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Agenda item 3: Compliance and Enforcement in the Mediterranean

**Guidance document on environmental
inspection system, key principles, up-to-date
inspection methods and tools**

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GUIDANCE DOCUMENT ON
ENVIRONMENTAL INSPECTION SYSTEMS;
KEY PRINCIPLES, UP TO DATE
INSPECTION METHODS AND TOOLS

List of acronyms

Acronym	Description
BC	Basel Convention
BCRC	Basel Convention Regional Centres for Training and Technology Transfer
CEN	Customs Enforcement Network
EIC	Environmental Inspection Cycle
EIS	Environmental Inspection System
ENFORCE	The Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic
FAO	Food and Agriculture Organization of the United Nations
GCI	Green Customs Initiative
HW	Hazardous Wastes
IGOs	Intergovernmental Organizations
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
INECE	International Network for Environmental Compliance and Enforcement
LBS Protocol	Protocol for the Protection of the Mediterranean Sea Against Pollution from Land-Based Sources
MAP	Mediterranean Action Plan
MARPOL	International Convention for the Prevention of Pollution from Ships
MEA	Multilateral Environmental Agreement
MEDPOL	Marine Pollution Assessment and Control Component of MAP
MEDU	MAP Coordinating Unit
MoU	Memorandum of Understanding
NEPA	European Network of the Heads of Environment Protection Agencies
NGO	Non-governmental Organisation
ODS	Ozone Depleting Substances
OECD	Organisation for Economic Co-operation and Development
POPs	Persistent Organic Pollutants
RAC	Regional Activity Centers
RILO	Regional Intelligence Liaison Office
RMCEI	Recommendation Minimum Criteria Environmental Inspections
TFS	Transfrontier Shipments of Waste
WCO	World Customs Organization

Acknowledgement

The content of this document is based on the 'Guidelines on Environmental Inspection Systems for the Mediterranean Region (MAP Technical Report Series N°. 149) and 'Reference Handbook on Environmental Compliance and Enforcement in the Mediterranean Region (MAP Technical Report Series N°. 150); both were developed under the UNEP – MAP - MED POL programme in 2004.

In addition, material from three other key organisations has been used: 1. The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), 2. The International Network for Environmental Compliance and Enforcement (INECE) and the Organisation for Economic Cooperation and Development (OECD).

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1. INTRODUCTION

1.1 BACKGROUND

Over the past forty years, environmental law has been central to government efforts to implement a wide range of environmental (legislative) frameworks and programmes designed to protect air, water, natural resources, wildlife and public health. Countries throughout the world use environmental law to help address problems such as the discharge of pollutants into the environment, the protection of flora and fauna, the handling, storage and disposal of solid and hazardous wastes, the application of pesticides, preventing air contamination, and protecting the quality and availability of clean water.

However, simply having environmental laws in place is not enough to address these problems. Governments must find ways to ensure that the regulated community meets the requirements put forth in the environmental laws and their implementing regulations. Successful strategies will both encourage and compel behavioural changes within the regulated community that are needed to achieve compliance.

Environmental inspections represent a key instrument to promote and ensure compliance and enforcement. The effectiveness of inspections will relate to the extent to which they identify and characterize non compliance and the extent to which they prepare the way for efficient follow up. Having efficient and effective inspection systems in place is crucial in order to execute environmental inspections.

1.2 EXISTING GUIDANCE AND TOOLS

In order to enhance the performance level and support the inspection and enforcement of relevant provisions, various guidelines have been developed for the Mediterranean Region within the Framework of the MED POL Programme of UNEP - MAP.

