similar conclusion in their study in Austria, finding that direct improvements attributable to ISO 14001 adoption could be seen in some areas, particularly in waste and recycling. The impact of ISO 14001 on raising awareness of environmental issues within companies was described by Schylander and Martinuzzi as the 'most important contribution of ISO 14001'. However, ISO 14001 has also been criticised for being a systems-based approach, concerned with procedures rather than outcomes (Krut and Gleckman 1998).

Another case is the NGO-driven Forest Stewardship Council initiative, which has been able to achieve a relatively high level of visibility with the general public in the timber products market with standards developed by a tripartite governance arrangement (Forest Stewardship Council 2007; Bernstein and Cashore 2004; Conroy 2001). Uptake in the initiative continues to increase, with more than 90 million hectares of forest being certified in the past 13 years (Forest Stewardship Council 2007). However, the success and credibility of the initiative is still contested by some NGOs (Counsell and Loraas 2002; Bass *et al.* 2001) and its dependence on market viability leaves it vulnerable to continued criticism.

These examples demonstrate that, even with regard to 'successful' voluntary initiatives, a number of factors need to be addressed to allow such approaches to reach their full potential as an effective means of regulating environmental performance. There is a considerable level of consensus throughout the literature as to these factors, across industry sectors. We have identified these 'key effectiveness factors' as:

- ▶ **Monitoring**, including evaluation, verification and meta-regulation. This is essential for assessing effectiveness and performance claims; credibility is enhanced if carried out or verified by third parties (Gunningham and Sinclair 2002; Feiler 2002; Sethi 2005)
- ▶ **Transparency**, including disclosure, publication and public involvement. Creates the conditions for external scrutiny and enhances credibility (Campbell 2006; Gunningham and Sinclair 2001; Grant and Taylor 2004)
- ▶ **Enforcement**, including sanctions and penalties. Although initiatives are voluntary, it is still believed incentives and/or remedies are required to address non-compliance (Cunningham and Clinch 2004; Potoski and Prakash 2005a)

- ▶ **Content**, including design, objectives, standards and measurable targets. The critical content needs to be clearly defined, rigorous, outcome-based and not ‘captured’ by particular interests (Moran 2002; Walker and Howard 2002)
- ▶ **Compulsoriness**, including mandatory application and incentives for adoption. It is argued that the broader the adoption of an initiative, the better the impact and effectiveness (O’Higgins 2006; Moffet and Bregha 1999; Paton 2000)

Even where voluntary initiatives are weak and/or do not appear to primarily improve performance, they have been shown to have a range of ancillary effects. These can include:

- ▶ Influencing company reputation and stakeholder trust (with or without justification) (Potoski and Prakash 2005b)
- ▶ Potentially influencing the future development of regulatory standards by raising the bar on standards (Brereton 2003)
- ▶ Bringing together the disparate expectations of companies and stakeholders as to standards of responsible behaviour (Hsieh 2006)
- ▶ Raising general awareness of environmental issues within companies (Strachan *et al.* 2003)
- ▶ Making a company more accountable for performing the actions specified in the code (Hsieh 2006)
- ▶ Contributing to the creation of new international institutions (Kolk and Tulder 2005: 19)

These ancillary effects, though arguably useful, do not, however, directly address the central aim of voluntary initiatives to regulate performance. In the next section, we will consider these issues.

Voluntary initiatives in the mining industry

A chronology of mining industry-relevant initiatives that we constructed for the Mining Certification Evaluation Project (MCEP) highlights their expanding presence since the mid-1990s (see Solomon *et al.* 2006: 17-21). In essence, development of various mining industry-relevant initiatives seems to have been in almost constant progress over the last decade. The MCEP chronology also demonstrates the diverse nature and focus of the instruments that seek to apply to the activities of the mining industry. Since that chronology was published, the Initiative for Responsible Mining Assurance (IRMA) formally commenced, which draws on the work of both the North American-based Framework for Responsible Mining and the Australian-based MCEP.¹ It describes itself as a ‘voluntary, multi-sector effort to create a verification system in the mining sector to assure compliance with environmental, human rights and social standards’ and progress is periodically reported on its website (IRMA 2006, 2007). It is the latest in a series of voluntary initiatives for the mining sector.

