**Environmental Regulators on the Front-Lines:**

**A View from the States[[1]](#footnote-1)**

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Paper prepared for the

2013 Western Political Science Association Meeting

March 28, 2013

Los Angeles, California

The enforcement approach and regulatory style of regulators is often the subject of study in a host of policy arenas. Related to understanding enforcement is the nature of the interactions between regulator and regulatee. Yet, in the realm of U.S. environmental policy, these interactions remain understudied. We strive to understand how front-line environmental regulators with state environmental protection agencies interact with their counterparts in the regulated community since these interactions constitute environmental policy. We conducted an extensive online survey of these regulators in seventeen states, which resulted in a sample of more than 1,200 regulators. To our knowledge, no survey of this scale has been conducted in the U.S. with this population; further, this level of participation provides perspectives from around the nation and includes states that are both environmental leaders and laggards. These data reveal that environmental regulators generally have positive interactions and are building productive relationships with their regulatory counterparts. Our findings contribute to the dialogue on responsive regulation and the ability of regulators to have positive, productive interactions without the automatic presumption of regulatory capture. By documenting the voices of these front-line regulators, we can better articulate how environmental regulation can and should evolve in the U.S.

It is often presumed that regulatory interactions are fairly straightforward. A regulator arrives at a facility with knowledge of the applicable regulatory requirements and begins checking off compliance with those requirements, thereby conducting inspections in a uniform and scripted manner. Yet, the reality of these inspections in environmental policy is far less straightforward. Consider the following scenario which demonstrates the complexities a regulator encounters in a typical site visit. A waste regulator arrives at a landfill that has been operating for decades, without any major issues regarding traffic, noise, or any of the other usual complaints about a landfill. This regulator has been assigned to this facility for the last five years, and this facility has operators that know their job and rigorously pursue compliance with environmental regulations.

Upon arrival for a routine inspection, the regulator notices that there is an unusually high level of erosion – enough to jeopardize the landfill’s compliance with its permit requirements. Just as the regulator is about to bring up the erosion he has noticed, the facility contact brings it up gloomily. The facility contact ashamedly admits that the landfill has been dealing with an unusual rate of erosion, and he has been worrying about it constantly as his facility has been doing its best to try and mitigate it. The likely culprit of the erosion is the unseasonable rain the region is experiencing with. With this information, a variety of questions arise. What regulatory approach should the regulator take? More specifically, should the regulator be strict with this facility that has always been in compliance? Or, should the regulator take into account the unusual circumstances along with the facility’s compliance record?

 This scenario demonstrates that compliance is far more complicated than a simple check box as to whether a facility is in or out of compliance. The regulatory enforcement approach or style a regulator use may have significant implications for the implementation of policy (May and Winter 2011). Here, we focus on the regulatory style of state environmental regulators. These state regulators are frequently neglected in larger examinations of the environmental regulatory state in the U.S.; as such, we refer to the 1,238 state regulators collectively as the Lilliputians of environmental policy. Although the term Lilliputian, borrowed from Jonathan Swift’s *Gulliver’s Travels*, often carries with it a pejorative connotation, we use it in a positive manner, much the way Goodsell (2004) and Wamsley et. Al (1990) use the term “bureaucrat.”

The following pages unpack the concept of regulatory enforcement styles and consider the preferences of the Lilliputians, and we demonstrate the complexities associated with the existing categorizations of regulatory enforcement styles. As a result of these complexities, we offer new terminology (precision-based and intention-based regulatory enforcement styles) to better understand the styles of the state environmental regulators in this study. The data demonstrate that the Lilliputians ultimately embrace a mix of precision-based and intention-based enforcement styles. The driving influences on their regulatory styles are determined by the state in which they work, media, time spent in the office, age, and level of trust that they have in a regulated facility. We argue that the mixture of a precision-based and intention-based enforcement style bodes well for discussions of next-generation environmental policy and helps dispel the sometimes negative caricatures of front-line workers.

**Significance of the Lilliputians**

 Even though environmental regulators are understudied, they are significant. As Lipsky (1980) correctly notes, the work and experiences of front-line workers “occupy a critical position in American society” since the actions of these individuals constitutes agency policy (3). Riccucci (2005) reminds us, decades later, that front-line workers function with less influence from management than we might think. These crucial actors influence policy implementation profoundly and with far less influence from management than we might expect for several reasons. First, the responsibilities of front-line workers require substantial amounts of bureaucratic discretion in order to accomplish the “impossible tasks” before them (Lipsky 1980). Front-line workers are charged with implementing vague policy and regulatory language that may have equally confusing or unrealistic policy guidance. Therefore, to accomplish their tasks and to do so in the face of often insurmountable resource and personnel constraints, front-line workers use their own training and expertise to exercise bureaucratic discretion. Second, front-line workers are often subjected to multiple principals who suffer from information asymmetry and lack the expertise that front-line workers possess, thereby compounding their challenges (Waterman, Rouse, and Wright 2004).

Given the work environment of these individuals, such as enormous caseloads, insufficient resources, challenging client populations, and specialization within agencies, it is typical to find front-line workers functioning in silos, independently from each other. Although standard operating procedures and related policy guidance invariably exist, ensuring those procedures are followed can be difficult. These realities underscore the need to understand front-line worker populations because they are the ones tasked with implementing policy, yet unbeknownst to many Americans, the decisions and actions of these civil servants constitute policymaking.

In terms of front-line workers in regulatory arenas more specifically, they are responsible for implementing and assuring compliance with various regulatory regimes. They too are studied, but typically only in terms of their enforcement style and whether that style coincides with their agency’s broader approach to enforcement (c.f. Bardach and Kagan 1982/2002; Hawkins 1984; Braithwaite, Walker and Grabosky 1987; Gormley 1998; Hutter 1988; Hutter 1989; May and Winter 2000; Nielsen 2006; Nielsen and Parker 2009). However, investigating enforcement styles neglects the factors that impact how policy is implemented by front-line workers in the first place. Enforcement styles are just a piece of the regulatory equation since they provide little elucidation regarding front-line regulators’ perceptions of the regulated community, their opinions about their colleagues in their agency and their colleagues in other governmental agencies, and, more generally, their views about the broader aims and objectives of the regulatory regime.

