

Confronting the Regulator

Directors of Maintenance and others in aviation can periodically have a difference of opinion with their local regulatory body. It happens in every country and under the various political systems. This article is the first in a series based on my experiences shared with many aviation managers and staff. After retiring from Transport Canada, I developed a course called “Dealing with Regulator” which I offered through my consulting business, Plane Talk Consulting. I wanted to share some ideas and techniques based on my regulatory experience with the aviation industry so they could better understand and communicate with regulator. So here we go.

The Different Roles

Public safety regulators have a very different mandate than their industry counterparts. One key mandated public role is to enforce safety regulations, policies and standards. This role began in Canada and other countries soon after World War One. Citizens and judges, under public pressure, soon started demanding governments regulate the industry. By the 1930’s most countries had robust regulatory systems in place to certify aircraft, manufacturing, airports, navairs, maintenance and operations as well as to licence key personnel.

The one confrontation you should try to avoid in your career is an enforcement case. Enforcement is a very strict legal procedure which falls outside the scope of this article. Regulators do not enter enforcement cases lightly or without enough evidence to prove that they have a solid case. That is why they win most cases and appeals. Your best approach is to follow the regulations and your approved manuals to avoid such an issue. If you do find yourself in a case consult the real experts, professional aviation lawyers. However, unless you run a perfect organization you will end up in some disputes following safety evaluations, audits, inspections, accidents or incidents. Sometimes its a technical difference or a policy difference which can be dealt with by working and communicating with the regulatory body in a professional manner.

The Three C’s – Confront, Correct, Compliment

One of the short cuts to management known as the ‘three c’s’, another is the 4 D’s which we can talk about in another article. First one has to learn how to

confront an issue, then to correct it and after that to compliment the person or persons involved. This works in most situations but it needs skill and knowledge to do it properly. I hope to show how this method can be applied to dealing with the regulator. It can be used to deal with employees, customers and even friends but you must be skilled and careful how you use the process. To do so effectively you need to be aware of the other person's needs and motives. This includes your regulatory staff.

Confront means to address the matter without causing any emotional stress due to personalizing the issue.

Correct means to set out the means to solve the problem and get agreement.

Compliment means to go back sometime later and compliment the person's positive in behaviour. Demonstrating how the changes have benefited those concerned is a strong way to show it was all about solving an issue and not simply a personality clash.

Industry and Government Culture Differences

The aviation industry exists to provide services at a profit. Although many aviation companies began because people loved the idea of flying, business demands to stay solvent leads to making a profit to keep doing what they loved to do. Like many other industries it becomes a way of life, a vocation and a way to earn a living and build something for their family's future. All noble and well respected. Government on the other hand exists to regulate behaviour and industry for the common good. We won't argue about whether or not this always true.

Individuals employed in regulatory departments are for the most part devoted aviation enthusiasts as well. Once they take a position with the regulator they are trained to consider the general public as the prime customer and industry as the secondary one. Its easy to understand why. If the political system and the general public loses confidence in any transport system safety, demands arise for additional regulation which politicians must deal with. This puts pressure on the regulators. Regulatory staff also have many people watching them; lawyers, transportation safety boards, media and public, auditor generals and even foreign authorities. This explains why they work so diligently but to industry the process seems so slow. The regulator does not second chances. In industry you can make a mistake and it probably will not be in the news, not so in the public sector.

Another area of difference is the budgeting system. In industry, saving money and making a profit marks most managers as good managers, even in maintenance. In a regulatory environment your budget is provided so you can provide the service. Saving money in your budget generally means you must have done less inspections and audits which is counter to why you received the budgeted money. This difference in objectives can cause misunderstanding in approaches when dealing with regulators.

Dealing with Issues

When you discover you have an issue with the regulator, this is how you should respond. Carefully analyze the situation and set out your position on paper or its email equivalent. Writing it down on paper usually helps to clarify the situation and enables you to determine your arguments. If you have a contact at the regulator, say a principle inspector, call him/her and advise them of your position. Start by telephone and keep a record of the time, date and content of the conversation. If it is apparent it won't be resolved by voice contact, then follow up in writing. Its a good practice to summarize each telephone call on paper and send it, including any action agreed upon, to the regulator. This forms a continuous record which can be very helpful if you proceed further.