In this section, we identify some of the key participant groups in the development of voluntary initiatives in the mining industry. We then explore what motivates mining companies to adopt voluntary initiatives and how the elements of voluntary initiatives

¹ Initiative for Responsible Mining Assurance (IRMA) website, www.responsiblemining.net.

are integrated into corporate activity. To investigate our core question ‘do voluntary initiatives work?’ we focus on a specific case, the Minerals Council of Australia Code for Environmental Management (MCA Code).

We draw from a series of qualitative, in-depth interviews conducted between 2003 and 2005 with executive managers of large mining corporations in Australia and internationally, representatives of global NGOs and government regulators in Australia. Our focus is, however, predominantly on the perspectives of mining company executives who have been active in developing and/or adopting voluntary initiatives in the sector.

The development of voluntary initiatives: Participants

A review of listed participants in initiatives such as IRMA, the International Council on Mining and Metals (ICMM) Sustainable Development Framework, the Extractive Industries Transparency Initiative (EITI) and the Global Reporting Initiative (GRI) Mining Sector Supplement indicates that it is primarily large mining companies that are involved in their development. While smaller companies may become involved in nationally based subsidiaries of these initiatives, such as the Mineral Council of Australia’s re-branding of the ICMM Sustainable Development Framework as a national code called *Enduring Value* (MCA 2004), it is fair to say that, in general, their participation in initiative development and governance is relatively minor.

NGOs are the other key groups that are active in the development of voluntary initiatives relevant to the mining industry. For example, WWF, Global Witness and Conservation International have all taken a leading role in the development of various instruments. This is not to say that all NGOs would consider such involvement; for example, Friends of the Earth oppose voluntary initiatives as a means of regulating corporate activities and argue instead for more effective government regulation (Friends of the Earth 2002). Our interview data suggests that even for NGOs that are involved in the development of voluntary initiatives, government regulation remains the preferred regulatory strategy, although it is perhaps slower:

Basically in terms of codes of conduct, we say they’re great for industry . . . because they should be constantly trying to improve themselves . . . However, it’s no replacement for regulation (NGO #4).

Conceivably [a voluntary] system might be quicker than government regulation. It might also establish a dialogue where the actual performance standard can be thrashed out, perhaps a bit more efficiently than it might otherwise take place (NGO #1).

Other significant contributors to the development of voluntary initiatives in the mining industry include international organisations such as the United Nations (UN) and World Bank, the finance sector, major accounting firms, as well as some government bodies.

The adoption and implementation of voluntary initiatives: reputation and selectivity

The main message from the mining executives’ interviews was that companies primarily adopt voluntary initiatives as a means of improving their reputation. This is consistent with the findings of similar empirical research (for example, Gunningham and Sinclair 2001, 2002; Bartley 2003; Potoski and Prakash 2005b). Gunningham and Sinclair (2001: 5) further submit that, ‘those with reputational capital will be those who benefit from greater access to government and planning approvals, community acceptance and preferred access to prospective areas and projects’.

The dominance of reputation considerations is consistent with the contextualising of sustainable development ideas for the industry within the concept of a ‘social licence to

operate' (for example, MCA 2004). The attention paid to reputation meant that voluntary initiatives were not necessarily seen as having a significant impact on a company's performance:

[Mine site certification is] all about reinforcing our reputation, which therefore opens opportunities. If we can say, 'look, all of our mine sites are certified and if we come and develop a project in your country, we'll get that certified as well'. If the scheme has credibility, then people will feel more comfortable with us than they might with a competitor who doesn't have sites certified or only has one certified or has no intention of getting certified, so it provides again another benchmark of credibility and performance I think. So it is really about reputation, I'm not sure there's anything else (Executive #1).

Voluntary things, like membership of EITI and the voluntary principles on security [and human rights], I think they have a lot more to do with your global reputation than anything else. For some companies they are drivers, maybe they are to some degree for [this company], I don't know—but I don't really see them as a driver because I don't feel driven by those (Executive #11).

The conversion of the elements of voluntary initiatives from high-level policy to specific actions to be undertaken by employees is a critical task for implementation. However, Brereton (2003: 274) observes that, 'Across the board in the [mining] industry, translating higher level commitments into changed practices on the ground is proving to be an ongoing challenge for management.' This process of 'translation' not only highlights the complexities of integrating the company's commitment to a voluntary initiative into existing management standards and practices, but also reveals a level of subjectivity in this process.