**Study Design**

To investigate the Lilliputians’s regulatory enforcement style preferences, we employed an online survey to gather data from environmental regulators in states across the US.[[2]](#footnote-2)The online survey included responses from 1,238 regulators in 17 states: Arizona, California, Colorado, Illinois, Kansas, Kentucky, Minnesota, Montana, New Hampshire New Mexico, New York, Ohio, Rhode Island, Utah, Vermont, Wisconsin, and Wyoming.[[3]](#footnote-3) This level of participation provides perspectives from regulators across the nation and includes states that are environmental leaders and laggards. To our knowledge, no survey of this scale has ever been conducted in the US with this population of environmental regulators.

 First, some detail about key components of our survey. We gathered data on a host of contextualizing factors. Respondents were asked about the environmental media (e.g. air pollution control, water pollution control, solid and hazardous waste, etc.) in which they work. In general, state environmental agencies have a variety of titles for their offices or divisions. For example, New Mexico’s Environmental Department contains divisions ranging from hazardous waste, drinking water, surface water, to air quality. Conversely, Utah’s Department of Environmental Quality has divisions including radiation control, solid and hazardous waste, drinking water, air quality, and remediation. To provide consistency, the regulators have been categorized into air, water, waste, or remediation.

 Additionally, the 17 states that participated in this project were categorized by their environmental approach and capacity. Some states have the commitment and capacity to pursue more robust environmental protection policies while other states either cannot or chose not to pursue such rigorous policies. It is important to consider the Lilliputians in the context of their state’s approach. More specifically, we have grouped the states based on Rabe’s (2011) evaluative criteria.[[4]](#footnote-4) Therefore, the states for this project have been grouped into the following categories (see Table 1.1): trailblazers, mainstreamers, and lingerers.

**Table 1.1**

**State Environmental Protection Groupings**

**Trailblazers Mainstreamers Lingerers**

California Arizona Colorado

Illinois Kentucky Kansas

Minnesota Montana Ohio

Vermont New Hampshire New Mexico

 New York Wyoming

 Rhode Island

 Utah

 Wisconsin

We suggest that *trailblazers* are the environmental leaders with the greatest commitment and capacity for environmental protection. Moreover, Minnesota, Vermont, Illinois, and California rank among the top states according to the *State of the States* environmental index (Vig and Kraft 2006). *Mainstreamers* are “middle of the road” states and include New York, Utah, Wisconsin, Kentucky, New Hampshire, Montana, Arizona, and Rhode Island. These particular states are generally receptive to environmentally friendly policies. Lastly, we argue that Ohio, Colorado, Kansas, New Mexico, and Wyoming, are the *lingerers*. This grouping of states has a tendency to lag behind the others in promoting environmental protection. Altogether, this grouping scheme is consistent with existing classifications in the environmental policy literature (c.f. Lester 1989; Vig and Kraft 2011; Rabe 2010). Moreover, this grouping helps to identify if a state’s commitment to environmental protection is an explainable variable in this study.

For our purposes in this paper, we are primarily concerned with survey data that explore the regulatory styles of the Lilliputians and these data help demonstrate the complexity of regulatory compliance assessments that regulators encounter daily. Regulators face mounting challenges when it comes to compliance, ranging from workloads, difficulties monitoring compliance from afar, confusion over regulatory language, the exercise of discretion, and other issues. As Fineman (1998) concludes “[t]he field inspector’s ‘street-level’ bureaucracy is a far cry from the Weberian image of monolithic rules and standardized procedures. It is more an exercise in careful ritual and improvisation, where personal style, dramatic skill, emotion and a degree of bluff are used to put flesh on the regulatory skeleton” (969).

**Regulatory Enforcement Strategies and Styles**

 When we consider enforcement approaches, they are conceptualized at two different levels, agency and individual. Discussions of agency and individual regulatory enforcement approaches are oftentimes conflated; however, there is a distinct difference (May and Winter 2011).Accordingly, for our purposes, we follow May and Winter (2011) and term an agency’s means of pursuing regulatory enforcement as its *enforcement strategy* and we term the approach of an individual regulator as *enforcement style*. With our emphasis on individual regulators, we focus generally on enforcement style, but given the agency environment in which regulators work, it is important to spend a few moments considering enforcement strategy.

**Enforcement Strategy**

Any regulatory agency, including those agencies that the Lilliputians work for, makes decisions about enforcement priorities, targets, and where to concentrate its efforts. For example, one environmental protection agency may focus on working with the small business community because those facilities may not have the infrastructure or the resources, particularly in a down economy, to devote lots of staff time to environmental compliance. Therefore, the agency may increase efforts to educate this population about regulatory requirements. Alternatively, another state agency might have a particularly low compliance rate among its printing operations as a whole, so the agency may prioritize this population to undergo inspections more frequently in an effort to promote compliance.

Numerous studies have explored agency enforcement strategies (c.f. V. Braithwaite, J. Braithwaite, Gibson, and Makkai 1984; Braithwaite et al. 1987; Reiss 1984; Scholz 1994).Braithwaite et al. (1987) devised four different groupings of agency enforcement strategies: get tough, persuasion, education, and management advice. Although understanding enforcement strategies of an agency are significant, this approach is top down and at the macro level of an agency’s regulatory work. We maintain, however, that although this approach is valuable, it is imperative to examine the work of a regulatory agency from the ground-up because it is the actions of regulators, day in and day out, that constitute the implementation of policy and regulation.

