



# **SELF-REGULATION & VOLUNTARY COMPLIANCE**

**AWMA**

**April 6, 2006**

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# Agenda

- ▶ Statement of the Problem
- ▶ Enforcement / Compliance Theory
- ▶ Voluntary Compliance Initiatives
- ▶ Self-Regulation Theory
- ▶ Self-regulation as a Policy Instrument

# he Problem

Resources For the Future report - "for the foreseeable future, neither EPA nor the states will have enough money to implement all of the legally required pollution control functions."

(Davies 1997)

The 2006 budget will be \$200MM lighter (\$7.6 billion)

# The Dichotomy

Environmental issues are very important to the American public because people want clean air, clean water, and minimal use of natural resources, "an overwhelming majority of voters think that environmental protection should be maintained or strengthened." (Repetto 1995)

# Problems with US Regulatory System

Often Cited Problems with US Regulatory System:

- Does not take a holistic view of the environment
- Does not require pollution prevention at the source
- Very complex
- Expensive & Burdensome

# Compliance / Enforcement theory

Compliance = company is "achieving the required environmental standards, regulations or permit conditions by meeting expected behavior in processes and practices."

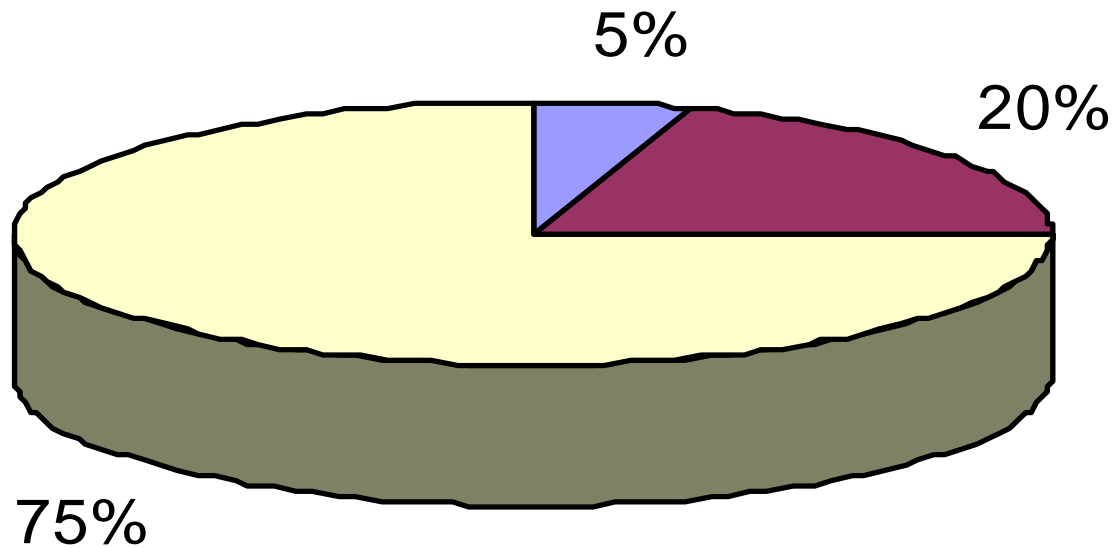
Enforcement comprises the "legal tool[s] ... designed to compel compliance,"

# Compliance With Regulations

(Tietenberg 1992)

20 % that will comply no matter what

% of individuals that will violate no matter what



% that will comply only if the violators are punished

# Compliance is Critical

Environmental regulations are meaningless if they are not being followed, compliance is critical to “realizing the benefits envisioned by environmental policy.”