Mining executives described their implementation of voluntary initiatives as a three-stage process. First, they identify the elements of voluntary initiatives that they see to be 'relevant' or 'of value' to their corporation. They then undertake a gap analysis of their existing internal management system to see where and how they can integrate those elements. Finally, they amend their management systems' policies and procedures to address the identified gaps. These interview extracts from two executives from different mining companies demonstrate the similarities of their approaches:

So we committed to the UN Declaration on Human Rights, for example, and then really tried to **pull the key elements out of all of those in terms of the ones that are relevant to our sort of business** and build that into our management standards . . . We slowly fill the gaps as we become aware of new initiatives and new expectations **that we think are logical and sensible for us to adopt**. So we don't always adopt everything that comes along but we've got a pretty solid core now that enables us to [build on what we have already got] rather than continually throw stuff out and say we'll start again or adopt this (Executive #1; our emphasis added).

It's almost impossible to deal with [voluntary initiatives] as individual elements. So one thing you do if there is a new code is that you go through it and set it against your management system and there'll often be a couple of things that appear as though they should be managed at a higher level than what we are. So basically if that's the case you'll come back and then adjust the management system on the understanding that all the other ones are of lesser requirement, so will be met by complying with the highest one of the range of codes. That's a long-winded way of saying that **we pick the eyes out of them** and set the standards appropriately. I mean, that's probably the easiest way around it (Executive #4; our emphasis added).

The process described by these executives of 'picking the eyes out of' voluntary initiatives, or extracting out 'the key elements of . . . the ones that are relevant to our sort of business' alludes to a level of subjective interpretation of the content of voluntary initiatives. It suggests that, even though mining corporations claim to adopt certain voluntary initiatives, there is a level of flexibility as to what elements of the voluntary initiative they actually address in their business systems. This supports Howard *et al.*'s

(1999) finding that the adoption of a voluntary initiative does not guarantee that companies follow a uniform set of practices, or comply fully with desired norms. We return to this point later.

Do voluntary initiatives work? An example from the Australian minerals industry

Our case study for this paper is the MCA Code. The MCA Code was launched in 1996 and became one of the longest-running voluntary initiatives that sought to address the environmental performance of mining companies. It required mining companies to report via a self-assessment on specific components of their environmental management and performance (a relatively new concept in the mid-1990s); and, when the code was reviewed in 2000, new requirements were put in place for the independent audit of company's reports against the Code. The Code was formally retired in January 2005 and *Enduring Value*, an Australian-focused implementation guidance for the ICMM Sustainable Development Framework, took its place.

The Code applied to the Australian and international mining operations of the signatory company: some multinational corporations only signed their Australian subsidiary companies to the Code in order to avoid the international implications of this requirement. In 2002, 39 mining companies were signatories to the Code and these represented around 85% of Australia's mineral production. Gunningham and Sinclair (2001: 7, citing Gould 2000) note that there was praise from the United Nations Environment Programme for the MCA Code, which they described as 'one of the most comprehensive voluntary codes yet devised for the mining industry and the only code to require the disclosure of environmental performance'. The MCA Code was also significant in that it was widely cited during the Mining, Minerals and Sustainable Development (MMSD)² process as highlighting the need for the development of an international framework, which subsequently emerged through the ICMM.³ It has also been influential in the sense that many of the people involved in recent and emerging voluntary initiatives (for example MCEP, IRMA) played an active role in relation to the MCA Code.

The interviews quoted here took place at a crucial moment in the MCA Code's history. The Code had been operating within the Australian minerals industry for eight years and work was under way to broaden it from a Code for Environmental Management to address issues of sustainable development. A nationally focused Code for Sustainable Development did not eventuate; the final product was, instead, the ICMM-related *Enduring Value*.

The MCA Code is used here as a case study to discuss three key issues in relation to its impact:

1. Did the Code improve environmental performance on the ground?
2. What did the Code do?
3. What key features would improve its effectiveness?

Did the MCA Code improve environmental performance on the ground?

The resounding response from the industry interviews was that the MCA Code had very little, if any, impact on the mining industry's environmental performance on the ground.

2 See Mining, Minerals and Sustainable Development (MMSD) Project archive at www.iied.org/mmsd.

3 The ICMM was also a product of the MMSD's umbrella exercise, the Global Mining Initiative, which sought some rationalisation of national and international mining industry associations. It describes itself as an industry association 'representing the leading companies of the world'. See www.icmm.com.