**Enforcement Style**

Examining regulators and their role in enforcing regulation has not gone unstudied (c.f. May and Winter 2011, 2000, 1999; May and Burby 1998; Kagan 1994; Hutter 1997; 1989).Following previous studies,[[5]](#footnote-5) we use the term “enforcement style” (as opposed to enforcement approach) to describe how an individual regulator deals with the regulated community and ensures compliance with applicable regulations. Enforcement style essentially is the nature of the day-to-day interactions of inspectors when dealing with the regulated entities(May and Winter 2011; 2000; 1999).

Initial discussions of regulatory enforcement styles asserted that regulators embraced one of two styles and those styles were mutually exclusive (c.f. Hawkins 1984; Reiss 1984). Those two styles were either a formal, rules-oriented enforcement style or a flexible, results-oriented, accommodative style. We consider each in turn because we first need to understand the ends of the regulatory enforcement style spectrum before we can discuss the less well-defined middle ground where we seem to find most of the Lilliputians in this study (see Figure 1.1).

**Figure 1.1**

**Traditional Regulatory Enforcement Style Spectrum**

**Formal, Flexible,**

**Rule-oriented Results-oriented**

**Enforcement Style Enforcement Style**

**Formal, Rule-oriented Enforcement Style**

A formal, rules-oriented enforcement style might be summed up as ‘strict’ or ‘hard’ in terms of ensuring the regulated community is compliant (c.f. Bardach and Kagan 1982/2002; Shover et al. 1984).Key attributes of this style include: (1) rules orientation, (2) consistency, (3) tough enforcement, (4) deterrence through enforcement actions, and (5) some degree of adversarialism (see Figure 1.2).

With both this enforcement style and its contrasting style (flexible, results-oriented), it is unlikely that a regulator will admit to embodying one style or the other because this enforcement style, rooted in strict adherence to rules and an emphasis on deterrence, might strike some individuals as punitive and inflexible and the other style might seem too flexible. Therefore, to examine the regulatory style of an individual regulator, we follow the work other scholars (c.f. May and Winter 2000; Hutter 1997; Makkai and Braithwaite 1992; Koski and May 2006; Riccucci 2005; Scheberle 2004; May and Burby 1998; Waterman, Wright, and Rouse 2004; Hedge, Menzel, and Williams 1988) by asking less direct questions about enforcement style, which enables us to gain insights in to the Lilliputians’s regulatory styles.

**Figure 1.2**

**Attributes of the Strict, Rules-Oriented Regulatory Style**

* **Focus on rules**
* **Emphasis on consistency, regardless of circumstances**
* **Tough enforcement**
* **Deterrence as motivation for compliance**
* **Adversarial posture**

First, regulators who embrace a formal, rules-oriented style think regulations have to be enforced as they are written in order to be effective – in other words, they have to “go by the book” (Bardach and Kagan 1982/2002). This approach ensures that all regulations are applied uniformly, leaving little room for deviation in terms of compliance assessment. Moreover, regulators who embrace this style believe that they are compelled to enforce the rules as written without deviation.

Most of the Lilliputians (56 percent) in our study agree that effective implementation of regulations means that regulations must be enforced as written.[[6]](#footnote-6) Yet, it is interesting to note that *only* 56 percent of regulators agree with this statement, while 30 percent convey neutrality, and 13 percent disagree. One might expect almost all regulators to say that regulations must be enforced as written for effective implementation, yet, 43 percent of the Lilliputians suggest otherwise.[[7]](#footnote-7)

These results demonstrate that regulators recognize that effective implementation does not necessarily mean regulations must be enforced as written – thereby indicating some degree of flexibility from the regulator’s point of view. And these responses indicate that some regulations simply may not be able to be enforced as written. There are some differences in responses depending on environmental media; 70 percent of air regulators believe effective implementation requires the rules be enforced as written whereas only 47 percent of waste regulators – the lowest percentage of agreement – concur.[[8]](#footnote-8) Water and remediation regulators fall in the middle, with 56 and 54 percent agreement respectively. The majority of air regulators who think rules must be enforced as written is potentially explainable in that air regulations are among the most thorough of environmental regulations whereas waste regulations have the most flexibility and variability since states have much more authority to dictate these rules than they do regarding air regulations.

A second characteristic of this regulatory style is being firm and consistent with the regulated community. Uniformity and a certain degree of rigidity ensure that regulations are implemented as written regardless of the circumstances and all facilities are held to the applicable standards. Sixty-nine percent of the regulators here agree that the most effective way to ensure compliance is to be consistently thorough and firm when conducting inspections.[[9]](#footnote-9) Naturally, it is expected that regulators think that consistency is vital to their work as regulators. Regulators know all too well that the regulated community talks amongst themselves and inconsistencies among regulators are noticed – indeed regulators often indicate great ire that their colleagues are inconsistent as the regulated community wants to be treated fairly (Pautz 2008).

Coinciding with firmness and consistency, regulators with a formal, rules-oriented style are also characterized as being tough enforcers. With this style, it is important for regulators to exert their position of authority in compliance determinations. In an effort to stymie concerns of being too lenient and accommodative with industry, regulators must be stern, otherwise they may not ensure the integrity of the regulations they are charged with enforcing. In our study, only 38 percent of regulators agree that they should be tough; however, and 31 percent disagreed.[[10]](#footnote-10) On the surface, this percentage might appear low, so consider what may lie beneath the surface. First, exploring these responses based on environmental media yields some insight. Fifty-five percent of air regulators agree that they should be tough, whereas 41 percent of water regulators agree, 33 percent of those in remediation, and 25 percent of those regulators in solid and hazardous waste.[[11]](#footnote-11) Accordingly, air regulators appear to be the regulators most inclined to be tough enforcers and waste regulators are the least inclined to be; these findings make some sense since air regulations are very complicated and the ones most dictated by the federal government, whereas waste and water regulations allow more flexibility for the states.