# Compliance is Difficult

Former EPA Administrator, Carol Browner - current environmental regulatory scheme "**a complex and unwieldy system of laws and regulations and increasing conflict and gridlock.**"

*National Law Journal* reported that two thirds of corporate lawyers surveyed ... indicated that their companies have violated some environmental statute within the last year because of uncertainty and complexity, and **70 % believe that it is impossible to be in full compliance with all the state and federal environmental laws.**" (Volokh 1996)

# CAL COMPLIANCE METRICS : 2005

<b>EPA Administrative Penalties</b>	\$27,000,000
<b>EPA Judicial Penalties</b>	\$127,000,000
<b>Sentence years</b>	186
<b>Criminal fines</b>	\$100,000,000

# COMPLIANCE PROGRAM: 2005

Web site VE 2005 results

<b>Pollutants reduced (pounds)</b>	<b>1,100,000,000</b>
<b>Contaminated soil and sediment cleaned up (cubic yards)</b>	<b>28,200,000</b>
<b>Value of Supplemental Environmental Projects (SEPs)</b>	<b>\$57,000,000</b>
<b>Number of Regulated Entities Receiving Assistance during EPA Inspections/Evaluations</b>	<b>7,085</b>

# enforcement

Some scholars agree that the reliance on enforcement statistics **is not a healthy indicator** of enforcement programs.

Is a police department doing a good job if it has more arrests and convictions?

A police department is doing a good job when there is less crime and fewer convictions. (Morelli, RI)

# Mind Set of the Regulatory Agency is Critical

Two views:

"amoral calculator," where the industry is thought to be consciously devising ways to get around the regulation.

"corporate citizen" where the industry is willing to work with the regulator to achieve common goals.

(Kagan 1983)

# Agency Approaches

Regulatory Agency's Have a variety of Approaches to Choose From:

Deterrence - - - Relies on violations & punishment

Compliance - - - Relies on negotiation, relationship building

# ENFORCEMENT / COMPLIANCE

*Protecting Your Health & The Environment Through Innovative Approaches to Compliance: Highlights from the Past 5 Years (1999)*

EPA admits measuring inspections, fines and violations “**do not help us measure the state of compliance** with environmental laws, the environmental results achieved, nor the degree to which program objectives are being met and non-compliance problems are being addressed.”

# LESSONS FROM NYC

- ➔ Giuliani administration - dramatic decrease in crime
  - 62% less than when he took office!
  - 67% less robberies and
  - 81,695 less auto thefts.
- ➔ How did it happen? A focus on **prevention** and **better use of resources**.
- ➔ In 1994 Giuliani made it clear that a police officer's **"primary role was preventing crime."**