This is a significant finding, particularly as it might be expected that those in the mining industry would have a vested interest in presenting a more optimistic view of the effectiveness of the MCA Code on improving environmental performance.

Most mining executives remarked that the MCA Code was generally adopted by those companies that were already performing at a relatively high level and that already had environmental management systems in place. In the course of explaining what they did as a result of adopting the MCA Code, mining executives typically commented that they did not have to change their business practices in any significant way. This led several to conclude that, from their perspective, the MCA Code had very little impact on the performance of companies with existing management systems. For example:

[The MCA Code has had] less [impact] than what we would like, in that it's been mainly picked up by the larger and medium-sized organisations and basically those were the ones that were performing at a relatively high level anyway (Executive #4).

I'm not so sure it's improved our performance. Really what we did was build the [MCA Code] into our existing management system. It's there, but we're not asking our businesses to do really any separate work on it, except for the yearly report (Executive #2).

I think most, if not all, of the elements of the [MCA] Code, are encapsulated in our management system and our code of conduct and our way in which we do business . . . No, I don't see the Code substantially changing our business (Executive #3).

I mean, well, we're signed up to [the MCA Code]. We haven't actually come across anything in it that's a challenge. We're already doing it (Executive #5).

One regulator that we spoke to held the view that the MCA Code did impact to some degree on mining company practices. This was qualified, however, to note that any expectations as to what the MCA Code could achieve in relation to corporate behaviour had to be reasonable:

It must have changed their practice to some degree because they obviously had to think about what to put in place in order to comply and how they do that. Look, you have to be realistic about these things. Nothing changes completely overnight and not least the cultural practices in organisations of a reasonable size. So, if you have reasonable expectations of it, I think it's probably met those (Regulator #4).

One NGO also thought that existence of the MCA Code was a positive thing, but similarly observed that their expectations of what the Code might achieve had always been fairly limited:

Well, they didn't have any responsibility or requirement to report [before the MCA Code] and now all the signatories do. They report to lesser and greater quality and that's an issue because there's no requirement within the Code as to the precise nature of the reporting or the standard that they would report to . . . As a historical event the Code has certainly been worth it. Even from where I think we sit, it's been a useful exercise. It didn't do everything that they thought it would but we knew that right from the start (NGO #1).

What did the MCA Code do?

If the primary function of the MCA Code was not its impact on the environmental performance of its signatories, what did it do? From the perspective of the Code signatories interviewed for this research, the accomplishments of the MCA Code fell into three interrelated categories: reporting; measuring performance; and public perception.

Reporting

The fact that the MCA Code got the Australian mining industry reporting on their environmental performance was seen as one of its key achievements. One executive felt that,

as a result of impact of the MCA Code, Australian mining companies were global leaders in the area of public reporting:

We went from having nobody reporting to, I think prior to some industry consolidation, around 35 or 40 companies producing public environment reports. So we've been doing that sort of from the mid-90s and as a result we are much further advanced than most sectors and so I think that's been very positive. I think in a way the Australian minerals industry has had a leadership position globally in terms of our public reporting (Executive #1).

Measurement of performance

Mining executives liked the fact that the MCA Code provided an independent point of reference on how they were performing. They could use the Code to measure their own performance internally (as a self-assessment, at least for the first four years of its operation) and then make comparisons with other companies (subject to the limitations of a self-assessed measure). Opportunities to discuss experiences and outcomes at MCA committee meetings and conferences also gave them a means and common language for assessing their own environmental management relative to others.

Public perception

Mining executives pointed to the reporting and measurement dimensions of the MCA Code as very useful means for communicating with many of their stakeholders. For example:

I think it's been a useful code to present a united face of the industry. I think it's been very useful in convincing the government that we've been doing something (Executive #2).

. . . we needed to find ways to tell our stakeholders that we were performing to these standards. Things like the Code and public reporting . . . offered us an opportunity to actually move beyond where others perceived us to be (Executive #4).

These findings highlight that reputation was the key motivator for adopting the Code. It appears that, from the perspective of industry, the usefulness of voluntary initiatives centre on their relative value for communicating corporate environmental performance to their stakeholders.

Key factors to improve the effectiveness of the MCA Code

The five key effectiveness factors for voluntary initiatives were monitoring, transparency, enforcement, content and compulsoriness. In our research, these factors have correlated closely with critical observations from industry and some of its stakeholders as to the deficiencies of the MCA Code.