Also, a state regulatory agency’s position regarding environmental commitment and capacity helps us to understand these findings. More specifically, 44 percent of regulators in states considered trailblazers, 43 percent in states labeled lingerers, and 29 percent in mainstreamer states agree they should be tough, even at the risk of being punitive.[[12]](#footnote-12) Finally, and perhaps on a more general level, although the plurality of regulators agreed, significant percentages remained neutral (29 percent) and disagreed (28 percent). These results demonstrate that it is possible that regulators recognize that there is a balance in being tough without being unreasonable and punitive.

With the aforementioned characteristics of this regulatory style, regulators who embrace this regulatory style look towards enforcement actions as evidence of an agency doing its regulatory duty. A large number of enforcement actions, from this perspective, are thought to serve as a deterrent to regulated entities to help ensure compliance. However, in our study, only 11 percent of regulators agreed. More specifically, 49 percent of the Lilliputians disagreed that a large number of enforcement actions indicate an agency is doing a good job. In light of these characteristics associated with a formal, rules-oriented regulatory enforcement style, regulators might find that their interactions with the regulated community can be tense and perhaps even adversarial. Yet, only four percent of the Lilliputians in our study thought that their interactions with regulated facilities were adversarial.[[13]](#footnote-13)

The preceding discussion outlines the attributes of a rules-oriented regulatory enforcement style. By way of summary, if regulators with this style discover compliance problems, then they are generally in favor of pursuing enforcement actions for any violation, no matter how seemingly small or if the infraction is the result of factors beyond the facility’s control. To ensure compliance, these regulators are consistent, firm, and formal with their regulatory counterparts. They are often inherently skeptical of the regulated community. One might summarize these regulators’s style as embracing the role of an “environmental cop.”Existing studies have found support for environmental regulators embodying this strict approach to environmental compliance (c.f. Bardach and Kagan 1982/2002; Vogel 1986).

Unsurprisingly, when we directly asked the Lilliputians if their regulatory style was best described as strict and consistent, the regulators had mixed responses. Thirty-seven percent agreed, 42 percent were neutral, and 20 percent disagreed. Even though responses to some of the previously discussed questions might suggest that these regulators embrace this regulatory enforcement style, regulators may not label their style as such. This distribution is also reflected in examining these results by environmental media.

Again, the results by environmental media are mixed, but they are statistically significant.[[14]](#footnote-14) We find air regulators most inclined to label themselves as strict and consistent (43 percent) whereas waste inspectors (25 percent) are the least likely to agree, with water and remediation regulators falling in between (37 percent and 28 percent respectively). However, it is important to note there was a significant portion of regulators across media that were neutral in their response.[[15]](#footnote-15) We posit that this makes sense because this approach can be seen as punitive and harsh with many regulators not wanting to acknowledge their regulatory style explicitly.

This discussion has explored the attributes of regulators who embody a formal rules-oriented regulatory style and it has considered how the Lilliputians in this study fit these attributes. Although some existing studies have found support for environmental regulators embodying this strict approach to compliance (c.f. Bardach and Kagan 1982/2002; Vogel 1986, among others), so far, we have a fairly mixed picture of the regulators’s regulatory enforcement style in this context. Now, we turn to the other side of the traditional enforcement spectrum – the flexible, results-oriented, regulatory enforcement style (see Figure 1.2).

**Flexible, Results-oriented Enforcement Style**

 Alternatively, regulators may embody a more flexible, results-oriented regulatory enforcement style (refer to Figure 1.1)in which they seek compliance through cooperation and collaboration with the regulated community (c.f. Shover et al. 1984).These regulators are less formal and rigid and can be described as more flexible since the contours of every regulatory encounter varies; moreover, they may be thought of as partners with the regulated community in pursuing compliance. This style encompasses a variety of attributes based on our study and past studies: (1) making an effort to understand the perspective of the regulated community, (2) give the regulated community the benefit of the doubt, (3) to use persuasion rather than threats, (4) be flexible as appropriate, and (5) and willingness by both parties to cooperate (see Figure 1.3).

**Figure 1.3**

**Attributes of the Flexible, Results-Oriented Regulatory Style**

* **Understand perspective of the regulated community**
* **Give the regulated community the benefit of the doubt**
* **Utilize persuasion instead of threats**
* **Be flexible as appropriate**
* **Cooperation**

First, regulators with this regulatory style endeavor to understand their regulatory counterparts in an effort work with them to achieve compliance (as opposed to working against them). Every facility that a regulator deals with is different and, as a result, a regulator has to take those differences into account in his/her interactions. However, understanding where a facility is in terms of environmental commitment, capacity and compliance, does not mean that the facility should be exempt from relevant rules; rather, it indicates that a regulator works with the facility where it is rather than where the regulator thinks the facility should be. If, for example, a dry cleaner has recently changed owners and the new owner does not even realize that the facility has an air permit, the regulator cannot initially begin with discussions about best practices; rather, the basics need to be explained first. According to the Lilliputians, it is very important to understand the facility that they are regulating before making demands. Seventy-four percent of regulators agreed while only ten percent disagreed.[[16]](#footnote-16)

Often regulators can and do give their regulatory counterparts the benefit of the doubt - thereby indicating they are not inherently skeptical of the facilities. Regulators with this style think that it is advantageous to exhibit respect and even trust toward their regulatory counterparts and be willing to work together first, and change course only later if needed (c.f. Pautz and Wamsley 2012).[[17]](#footnote-17) Put differently, regulators assume the best about the facility until they have reason not to do so. Fifty-three percent of regulators agreed that they give facilities the benefit of the doubt while only 13 percent disagreed (the remaining regulators were neutral in response). Therefore, while the regulators may not be overwhelmingly amenable to giving the benefit of the doubt, only 13 percent say they should not.