Two guidelines are of particular relevance: firstly the 'Guidelines on Environmental Inspection Systems for the Mediterranean Region'¹ (MAP Technical Report Series N°. 149). These guidelines have been prepared in accordance with Article 6 of the LBS protocol. They are intended to help countries in the Mediterranean region to establish inspection systems or review existing inspection systems. In this respect, the guidelines are designed to act as a framework insofar as possible, taking into account the situation in the Mediterranean countries. Assuming that the national environmental framework laws are in place, the guidelines follow the regulatory cycle, starting with permitting and ending with feedback mechanisms to pass back the experience acquired by inspection systems in exercising their programmes of compliance and enforcement. Management-related subjects of direct importance to the operational capabilities of inspectorates, such as policy and strategy, are intended to assist in the development of an inspection plan, as a basis for the detailed work

¹ Link to guidelines: <http://195.97.36.231/acrobatfiles/MTSAcrobatfiles/mts149eng.pdf>

plans of individual inspectors. Once an inspection plan has been properly developed, compliance checking and enforcement can take place in a systematic and organized manner.

The second document is the 'Reference Handbook on Environmental Compliance and Enforcement in the Mediterranean Region'² (MAP Technical Report Series N°. 150). Following the preparation of the above mentioned guidelines, it was felt that more information was needed on a number of technical issues, so that reference information developed adequately could better assist the implementation of the guidelines. As a result, the Handbook was developed. The purpose of the Handbook is to raise the level of performance of the environmental inspectors and support the above mentioned guidelines by providing details on assessing, developing, implementing and sustaining a viable inspection programme. All aspects of an inspection programme are covered, including planning and designing enforcement programmes, international cooperation, non-point sources of pollution and compliance strategies, enforceability of permits, self-compliance, environmental negotiations, public participation, voluntary agreements, profiles of inspectors, inspection policies and planning, sampling, inspection techniques and training. To address those elements of comprehensive inspection programmes, the Reference Handbook includes the following:

1. Organization issues;
2. General procedural issues;
3. Human infrastructure;
4. Sampling.

The Network on Enforcement and Compliance established under UNEP/MAP – MED POL Programme, further developed performance indicators for environmental inspectorates concerning the implementation of relevant legislation³.

1.3 AIM OF THIS DOCUMENT

This document shortly describes the key principles of environmental compliance and enforcement, inspection methods and tools, based on existing materials and by adding new elements. It further supports the training activities that were organised on Environmental Inspections and Enforcement in 2014-2015 under the umbrella of the UNEP – MAP – MED POL through the MedPartnership project. The training aim to implement the current guidelines of MED POL but also taking this opportunity to highlight and focus on up to date or recent development related to environmental inspectorate and its effectiveness.

² Link to handbook: <http://195.97.36.231/acrobatfiles/MTS Acrobatfiles/mts150eng.pdf>

³ Report of the meeting of the Network on Enforcement and Compliance, Greece, November 2011: http://195.97.36.231/dbases/MAPmeetingDocs/11WG367_1_eng.pdf

2. LEGAL CONTEXT

2.1 MEDITERRANEAN ACTION PLAN AND THE BARCELONA CONVENTION

In 1975, the Mediterranean countries and the European Community adopted the Mediterranean Action Plan⁴ (MAP), the first-ever Regional Seas Programme under UNEP's umbrella. In 1976 these Parties adopted the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention). Seven Protocols⁵ addressing specific aspects of Mediterranean environmental conservation complete the MAP legal framework.

In 1995, the Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean⁶ (MAP Phase II) was adopted by the Contracting Parties to replace the Mediterranean Action Plan of 1975. At the same time, the Contracting Parties adopted an amended version of the Barcelona Convention⁷ of 1976, renamed Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean.

The Convention's main objectives are:

- to assess and control marine pollution;
- to ensure sustainable management of natural marine and coastal resources;
- to integrate the environment in social and economic development;
- to protect the marine environment and coastal zones through prevention and reduction of pollution, and as far as possible, elimination of pollution, whether land or sea-based;
- to protect the natural and cultural heritage;
- to strengthen solidarity among Mediterranean coastal States;
- to contribute to improvement of the quality of life.

2.2 PROTECTION OF THE MEDITERRANEAN SEA AGAINST POLLUTION FROM LAND-BASED SOURCES

Marine pollution from land-based sources and activities has long been recognized as a major problem. In June 1983 the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources (LBS Protocol) came into force. The amended version⁸ of the LBS protocol came into force in May 2008. The LBS Protocol contains a number of provisions and activities to fulfil its objective, such as the formulation of regional action plans for the reduction and elimination of pollution from land-based sources. In relation to compliance monitoring and enforcement activities by the Parties; provisions aiming at both a regional and at national level activities are included in the Protocol.