# Current Approach Incomplete

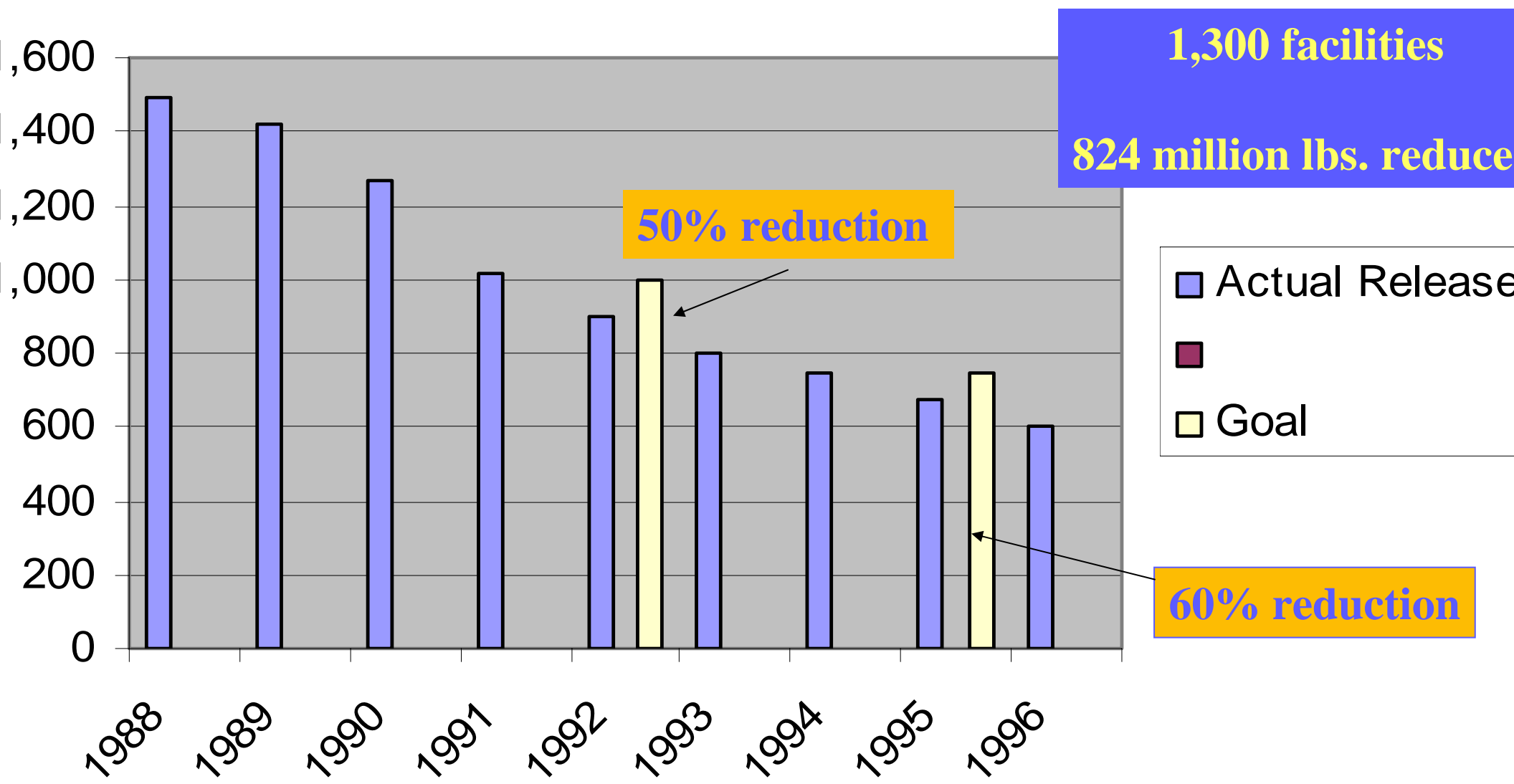
National Research Council states the current regulatory approach as an **incomplete** environmental strategy due to its command and control methodology.

Their report concludes **industry-initiated** environmental improvement programs should be an important supplement to government regulatory activity. (NRC 1997)

voluntary approaches have been successful

INDUSTRY INITIATED	US GOVERNMENT INITIATED	INTERNATIONAL INITIATIVES
<ul style="list-style-type: none"> <li>• 3M – Pollution Prevention Pays (3P)</li> <li>• Dow Chemical – Waste Reduction Always Pays (WRAP)</li> <li>• Dupont – Zero toxic chemical release goal</li> <li>• Monsanto – 90% toxic chemical emissions goal</li>   <li>• Johnson &amp; Johnson – Next Generation Environmental Goals</li> </ul>	<ul style="list-style-type: none"> <li>• Audit Policy</li>   <li>• Environmental Leadership Program</li>   <li>• Green Lights</li>   <li>• Energy Star</li>   <li>• 33/50 Toxic Chemical Reduction program</li>   <li>• Performance Track</li> </ul>	<ul style="list-style-type: none"> <li>• Germany – Industry Climate Protection program</li>   <li>• Netherlands - Dutch Covenants, National Environmental Policy Plan</li>   <li>• Canada – Industry Program for Energy Conservation</li>   <li>• New Zealand – CO<sub>2</sub> Reduction Agreement</li> </ul>

# A 55/50 Program (millions lbs)



# Program Results

Over 27 million metric tons of greenhouse gas emissions (MMTCE) prevented  
110 billion kWh and 20,000 MW peak power saved

Prevented the equivalent GHG emissions of 18 million cars

\$8 billion estimated in energy savings

56% of Americans recognize ENERGY STAR

# Carbon Reductions

S. companies and state regulators are clearly getting out front of the federal government in addressing climate change" said Neil J. Mark, Chairman of the SEI Board. "GreenBiz.com 11/04

work with  
companies to reduce CO2  
emissions demonstrates  
voluntary  
climate commitments  
valuable in  
demonstrating innovative  
technologies and the  
business case for climate  
action.