Third, regulators embracing this regulatory style are less likely than rules-oriented regulators to use threats and force to compel compliance. Flexible, results-oriented regulators prefer to use persuasion and other methods of motivation instead of deterrence because it is believed to achieve a better end result and not create hostile relations between them and the regulated community. For instance, regulators with this style think that threats of heavy fines and rigid scrutiny do not yield successful regulatory outcomes (c.f. Pautz and Wamsley 2012). Thirty-eight percent of regulators think it is better to try to use persuasion to achieve compliance whereas 32 percent were neutral and 28 percent of regulators disagreed. The relationship between responses here and the environmental media a regulator works in proves significant.[[18]](#footnote-18) Approximately 45 percent of water, waste, and remediation regulators agree that they should try to be persuasive even if that makes them appear soft whereas only 31 percent of air regulators agree.

Moreover, 44 percent of air regulators disagree that this is how they should approach compliance with the regulated community. It is difficult to explain the disparities in the regulators’ responses based on media. Perhaps air regulators are involved with such a wide range of facilities – from schools with boilers and dry cleaning operations to printing operations to power generation facilities- they become more skeptical of the facilities they encounter.

Also significant is the environmental commitment and capacity of the regulators’s state regulatory agency.[[19]](#footnote-19) The greater the environmental commitment and capacity of the state agency, the less likely the regulators in that agency agree that they should try and persuade the regulated community. Thus, regulators in high performing agencies may not need to cajole compliance because either (1) the regulated community is high performing in that state or (2) the agency has enough clout that the regulatory stick compels compliance. Forty-six percent of regulators in the states where the regulatory agency can be described as lingering believe it is better to persuade whereas only 28 percent of regulators in the agencies in the trailblazer category think the same. For the mainstreamers, 41 percent of regulators agree that they should try and persuade their counterparts. Ultimately, the means of pursuing regulatory compliance from regulators here vary, and have much to do with their environmental media and the categorization of their state agency.

Another attribute of this style is flexibility and an understanding that sometimes rules do not and cannot be implemented as they are written since it is difficult to predict every circumstance and create guidance for each scenario. Indeed, with the Lilliputians, almost half of them say regulators sometimes have to bend the rules.[[20]](#footnote-20) Forty-six percent of regulators think that bending the rules to fit a particular situation is permissible while 31 percent are neutral and 21 percent disagree. Of course, acknowledging that regulators may bend the rules from time to time is not to say that regulators break rules.

With this enforcement style, regulators overwhelmingly prefer interactions in which they cooperate with the regulated community. Cooperation is needed for positive regulatory outcomes (c.f. Bardach and Kagan 1982/2002; Kagan 2001; Levi 1998; Potoski and Prakash 2004; Scholz 1991; Pautz and Wamsley 2012). Successful implementation of regulations requires the regulated community and the regulator to work together and 93 percent of regulators agreed that the best interactions occur when they and the facility personnel want to cooperate with one another. Only six percent of respondents remained neutral and less than one percent disagreed. Regulators who embrace this regulatory style, depend on cooperation, rather than think it is simply an aspirational component of their regulatory interactions.

When the Lilliputians were directly asked if they have a flexible and accommodating regulatory style, only 31 percent agree, 27 percent disagree, and 41 percent are neutral. As with the similar question about a stricter, rules-oriented enforcement style, regulators acknowledge embracing traits of one style or another, but do not recognize or do not admit to that manifesting a particular style. This lack of acknowledgment of style is evident in the plurality of regulators responding neutrally. Again, this is unsurprising because regulators are apt to describe their regulatory style without labeling it because as you have probably already gleaned, these labels can be misinterpreted and both carry with them positive and negative attributes. Even without acknowledging one’s regulatory style, Gormley (1997) and Kelman (1981) found that the regulators they studied embodied this more flexible style.

**A Fusion of Enforcement Styles**

Now that we have considered the two ends of the enforcement style spectrum and how the Lilliputians may embody one style or the other, we come to the conclusion that these regulators do not fit neatly into two enforcement styles, even though some past research indicates that regulators tend to embody one style or the other (c.f. Bardach and Kagan 1982/2002; J. Braithwaite 1985).Indeed, in light of the responses from the Lilliputians, it seems that the state environmental regulators embody a regulatory approach that incorporates strictness and flexibility (see Figure 4.1).

We asked the Lilliputians about the various aspects of their enforcement styles to determine if they employ a fusion of styles – strict and flexible. Unsurprisingly, we found that these environmental regulators express a strong preference for a fusion of enforcement styles.[[21]](#footnote-21) Instead of relying on formal written communication (formal, deterrent style) or verbal communication (flexible, accommodative style), 58 percent of Lilliputians prefer a mix of both communication styles with the regulated community.

This melding of styles is included in other dimensions of regulatory interactions. Although 36 percent of Lilliputians rely on formal rules to seek compliance and 18 percent try to influence attitudes, the plurality of regulators (47 percent) prefer a combination approach to achieve compliance. For example, 41 percent of Lilliputians say they are results oriented, whereas 42 percent prefer a balance of rules and results oriented, and only 18 percent focus on rules. Most regulators prefer to be consistent instead of flexible (46 percent) and 41 percent use a combination of consistency and flexibility. Fifty-five percent of regulators are both skeptical and trusting of the regulated community – indicating that much of that attitude depends on which members of the regulated community are being considered. Finally, a majority of regulators – 55 percent – prefers to use a combination of threats and avoiding threats to achieve compliance. Twenty-seven percent of the regulators avoid threats whereas 18 percent prefer their use to the other options.

We have presented a lot of percentages that demonstrate that the Lilliputians do not neatly fall into either regulatory enforcement style category, but rather they appear to have a mixture of styles. These regulators want to use a combination of methods and attitudes to achieve environmental protection. Yet, our assertion that the regulators personify a fusion of traditional regulatory styles does not go far enough in our quest to understand the Lilliputians of environmental regulation. What explains the choices regulators make about their enforcement style? Are those choices a function of the different types of facilities they work with or are those choices explained by variation in the environmental media? Or do styles just depend? Also, should outsiders be alarmed that the Lilliputians opt for a common ground between strict and soft regulatory styles? Is this approach going to hinder their protection of the environment?