⁴ Link to MAP, phase I: http://195.97.36.231/dbases/webdocs/BCP/MAPPhaseI_eng.pdf

⁵ Link to the protocols: <http://www.unepmap.org/index.php?module=content2&catid=001001001>

⁶ Link to MAP, phase II: http://195.97.36.231/dbases/webdocs/BCP/MAPPhaseII_eng.pdf

⁷ Link to Convention text: http://195.97.36.231/dbases/webdocs/BCP/bc95_Eng_p.pdf

⁸ Link to LBS Protocol: http://195.97.36.231/dbases/webdocs/BCP/ProtocolLBS96amendments_Eng.pdf

The development and implementation of national and regional action plans and programmes are referred to in Article 5. The most important Article is however Article 6 containing provisions on permitting point source discharges, setting up inspection systems and establishing appropriate sanctions in case of non-compliance. Annex I lists elements to be taken into account when issuing the authorisation discharges of wastes. The need to collaborate bilaterally or multilaterally is highlighted in Article 10.

Article 6 LBS Protocol: Authorization or Regulation System

- 1. Point source discharges into the Protocol Area, and releases into water or air that reach and may affect the Mediterranean Area, as defined in article 3(a), (c) and (d) of this Protocol, shall be strictly subject to authorization or regulation by the competent authorities of the Parties, taking due account of the provisions of this Protocol and annex II thereto, as well as the relevant decisions or recommendations of the meetings of the Contracting Parties.*
- 2. To this end, the Parties shall provide for systems of inspection by their competent authorities to assess compliance with authorizations and regulations.*
- 3. The Parties may be assisted by the Organization, upon request, in establishing new, or strengthening existing, competent structures for inspection of compliance with authorizations and regulations. Such assistance shall include special training of personnel.*
- 4. The Parties establish appropriate sanctions in case of non-compliance with the authorizations and regulations and ensure their application.*

2.3 OTHER RELEVANT CONVENTIONS AND REGULATIONS

Regulating pollution and wastes created from land-based sources, is also (partly) covered by other international and regional agreements. At this point, those will not be elaborated on in-depth. Examples of linked agreements are:

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal⁹

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 22 March 1989 by the Conference of Plenipotentiaries in Basel, Switzerland, in response to a public outcry following the discovery, in the 1980s, in Africa and other parts of the developing world of deposits of toxic wastes imported from abroad.

Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa¹⁰

The scope of the Convention is confined to hazardous wastes, though not wastes from ship discharges covered by another Convention. Hazardous substances banned, cancelled or refused registration by government regulatory action for health or environmental reasons, are defined as hazardous wastes under the Convention. Radioactive wastes are covered also by the Convention. Parties are to enforce a ban on hazardous waste import, and on the dumping of hazardous wastes at sea and internal waters and in respect of waste generation, they are to adopt precautionary measures.

The same key principles from the Basel Convention and the Bamako Convention come back in the Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal.

Stockholm Convention on Persistent Organic Pollutants¹¹

The Stockholm Convention on Persistent Organic Pollutants is a global treaty to protect human health and the environment from chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of humans and wildlife, and have adverse effects to human health or to the environment. Exposure to Persistent Organic Pollutants (POPs) can lead serious health effects including certain cancers, birth defects, dysfunctional immune and reproductive systems, greater susceptibility to disease and even diminished intelligence. Given their long range transport, no one government acting alone can protect its citizens or its environment from POPs. In response to this global problem, the Stockholm Convention, which was adopted in 2001 and entered into force in 2004, requires Parties to take measures to eliminate or reduce the release of POPs into the environment.

International Convention for the Prevention of Pollution from Ships (MARPOL)¹²

The International Convention for the Prevention of Pollution from Ships (MARPOL), adopted in 1973, is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.