- 1<sup>st</sup> 9 Companies
  - Johnson & Johnson
  - IBM
  - Polaroid Corporation
  - Nike, Inc.
  - Lafarge
  - The Collins Companies
  - Sagawa Express
  - Yanterra

# Limited Inspections

"No agency can afford to conduct unlimited inspections ... the challenge is one of priorities and allocation of scarce inspector resources."

(Tietenberg 1992)



# Can Self-regulation Help?

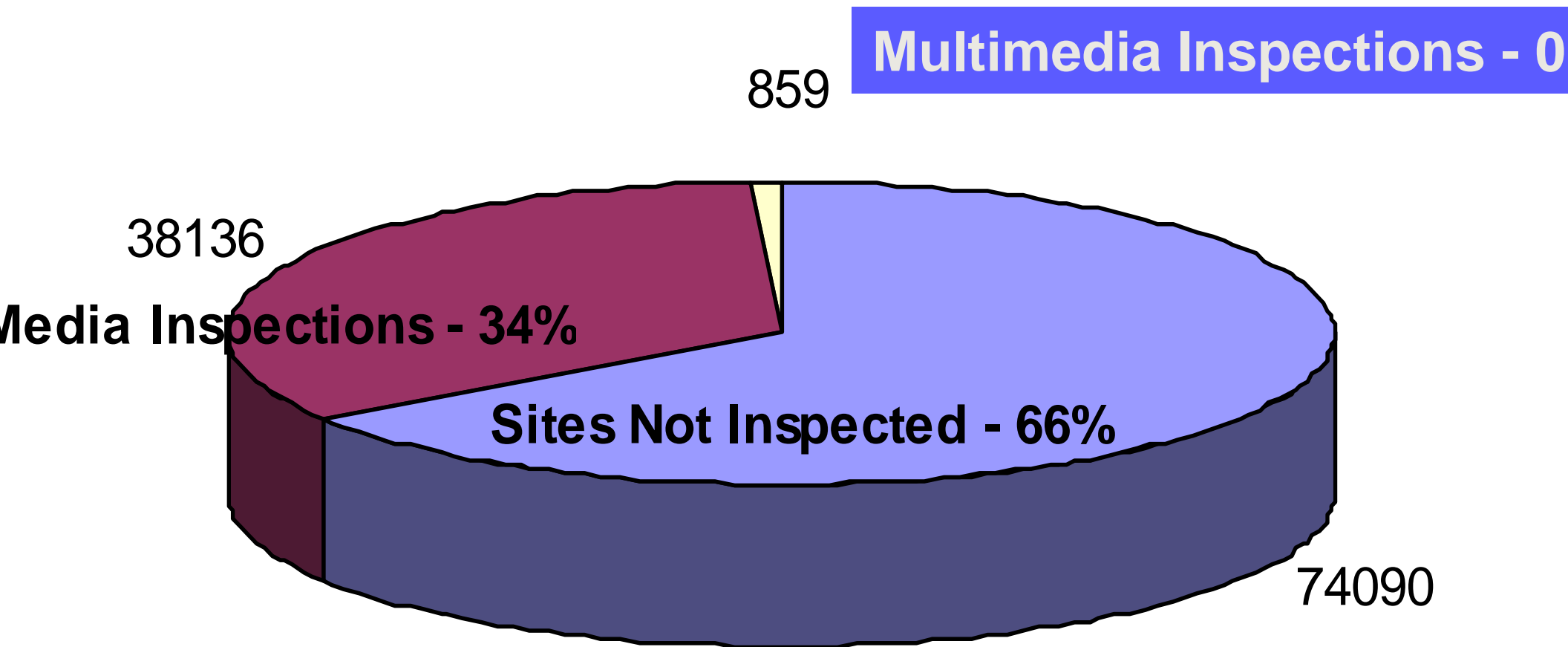
Self-regulation is identified by scholars as “alternate compliance plans conceived by regulated entities, with some degree of government review and involvement.” (Steinzor 1998)