**Making Sense of Regulatory Enforcement Style**

To unpack what might explain the variation in style among regulators, we grouped the Lilliputians into three different regulatory style categories: (1) strict, rules-oriented, (2) flexible, results-oriented, and (3) a fusion of enforcement styles.[[22]](#footnote-22) More specifically, an index was created based on a regulator’s response to a set of questions pertaining to their style, which were just discussed.[[23]](#footnote-23) Table 1.2[[24]](#footnote-24) reports the aggregate index values for the Lilliputians into three different enforcement style categories.[[25]](#footnote-25)

**Figure 1.4**

**Regulatory Enforcement Style Spectrum of Lilliputians**

**Precision-Based Intention-Based**

**Enforcement Style Enforcement Style**

Instead of using the strict, rules-oriented and flexible, results-oriented categories that are widely used, we have amended these labels based on our own index to represent the Lilliputians we studied (see Figure 1.4).We replace the label strict, rules-oriented based enforcement with the term “precision-based” enforcement style. And we substitute “intention-based” for flexible, results-oriented enforcement style. We wanted to more accurately represent the complexities of the Lilliputians. As a Montana Lilliputian exclaimed:

Being a regulator is more than enforcing the rules. A regulator needs to understand the purpose and intent of the rules and regulations and also have an understanding of the process and objectives of the regulated community. It is important to be able to explain to the regulated community what rules and regulations apply to them, why they apply, and then be able to have an educated conversation regarding achieving and maintaining compliance with the rules and regulations.

We argue that new terminology is needed because the existing labels can be interpreted pejoratively. For example, if a regulator embraces a strict, rules-oriented, regulatory style, then the presumption is that the regulator is mean, adversarial and only “goes by the book.”This negative connotation does not serve the regulator well nor does it help promote environmental protection other than through punitive means. This is not to say that regulators do not or should not enforce the regulations – after all that it is their primary role – but this label does not convey that regulators with this style may be helpful and want to work with the regulated community to achieve environmental protection, rather than simply exercise their authority and be environmental cops.

Therefore, we suggest that the term “precision-based” is more appropriate because it better captures a regulator’s style of focusing on enforcement of the exact rules without conveying the negative attributes associated with being power hungry and adversarial. Precision is typically a positive term used to describe accuracy and care, which are laudable traits in a regulator.

By contrast, a Lilliputian who embraces a flexible, results-oriented regulatory style may be perceived as soft, easily manipulated, and ripe for regulatory capture. However, the implication is negative for the regulator. Being flexible and willing to work with counterparts is a quintessential part of interactions, and regulatory interactions necessitate give and take from both sides (Axelrod 1984, 1997; Posner 2000; Zaheer, McEvily, & Perrone 1998; McCaffrey et al. 2007).However, this label indicates that regulators with this style are easily taken advantage of and succumb to the regulated community. Instead, we argue that the label “intention-based” enforcement style better conveys that regulators who embrace this style examine the intentions of the regulated facility and they consider the intent of the regulation. Although this label does incorporate the idea of cooperation that the traditional categorization does, we believe it does so in a way less likely to make regulatory capture seem likely since intentionality is emphasized.

Although these terms make sense given the existing understandings of these regulatory styles, we maintain that they need updating, especially for the Lilliputians. In particular, whichever current label is given to an environmental regulator, it often carries with it pejorative connotations. In keeping with Fiorino (2006), Kettl (2002b) and others, we maintain that a fundamental issue in the existing environmental regulatory regime is negative attitudes and a lack of trust and such negative labels only exacerbate these issues.

**Enforcement Styles of Lilliputians**

Now to our index more specifically; seven percent of Lilliputians embody a precision-based style and 18 percent of the Lilliputians embody an intention-based regulatory style. Three-quarters of the Lilliputians utilize a combination of both regulatory styles (precision-based and intention-based). Stated differently, the vast majority of these regulators demonstrate aspects of both the precision-based and intention-based regulatory styles.

**Table 1.2**

**Regulatory Enforcement Style Categorization**

|  |  |
| --- | --- |
| **Regulatory Style and Index Score** | **Percentage** |
| Precision-Based(6-14) | 7 percent  |
| Fusion of Styles(15-22) | 75 percent  |
| Intention-Based(23-30) | 18 percent  |

*p* = .01

 Discovering that the majority of environmental regulators employ a mix of both regulatory styles was expected in light of earlier discussions earlier. Since so many Lilliputians fell into the middle category we find it important to delve deeper into this regulatory style. More specifically, we unpacked this middle grouping of Lilliputians to see how each regulator fell within this fusion of styles category. In other words, since three-fourths of all regulators in our study fell in this middle category, how are the Lilliputians distributed in this category? As Figures 4.5 suggests, 39 percent of the regulators in this middle grouping, had index values of 15 to 18 – or, put differently, while these regulators used a fusion of styles, they tended to be closer to the precision-based regulatory style. In turn, 61 percent of this middle category had index values of 19-22, which means that these Lilliputians lean towards an intention-based regulatory style. So while most of the environmental regulators employ a fusion of styles, the regulators that exhibit this fusion of styles seem, however, to lean toward an intention-based regulatory enforcement style.

**Figure 1.5**

**Lilliputians’ Regulatory Style**

**Intention-Based**

**18 %**

**Precision-Based**

**7%**

**Fusion**

**75%**

61 percent lean intention-based

39 percent lean precision-based

**Factors Driving Enforcement Styles**

With these explanations in mind, we now turn to what drives the regulatory style of the Lilliputians.[[26]](#footnote-26) We considered the following independent variables: state agency capacity/performance, sex, education, media, age of the regulator, time spent working in the office, and level of trust in the regulated community. An analysis of these variables helped identify the statistically significant determinants of a Lilliputian’s regulatory style.