⁹ Basel Convention: <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>

¹⁰ Bamako Convention: <http://www.informea.org/treaties/bamako/summary/>

¹¹ Stockholm Convention: <http://www.informea.org/treaties/bamako/summary/>

¹² MARPOL Convention: [http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx)

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade¹³

The objectives of the Convention are to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm; To contribute to the environmentally sound use of those hazardous chemicals, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.

¹³ Rotterdam Convention: <http://www.pic.int/>

3. KEY PRINCIPLES OF ENVIRONMENTAL INSPECTION SYSTEMS (EIS)

3.1 REGULATORY CYCLE

The regulatory cycle shows the sequential steps of how policy objectives are met. Activities within these are inter-related and a missing or under-developed element immediately affects the segment that follows.

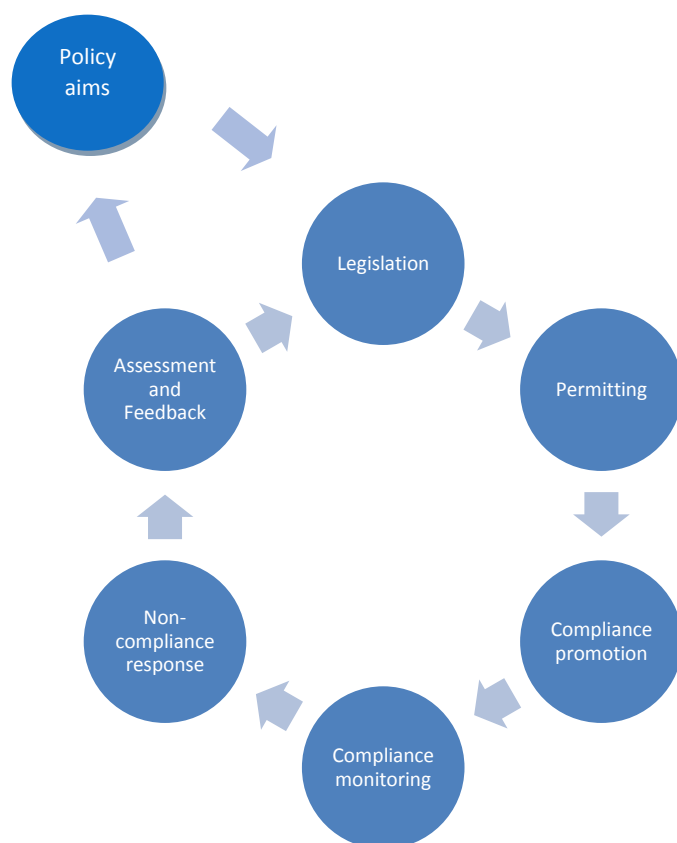


FIGURE 1 SIMPLIFIED PRESENTATION OF THE ‘REGULATORY CYCLE’ (source: IMPEL Reference Book for environmental inspection, 1999)

For example, inadequate permitting affects monitoring and enforcement actions. Compliance promotion is only effective if permitting can be used as a proper start mechanism. Compliance checking and monitoring are only effective if an inspection system is in place and the consequences of non-compliance can be adequately addressed in the follow-up activities. Feedback of enforcement action to policy and legal departments is key when reviewing existing frameworks.

3.2 ENVIRONMENTAL INSPECTION SYSTEMS

Irrespective of its position within the government, an Environmental Inspection System should have institutional autonomy, i.e. full authority to make independent and objective (free from political and other pressures) decisions on inspection-related issues or enforcement responses. Institutional autonomy cannot be achieved without adequate human and material resources.

The Environmental Inspection System should receive clear responsibilities based on a legal framework. At a minimum, they should serve as competent authorities to monitor compliance with environmental requirements and exercise administrative enforcement at the national and sub-national levels. It is also possible to designate the system with (some) criminal enforcement powers.