Monitoring

One of the main criticisms of the Code was the lack of independent verification of assessment of performance. In 2000, a provision for independent auditing of company reports was introduced; however, for some this fell short of more rigorous third-party processes for verification of performance. Developing systems for credibly measuring performance was a major challenge. There were examples where companies' self-assessments were:

. . . down-rated somewhat since the independent assessment [requirement was introduced]—but it's just natural for people to assess themselves favourably (Executive #3).

The Code itself was fairly simple at the end of the day. It's much more difficult to develop systems that actually show companies are performing to and beyond the requirements of the Code (Executive #4).

Transparency

For the MCA Code, concerns about transparency were mainly discussed in the context of reporting and monitoring. For example:

I suppose in my mind the impact [of the MCA Code] has weakened a bit, because I haven't seen many actually hitting their first compulsory audit and I haven't seen much report back on that (Regulator #4).

Enforcement

The lack of clear repercussions for non-compliance—for example, penalties or even expulsion ('to be outed!', in the words of Executive #2)—was another main criticism of the Code. For some executives, the importance of reputation served as a sufficient enforcement mechanism. However this is a relatively weak and indirect mechanism requiring action on the part of other stakeholders rather than the Code itself.

Content

A major criticism from industry and NGOs alike was that the MCA Code was systems-based rather than outcomes-focused. In this, the standards were found to be difficult to verify against. They were also perceived to be not challenging enough, so could not function to lift performance levels. For example:

The problem with a lot of these voluntary codes like [the MCA Code] is that . . . in terms of trying to seek agreement from the participants you end up at the lowest common denominator. You don't end up with something that's creating a leading-edge position (Executive #5).

Compulsoriness

In spite of what could be seen as a low entry point, the MCA Code failed to engage with smaller companies in its design or as signatories, largely attracting only the higher-profile companies. It was noted that few external pressures (for instance, quicker licensing approvals, relationships with NGOs) were harnessed that might effectively coerce small and medium-sized mining companies to adopt the MCA Code. This drew attention to the 'free-rider' problem:

. . . it's often those companies that aren't signed up to those codes that most need to be signed up (NGO #4).

What does impact on performance? When asked what would be the best way to deal with underperformers in the minerals industry, the candid answer from a mining executive was:

Government regulation. It's that simple. If it's made legal or illegal to do something, then that will dictate behaviour and anything else is secondary, quite frankly (Executive #4).

How, then, might voluntary initiatives that possess these key effectiveness factors differ from command-and-control regulation? This question is considered in the next section, with a particular focus on the apparent paradox of 'compulsory' voluntary initiatives.

'Compulsory' voluntary initiatives?

What would a regulatory instrument look like that incorporated all of the key effectiveness factors for voluntary initiatives? Theoretically, it might exhibit the advantages of both 'command-and-control' regulation and voluntary initiatives. It would be designed to address core issues that result in improved performance on the ground; it would be a cost-effective, flexible and reviewable instrument, responsive to industry's needs and with the potential for transboundary application; and its adoption would be compulsory with compliance maximised using monitoring, enforcement, transparency and sanctions.

A composite picture of a 'compulsory voluntary initiative' is emerging and it is suspiciously similar to the oft-cited nemesis of the voluntary initiative, 'command-and-control' regulation. 'Command-and-control' instruments have been defined as a 'form of law having broad goals and using specific direct means to achieve the goals' (Gunningham and Sinclair 2002: 191, drawing on Teubner 1983). Similarly, the European Environment Agency⁴ applies the following definition: 'command-and-control instruments (e.g. mechanisms, laws, measures) rely on prescribing rules and standards and using sanctions to enforce compliance with them'.

However, 'compulsory voluntary initiatives' and 'command-and-control' instruments can be distinguished by the nature of the institutions that create, administer and enforce them. Traditional command-and-control regulation arises from what is predominantly a state regulatory mechanism, which tends to limit their transboundary potential. Voluntary initiatives, on the other hand, represent an evolution towards private rather than public institutions and hold potential for global application (Cohen 2006: 36). Private-sector mechanisms seek to 'harness market, peer and community energies to influence behaviour and draw on the infrastructure of intermediaries such as industry associations, standards organisations and non-governmental organisations for rule development and implementation' (Webb 2006a: 4).