# Areas Where Self-regulation is Practiced

- Financial futures markets
- The Institute of Nuclear Power Operations
- The accounting field
- The US Department of Defense
- Many occupations (medicine, law)

According to another report, there are approximately 10,000 regulated facilities nationwide, of which 2,226 are considered large sources (Hale 1998)

## EPA Inspection Rates at Large Facilities Over a 2-Year Period



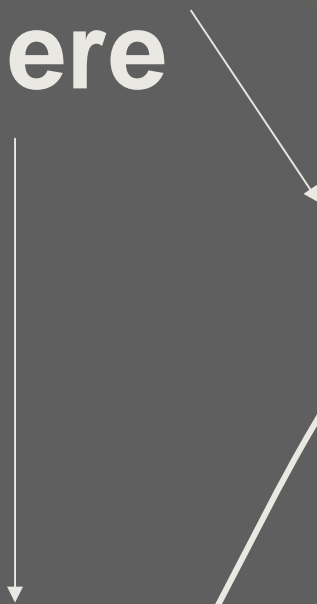
<i>ASPECT</i>	<i>SELF-REGULATION</i>	<i>TRADITIONAL REGULATION</i>
Rulemaking	Easier to develop, more flexible and faster to implement, inexpensive	Complex development process, lengthy implementation time, high cost
Agency oversight	Lower administrative resources, more cooperative	High administrative costs, more adversarial
Conformance to standards	Easier to conform, more flexible, less paperwork	More complex, difficult to conform to standards
Public trust	Lower degree of public trust, depends on the amount of government involvement	High degree of public confidence
Stakeholder involvement	Typically low stakeholder involvement, non-inclusive process	More open process, high degree of public involvement
Sanctions for non-performance	Low or minimal sanctions	High sanctions

# Importance of Incentives / Benefits

Without sufficient benefits self-regulatory / voluntary programs will only attract a hand full of companies interested in enhancing their reputation. **This will be of limited benefit.**

We must ask what the goal of the self-regulatory program is. If it is to gain a **complying majority** so that the environment will be better protected, it will not be attained if companies see little benefit in participating.