Again review the issue and make sure you have all the facts. Then decide to whom in the regulatory structure you wish to address it with. This is an important decision as I will demonstrate later in this article. Normally the first level should be first, in most cases this is your principle inspector. If you are not content with the inspector's responses, then you can proceed up the chain of command. Sometimes citizens react by going to the most senior people first, Minister or Administrator, etc. This is not always a successful strategy and I will explain why in the next section. The general principle is that you give each level of supervision a chance to change the response or to confirm the initial response. This gives both sides a chance to discuss and some time to negotiate.

Here are some tips on communications, both written and oral. Be correct and concise in your communication. Keep to one subject in your message; adding in additional subjects takes away from your single point. It also may cause delays in response if your communication covers several departments. For example, if its a maintenance issue do not add in an air traffic issue. Stay away from emotional

language or name calling. It will not help your case nor will it intimidate the regulators. Avoid threats as most nations protect their inspectors by law from such matters.

I have read and answered many thousands of letters and have seen regulations change on one well written letter from one technician or AME. Individuals in positions like DOMs are particularly well regarded and influential in such matters. I have also been on receiving end of the threats which do not work at all.

How the Regulator Reacts and Why?

So you now find you need to confront your regulator. You have sent them a well written communication. If you started at the inspector level, your letter will be analyzed and a response prepared. If your point needs some clarification, they will contact you for further information and once they have that they will continue on. At times the inspector will need to consult with other inspectors, study the standards and policies and perhaps consult with their supervisors. If policy is unclear they might refer your issue to a national HQ and their specialists. All this takes time and can be frustrating to industry, however, the inspector works for the government and they must be right as they are in fact committing the government to the reply.

Now you have received the reply and you believe their position is wrong. Next step is to move up the management chain. Thank them for the reply and readdress your point to the next level, making sure you copy your principle inspector. Its always important to keep everyone in the loop. You can continue this until you reach the regulatory HQ and even onto the Minister. If you are pursuing it that high make sure you attach all previous correspondence, copy the individuals you dealt with and await the Ministers or Administrators reply.

Starting at the Top

Why not start at the top? The following is the effect once you leave the technical chain and enter the political area. No public servant wants to make a mistake and have the Minister or Administrators sign a letter that is in error. It does happen but not often. Your issue will travel down the chain to your inspector and back up. Everyone has to sign off on it and usually it goes to a communications group for format and grammar etc., and then onto being signed. You can only imagine how

many such letters get written in U.S.A or Canada every day. In the regulatory department its an important thing, well tracked and has firm timelines for responses. So guess who gets to draft the first response, usually your inspector, so it does cause a lot of technical work delays because ministerial correspondence takes top priority and there are no surplus inspectors waiting for work. It basically locks the system down. Technical mangers can overrule their subordinates but once it has gone political it is very difficult to get a ruling changed.

So should you go to that level on technical matter. I say normally not if you have good case it should get resolved in the technical part of the department. If it is more political, for example sales taxes on aviation parts, then yes, but operational issues, not so quickly. Of course as a citizen you can do as you wish. I am only indicating how the system works.

Last but not least, telling the inspectors that you will turn the matter over to your lawyers thereby intimidating the inspectors. This method does not work as the department and the government have massive legal departments and access to many contract law firms. Of course, if you find yourself in an enforcement action, accident or incident with potential legal implications, call on your lawyers. When in doubt chat with them before you act, as there are many good aviation lawyers around who can help you decide how to proceed.

Conclusion

Thousands of technical issues are solved over the years by communicating clearly and professionally to the regulators. You can leverage the department's own standards to help make you case. Standards like professionalism, service levels and just good management means they want to resolve issues. Your part is to provide them with the information needed to move them to your position. The Inspectors are also very knowledgeable aviation people who want a safe and successful industry just as you do.

Finally, do not be afraid to discuss and debate things with them. The idea that they will get back at you is a false notion. Regulators are far too busy and have too many oversight agencies, including the courts, the media and their political masters to engage in that sort of activity. I can deal with that subject more thoroughly in another issue. Lastly, use the resources of your associations as well as your own. There is strength in numbers if the issue affects more than just your

operation. Clearly state your case, be polite, firm and open to solutions and your relationship with regulator will be smoother and more rewarding than confrontational. Remember to use the 3 c's along the way.