New research has examined three different categories of Ecological Risk Assessment (ERA), each with different goals. The researchers find that overlaps between the three assessments could be combined to create a more comprehensive form of ERA, usable by regulators and environmental decision makers.

Enforcement of environmental law needs an integrated administrative and criminal sanction system, according to a UK lawyer and researcher. Writing in a recent paper, he argues that an integrated system allows the most appropriate response to each individual case of the law being broken.

An effective sanctioning system does not simply mean bigger penalties, according to the researcher of this study. Instead, he believes that the most appropriate type of sanction needs careful consideration. A fully integrated system of criminal responses and administrative responses (which can be issued by a regulator, such as a local authority or environmental protection agency, without the need to involve police or courts) enables this careful judgment and increases the regulated community’s confidence in the sanction system, the researcher says.

In most jurisdictions, different bodies are responsible for criminal prosecution and the imposition of administrative sanctions, with little effective coordination between them. There are exceptions such as Flanders (Belgium) and Scotland where real effort has gone into improving liaison systems. In England, the main environmental regulator, the Environment Agency, both initiates criminal prosecutions and imposes administrative sanctions — but this is the exception.

An integrated system helps address key challenges for sanctioning identified by the researcher. For instance, breaches occur within a wide range of circumstances. Some breaches are deliberate, and offenders will calculate how much money they can make by committing the act, and how they can avoid being caught. At the other end of the spectrum, breaches may be careless or accidental (such as the breakdown of waste management equipment), but still require some sanctioning response beyond a mere warning because of serious consequences. In some countries, such careless or accidental behaviour can even be taken before the criminal courts, since criminal offences in environmental law are often drafted so as not to require any proof of intent or recklessness.

Furthermore, a huge variety of sanctions can be used. Traditional criminal sanctions are fines and imprisonment, but in some countries courts can force the guilty company to publically admit their offence in the media. As an alternative to imprisonment, criminal courts often have power to order offenders to complete community service or other forms of rehabilitation.

Administrative sanctions are often fines, and regulators can also order offenders to take action, such as cleaning up pollution or introducing measures to stop the offence re-occurring. In non-serious cases, many enforcement bodies also give formal warnings or cautions rather than impose a sanction.

Continued on next page.
The researcher proposes a number of principles that should underlie any sanction systems. He believes that sanctions should not be purely about punishment, but intended to change behaviour. They should ensure no financial gain from non-compliance, be appropriate to particular circumstances, encourage restoration and deter future non-compliance.

This complex environment of sanctions and breaches requires a sophisticated, flexible system, which is why the researcher argues for an integrated administrative and criminal-law sanctioning system. The criminal and administrative responses can be undertaken by different bodies, but those responsible should coordinate and agree the appropriate response to any particular breach, viewing the system as an integrated whole. There should be a common (jointly issued) enforcement policy. Ideally, when a breach occurs, a single investigation should be conducted before deciding on the sanction.

Robust research is lacking on the impacts of different sanctions, because there are so many other factors that may influence compliance behaviour. The researcher highlights a significant Canadian study\(^1\) which compared sanctions for breaking workplace safety laws in Ontario (where only criminal sanctions are used) with those in British Columbia (where administrative penalties are used).

In British Columbia, inspections were twice as likely to lead to penalties as in Ontario, but there were fewer appeals against the administrative penalties than criminal penalties. On average, there were 500 days between the crime and trial in Ontario, but just 70 days between the breach and penalty confirmation in British Columbia.

It remains extremely difficult to prove sanctions’ impacts on actual behaviour, the researcher writes. However, this gap in knowledge should not prevent the development of better sanctioning systems.

In conclusion, the researcher highlights recent improvements in exchange of information between European national bodies engaged in environmental enforcement issues (such as the European Network of Prosecutors for the Environment). However, he emphasises how vital it is for these bodies not to work in silos, and to recognise enforcement and sanctions, both administrative and criminal, as an integrated system.

---