**Table 1.3**

**Regulatory Style & Agency Categorization**

|  |  |
| --- | --- |
| **State Agency Categorization** | **Regulatory Style (Mean)** |
| Trailblazers | 20.3 |
| Mainstreamers | 19.4 |
| Lingerers  | 19.4 |

*p* = .006

 First consider a state’s environmental commitment and capacity as a factor in determining regulatory style (see Table 1.3).[[27]](#footnote-27) Although each state agency’s style categorization was a fusion of precision and intention based regulatory styles, we see that one category of states leans more towards an intention-based approach. The Lilliputians in Minnesota, Vermont, Illinois, and California (trailblazer states) have a regulatory style index value that reflects a slightly more willingness to be flexible when working with facilities. In the words of a California Lilliputian, “I have been both regulated and a regulator, collaborative and mutually respectful relationship is most advantageous for all.” Therefore, the trailblazers are more inclined to move towards an intention-based style. In turn, the mainstreamers and lingerers have a mean score of 19.4 in our regulatory index which indicates that their regulatory styles employ attributes of both ends of the regulatory enforcement style spectrum.

 Additional significant independent variables that explain what drives regulatory style include environmental media (air, water, waste, remediation[[28]](#footnote-28)), the amount of time spent in the office, and age. For example, individuals that work within air quality lean more towards an intention-based regulatory approach. Since there are a variety of layers surrounding the CAA, air regulators often find themselves interpreting vague statutes, trying to find a balance to ensure compliance with the law. In turn, the Lilliputians working in water, waste, or remediation lean slightly towards a precision-based regulatory style (see Table 1.4).

**Table 1.4**

**Style & Media**

|  |  |
| --- | --- |
| **Environmental Media[[29]](#footnote-29)** | **Regulatory Style (Mean)** |
| Air  | 20.3 |
| Water  | 19.5 |
| Waste  | 19.4 |
| Remediation  | 19.3 |
| Miscellaneous  | 20.1 |

*p* = .037

One of the most intriguing variables that drives a Lilliputian’s regulatory style is the amount of time he or she spends in the office. As Table 1.5 reports, the

Lilliputians that spend less than 25 percent of their time in the office maintain a regulatory approach that is more flexible and intention-oriented, which appears commonsensical because spending your days in the office writing reports and “pushing paper” impacts the style selected to use with a facility. Essentially, sitting behind a desk all day might make an employee disgruntled, effecting his interactions with the facility he oversees. Whereas if a regulator spends a majority of her time working with facilities, she might cultivate a deeper respect for the regulated community as she is around them more than her office-bound counterparts. Frequent interaction builds cooperation and respect (Fineman 1998; Pautz 2009a, 2009b, 2010a).

**Table 1.5**

**Style & Time Spent in Office**

|  |  |
| --- | --- |
| **Time Spent in Office** | **Regulatory Style (Mean)** |
| 0-25%  | 20.1 |
| 26-50%  | 19.9 |
| 51-75%  | 19.9 |
| 75-100%  | 19.6 |

*p* = .042

 Most of the Lilliputians range in age from 35 to 54, and this range slightly impacts a regulator’s style. For example, the Lilliputians in the age groupings of 18-34 and over 74 embrace a more flexible regulatory style. Therefore, these individuals are more likely to have positive interactions with facilities. As such, individuals with ages that range from 35-74 are marginally less flexible when working with a facility. A ready explanation for the influence of age is elusive. Although age is a significant factor in understanding regulatory style here, we caution that too much credence be given this factor since 60 percent of the population of Lilliputians here is concentrated in the 35 to 54 age range. For us, the important message is the remarkable consistency that the Lilliputians use a mix of regulatory styles.

**Table 1.6**

**Style & Age**

|  |  |
| --- | --- |
| **Age** | **Regulatory Style (Mean)** |
| 18-34  | 20.7 |
| 35-54  | 19.5 |
| 55-74  | 19.4 |
| 74 or older  | 21.5 |

*p* = .005

 While the thrust of this analysis reports the significant driving elements of a Lilliputian’s regulatory style, the less significant independent variables are worth mention. Sex, race, and education were not significant in our analysis. It is important to remember; however, a significant majority of our sample is white-men with a college education, so the demographics of our sample may explain why sex, race, and education level are not significant here. The results of this paper signal that U.S. environmental Lilliputians are not hard or soft as Bardach and Kagan (1982/2002) asserted or may be widely thought. Moreover, the classifications of strict or flexible are outdated categorizations of those street-level bureaucrats protect us from disastrous landfill runoffs.

 Again, we want to stress that in this paper, three-fourths of the Lilliputians embrace a fusion of traditional regulatory styles. Specifically, their style is driven by the capacity and commitment of their state agency, the environmental media that they work in, their age, and how much time they spend in the office. To our knowledge, this study is one of the first to investigate what drives the regulatory style of state environmental regulators.

**Conclusion**

The more than 1,200 Lilliputians studied here generally employ a fusion of precision-based and intention-based regulatory styles when it comes to ensuring compliance with environmental laws. These findings may challenge common perceptions about the work of environmental regulators because they demonstrate that regulators do not see their job as “environmental police” who are hard-nosed and determined to enforce regulations exactly as written without taking into account any other considerations. They demonstrate a willingness to work together, cooperate and collaboratively achieve environmental protection with their counterparts in the regulated community.

Nonetheless, some may be alarmed by the findings in this paper. For instance, for those that want strong environmental protection in the U.S. the concern might be that a somewhat flexible regulatory approach or style could lead to an unhealthy environment. Put differently, the underlying concern is that the Lilliputians will become “captured” by their regulated counterparts. Instead, we demonstrate in the next paper that this is not the case. Most importantly, regulatory style is impacted by the routine and frequent interactions regulators have with the regulated community. Here, we offer a classification of regulatory interactions that helps to categorize the day-to-day interactions that the Lilliputians have with their counterparts.