**Focus  
Agency  
Resources  
Here**

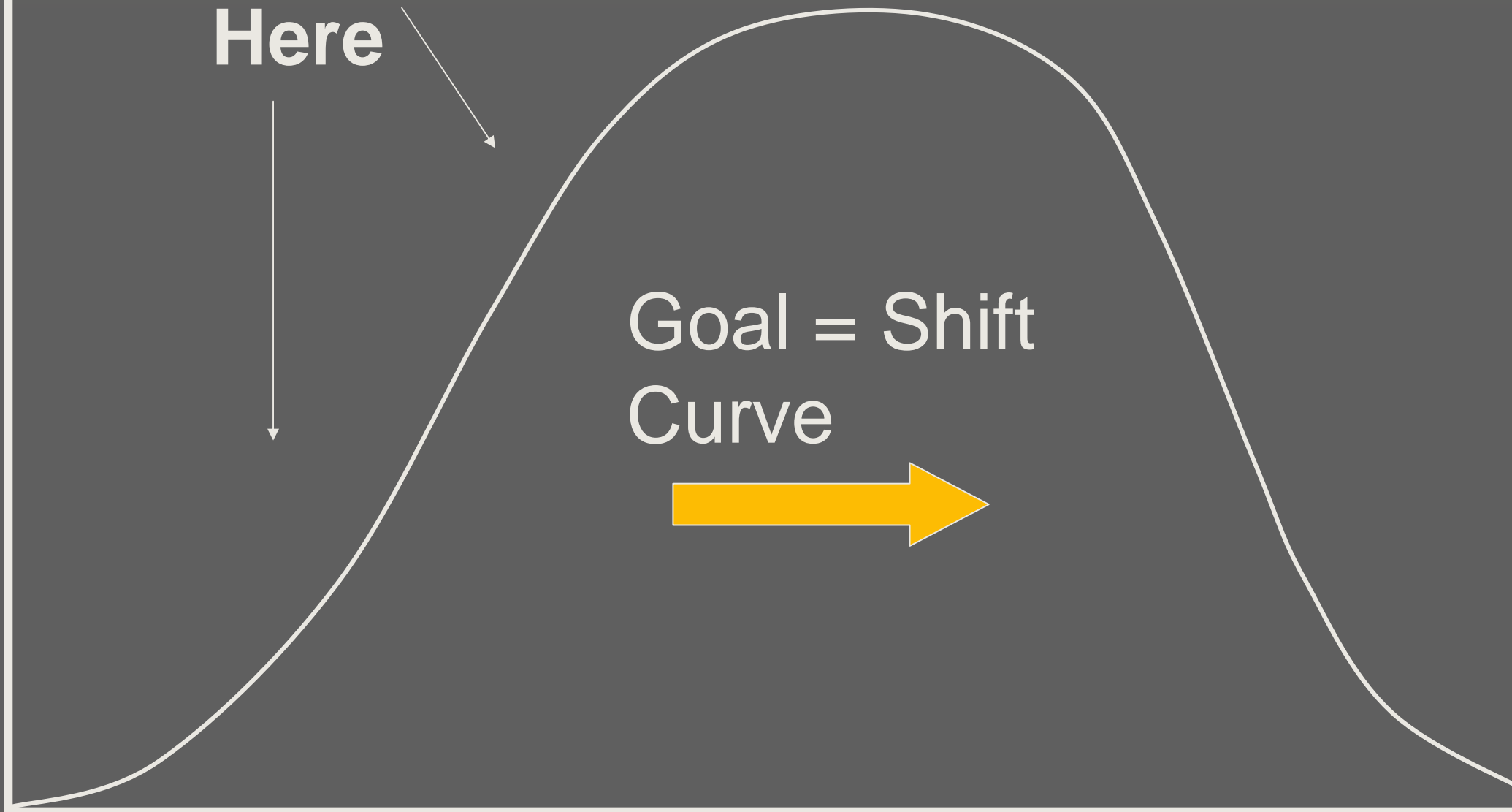


**Goal = Shift  
Curve**



**Poor**

**Top**



<b>Goals</b>	Program must have a clear purpose	If having a complying majority is goal – the entire program must be aligned with this goal
<b>Government involvement</b>	A government agency must run the program	Public confidence is greater with government run programs
<b>Self-Compliance component</b>	An element of the program should include going beyond regulatory requirements	This will help the participants stand out as leaders and bolster public confidence in the program
<b>Benefits \ Incentives</b>	Benefits to participate must be obvious and tangible	Public recognition, violation amnesty & reduced inspections are attractive incentives
<b>Size \ Complexity</b>	Program elements must be as simple as possible	There must not be undue burden on the participant or the agency to run the program for maximum benefit
<b>Stakeholder involvement</b>	Stakeholders like environmental groups should be part of the program development	Participation of stakeholders in on-site reviews should be optional because if mandatory – it will be a barrier
<b>Legal Standing</b>	There should be no doubt of the legal efficacy of the program	The fear of legal action is a barrier for participation in self-regulatory programs

# Model Self-regulatory program

Goal	Elements	Incentives
Develop complying majority	Self audits, commitment to compliance	Recognition as leader
Inclusive	ISO 14001 Certification	Violation amnesty for self-disclosed issues  Reduced inspections

# Alternative Strategy for Compliance



winning the cooperation of regulated firms is by and large  
the most effective way of carrying out a regulatory program.  
The regulator should at different times resemble a  
consultant, politician or a combination of both.

Regulated firms should be treated as responsible and  
reasonable citizens motivated by good faith and willing to  
seek advice." (Rees 1988)

Companies should be willing to go beyond regulatory  
compliance to affect environmental improvement

focus on **prevention & cooperation"**