

Regulatory Eco-Shaming

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The Article focuses on an emerging regulatory tactic applied by governments to promote environmental protection and combat climate change, termed here 'regulatory eco-shaming.' Regulatory eco-shaming refers to publications of administrative agencies regarding companies' environmental misbehavior that are designed to convey a negative message to the public. This practice is meant to encourage companies to comply with legal, regulatory and CSR norms, using social pressure and taking advantage of corporate reputational sensitivities. "Eco-praising" publications may also play a role in regulatory eco-shaming schemes, using "naming-and-faming" tactics. For example, The Irish Environmental Protection Agency rates companies according to the number of complaints received from citizens, on environmental issues, and publishes its rating on its official website alongside a condemning statement. In Israel, the Ministry of Environmental Protection publishes a "red list" of misbehaving companies, ranked not only according to regulatory violations but also based on level of pollution and voluntary environmental compliance. Regulatory eco-shaming practices may interfere with companies' rights like due process, reputation, and the right to not be subject to unauthorized or disproportional administrative action. The Article aims to explore the legal implications of regulatory eco-shaming based on regulation-by-shaming literature developed by scholars like Albert J. Meijer, Judith van Erp and Sharon Yadin, and suggest a legal framework that balances the rights and interests of shamed entities with environmental goals. The theory aims to guide regulators, legislators and judges in devising, implementing, and adjudicating regulatory eco-shaming policies and disputes. Based on comparative research covering four jurisdictions (the United States, the United Kingdom, Ireland and Israel), the Article offers a typology of regulatory eco-shaming tools, like environmental registries, eco-labels, naming-and-shaming lists, eco-praising, and compliance databases, based on their severity, creating a legal hierarchy of regulatory eco-shaming practices. The Article asserts that a correlation should exist between the shaming practice type and the applicable legal standard and offers appropriate administrative safeguards for implementing different regulatory eco-shaming schemes. These procedural measures could curtail unnecessary infringement of rights and maintain administrative reasonableness and proportionality, balancing effectiveness and fairness.