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1. This paper is an abridged version of a chapter in the newly published book, *The Lilliputians of Environmental Regulation: The Perspective of State Regulators*; by Michelle Pautz and Sara Rinfret (Routledge). [↑](#footnote-ref-1)
2. Before constructing and administering our survey, semi-structured interviews were conducted with regulators at the Virginia Department of Environmental Quality and the Ohio Environmental Protection Agency (for descriptions of these interviews and the resulting data, please see Pautz 2009a, 2009b, 2010a; Pautz & Rinfret, 2011). With this foundation, we constructed a comprehensive online survey instrument that asks regulators about their jobs, their views on environmental regulations, their working environment, their assessments of the regulated community, their experiences interacting with the regulated community, and assorted background questions. Multiple methods enable us to examine front-line regulators from various angles and allow us to triangulate data into more generalizable findings (c.f. King, Keohane, and Verba 1994; Frankfort-Nachmias 2000). [↑](#footnote-ref-2)
3. All 50 states were asked to participate and 17 agreed. Of the 23 states that did not participate, some were non-responsive and others maintained that their staff did not have the time to complete a 15-20 minute survey. [↑](#footnote-ref-3)
4. According to Rabe (2006), “One of the most thorough efforts to evaluate a state ‘green capacity’ involved a 100-point, 65 factors index completed in 2001 by the Resource Renewal Institute” (37). [↑](#footnote-ref-4)
5. See May and Winter (2011). [↑](#footnote-ref-5)
6. Respondents were asked to agree or disagree with the following statement: Effective implementation requires that regulations be enforced as written. [↑](#footnote-ref-6)
7. The remaining one percent responded don’t know/no response. [↑](#footnote-ref-7)
8. *p* = 0.010; and just a reminder, the results are reported at the 0.05 significance level. [↑](#footnote-ref-8)
9. Twenty percent of respondents were neutral in responding to this statement, however. [↑](#footnote-ref-9)
10. Respondents were asked to express agreement or disagreement with the following statement: it is better to be a tough enforcer of standards, even at the risk of being considered punitive. Thirty-eight percent of regulators agreed 31 percent conveyed neutrality, and 31 percent disagreed with this statement. [↑](#footnote-ref-10)
11. *p* = 0.040 [↑](#footnote-ref-11)
12. *p* = 0.000 [↑](#footnote-ref-12)
13. Seventy-five percent of regulators disagreed or strongly disagreed that their interactions were best described as adversarial. [↑](#footnote-ref-13)
14. *p* = 0.004 [↑](#footnote-ref-14)
15. 43 percent air, 44 percent water, 50 percent waste, 44 percent remediation. [↑](#footnote-ref-15)
16. Regulators were asked to react to the statement: you can’t just demand that certain things be done without first understanding the issues the facility is facing. The remaining percentage, 16 percent, remained neutral. [↑](#footnote-ref-16)
17. This is not to say that regulators who adopt other approaches to enforcement do not respect their regulatory counterparts. [↑](#footnote-ref-17)
18. *p* = 0.005 [↑](#footnote-ref-18)
19. *p* = 0.011 [↑](#footnote-ref-19)
20. Regulators were asked to respond to the statement: a good inspector knows when it’s necessary to bend a rule to fit a particular situation. [↑](#footnote-ref-20)
21. The regulators in this study were asked a series of questions about their preferences based largely off similar work of May and Winter (2000). [↑](#footnote-ref-21)
22. This index was based upon six survey questions that had a five point Likert agreement response scale: (1) the most effective way to ensure compliance is to be consistently thorough and firm when conducting inspections; (2) the fear of fines or other governmental regulatory actions is important in compelling the regulated community to comply with regulations; (3) the best interactions occur when facility personnel recognize that I am the authority and seek to comply with regulations; (4) it is better to be a tough enforcer of standards, even at the risk of being considered punitive; (5) a large number of enforcement actions is a sign that a regulatory agency is doing its job; (6) effective implementation requires that regulations be enforced as written. [↑](#footnote-ref-22)
23. Based on ordinal level data, we ran a Spearman’s Rho and the index was significant at the p = .05 level. [↑](#footnote-ref-23)
24. N= 912. The missing data for the regulatory score/style = 328 Lilliputians. While this amount might be alarming, it is explainable. The missing data includes a regulator if he/she did not answer all of the 6 questions used to create the index. For example, if Harry answered 5 out of the 6 questions, he would not have been included to categorize the Lilliputians into a particular regulator style. [↑](#footnote-ref-24)
25. The index is a scale from 0-30. If a Lilliputian answered the questions with all strongly agrees (SA = 1) his/her total would be 6. In turn, if a regulator answered each question with all strongly disagrees (SD = 5), the total would be 30. Strongly agree = 1, Agree = 2, Neutral = 3, Disagree = 4; Strongly Disagree = 5; Don’t Know = 0 [↑](#footnote-ref-25)
26. The statistically appropriate approach for ordinal and nominal level data is a standard one way analysis of variance (ANOVA) because it helps to examine the statistical significance of the overall effect of the Lilliputians’ regulatory styles (Berman 2002). [↑](#footnote-ref-26)
27. For tables 1.2-1.6 please refer to the regulatory style index presented in Table 1.2. For example, the mean regulatory styles in Table 1.2 portray that the Lilliputians state agency categorization is driven by a fusion of styles, leaning toward intention-based. [↑](#footnote-ref-27)
28. Remaining regulators were labeled in a miscellaneous category for a variety of reasons – the regulator may not have answered the survey questions which would have allowed us to categorize him based on media, or possibly the regulator listed a title/responsibility that we were unable to decipher. [↑](#footnote-ref-28)
29. N= 843. Please note that some sample sizes differ due to respondents answering specific questions. [↑](#footnote-ref-29)