The 'private' provenance of voluntary initiatives should make us wary of embracing the notion of a 'compulsory voluntary initiative' as a panacea to the problem of corporate environmental impacts. The implications more generally of privatising regulation are problematic and include the possibility of unclear responsibility for setting standards, increased influence of business considerations in designing standards, a diminishing of democratic channels of participation (as a result of participation being by selection based on deemed interest, potential contribution or perhaps anticipated agreement) and weaker public control and access to information. Gleckman (2004) is one observer who warns that the power balance between public and private interests in relation to environmental issues is currently too far tilted in favour of short-term private-sector interests.

There are also indications that some of the proposed benefits of 'compulsory voluntary initiatives' might be difficult to balance or reconcile. For example, ensuring that an initiative is both cost effective and able to effect real change on the ground is a key challenge. The industry participants in our research, for example, stated that the adoption of the MCA Code caused them to make few changes to their practices. This meant that its adoption was cost-effective; but would it have still been so if it had required them to implement dramatic changes? What, then, are its prospects for broad sectoral adoption, let alone compulsoriness? As discussed in the MCA Code case study, the process of reaching agreement in the standards-setting process often results in compromise to the lowest common denominator.

4 See EEA Glossary available at: glossary.eea.europa.eu/EEAGlossary/C/command-and-control.

Similarly, there may be a tension between a voluntary initiative's flexibility and compliance, particularly with regard to the complete implementation of its stated requirements. As our discussion of the 'translation' of voluntary initiatives within companies indicated, adopted instruments are not always comprehensively implemented. The flexibility of voluntary initiatives is touted as one of their benefits, particularly in terms of application in a range of environmental and social contexts. However, their malleability needs to be tempered to ensure that the claimed intentions of the voluntary initiative are being achieved. Accordingly, less flexibility may be required to ensure greater consistency between the corporate policy adoption of voluntary initiatives and their impact on performance on the ground.

Understanding voluntary initiatives—compulsory or not—as a form of private regulation highlights the dependence between the relative power of stakeholder interests in the development process and the prospects for impact on on-the-ground performance. While we certainly appear to be moving towards a global environmental regulatory paradigm where government and corporations share regulatory responsibilities (Arnold and Whitford 2006: 9), the critical dimensions are going to be power and authority. The increasing influence of business interests in regulatory mechanisms, both public and private, hold implications for a reduced consideration of the importance of the public good and an increased importance placed on reputation and value to the company through adoption. The question of making voluntary initiatives compulsory only serves to highlight the blurred lines of authority (and thus motivation) for the shaping of regulatory governance. With so much at stake, this is likely to continue to be a contested domain for all those with an interest in improving environmental performance.

Conclusions

So, on balance, do voluntary initiatives in the mining industry work? They certainly appear to, in terms of reputation, communication with stakeholders and general awareness-raising within companies. However, a demonstrated effect on environmental performance, as explored with the specific example of the MCA Code, is more difficult to attribute directly to the adoption of voluntary initiatives. The process of 'translation' of voluntary initiatives into company systems highlights an inherent subjectivity in implementation. In essence, an industry initiative can probably be said to 'work' in the interests of its designers, mostly by addressing aspects of their social licence to operate.

There are a number of key factors—monitoring, transparency, enforcement, content and compulsoriness—that hold prospects for enhancing the efficacy of voluntary initiatives. New initiatives such as IRMA are drawing on the experiences and lessons of the last decade of initiative development and are focused on key factors such as monitoring, transparency, content and broad participation in design. However, the reputational stakes, which tend to motivate company participation and the inherent power issues in the process of development, are still likely to be complicating factors.

While making voluntary initiatives compulsory may offer a means for recapturing some of the benefits of mandatory command and control-style regulation, it is by no means a panacea. Idealising a composite picture of a compulsory voluntary initiative leaves aside the broader problem of private, but mandatory, regulation. Privatisation of regulation raises significant questions of authority, responsibility and influence in environmental governance, which appear to point to the diminishing of importance of public interests.

Voluntary initiatives seem likely to at least remain, if not increase, as a significant regulatory tool in capitalist societies, particularly for issues that are global, international,

sectoral or thematic and which impact directly on private-sector reputation. Importantly, they do not diminish the role of government-directed regulation and, indeed, are widely seen to be complementary. However, their increasing influence means they must continue to be watched carefully regarding their claims for effectiveness in changing performance.

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