An Environmental Inspection System could consider offering general information compliance assistance to the regulated community and ensure open communication with, and participation of the general public in the framework of environmental enforcement system. Establishing and enforcing environmental regulatory requirements should be institutionally separate. It is advisable to separate environmental permitting from environmental monitoring, though recognising the interconnection between both responsibilities. To avoid conflict of interest, however, permitting and inspection should not be assigned to the same sub-unit within the organisational structure.

Adequate powers should enable enforcement officials to identify violations and effectively bring violators to compliance. The key powers available to the inspectors should include inter alia, entering a facility without restrictions with measuring and sampling equipment, and, when needed, accompanied by authorised external experts or civil society representatives; having full access to any information from a public or private entity related to the violation, examining and taking samples of goods; issuing notices and warnings, imposing penalties, suspension or revocation of environmental licences/permits (in co-operation with licensing authorities), and filing a court suit against violators. When a violation falls under criminal law, the inspector should be able to secure quick response from the police.

Environmental Inspection System - characteristics

- *Is independent;*
- *Is based on a solid legal framework;*
- *Shows separation of responsibilities;*
- *Proves integrity, accountability and professionalism;*
- *Possesses adequate inspection and enforcement powers.*

3.3 STRATEGIES AND PLANS

The development of an inspection and enforcement strategy is the basis for successful compliance monitoring and enforcement actions. It describes the efforts of the EIS for the longer term (e.g. three or five years), its priorities and activities, focus areas and includes a mission statement. Other elements to consider for an enforcement strategy cover a definition of the target groups, desired rate of compliance and environmental targets, inspection activities, application of enforcement tools, and communication strategy.

Examples of strategic aims are:

- *Simpler & smarter legislation; which leads to less administrative burden on the regulated community. Or the development of clear, enforceable, practical, and technical feasible standards;*
- *Inspection towards excellence or Better with less; meaning for example proportionate enforcement actions, risk based and targeted inspections;*
- *Better cooperation - working together; within the own organisation but also with other relevant organisations.*

On the operational level, Environmental Inspection Systems should develop annual work plans. On the operational level, the Environmental Inspection System should at least develop annual work plans. They should include at least frequency, time, resources and budget planning for installations to be inspected. They should also describe compliance assistance and promotion activities and should allow time and resources to carry out administrative or any unexpected tasks. The work plan should be progressively based on the approaches of professional project management, e.g. with clear targets, measures of effectiveness, time and resource allocation, and identified preconditions for implementation.

3.3.1 Environmental inspection cycle

The European Network for the Implementation and Enforcement of Environmental Law (IMPEL) has developed the Environmental Inspection Cycle, which they consider to consist of the following seven steps:

1. Describing the context
2. Setting priorities
3. Defining objectives and strategies
4. Planning and review
5. Execution framework
6. Execution and reporting
7. Performance monitoring.

Following the Environmental Inspection Cycle, authorities are enabled to set priorities with regard to their tasks and activities, being one of the key steps in setting up inspection plans.

The first four steps are considered to be part of the overall planning process. In order to write the inspection plan the inspecting authority first has to identify the relevant activities that should be covered by the inspection plan and gather information on these activities.

With this information the inspecting authority can perform an assessment of the risks of the identified activities and assign priorities to these activities. Typical criteria that are taken into account when setting priorities are environmental impact, compliance record, legal obligations to inspect, (national) policies and objectives and available resources. The priorities indicate what activities should get (the highest) attention. A following step is to define (measurable) inspection objectives and targets for the activities to be inspected and to choose the best inspection strategy to accomplish these targets. All these steps contribute to the inspection plan. The inspection plan clearly indicates the time period and area it covers. An inspection plan outlines the context in which the inspecting authority performs its inspections. It describes the mission and objectives of the inspecting authority, its statutory tasks and inspection obligations and (national) policies to be implemented. An inspection plan furthermore gives an overview of the priorities that have been assigned and explains why and how these priorities were set. The plan also gives general information on inspection targets, strategies, procedures and the planned inspection activities themselves. The inspection schedule describes what, where, when and by whom the different types of inspection activities will be executed. The inspection plan and the inspection schedule need to be reviewed and – when appropriate - revised periodically.

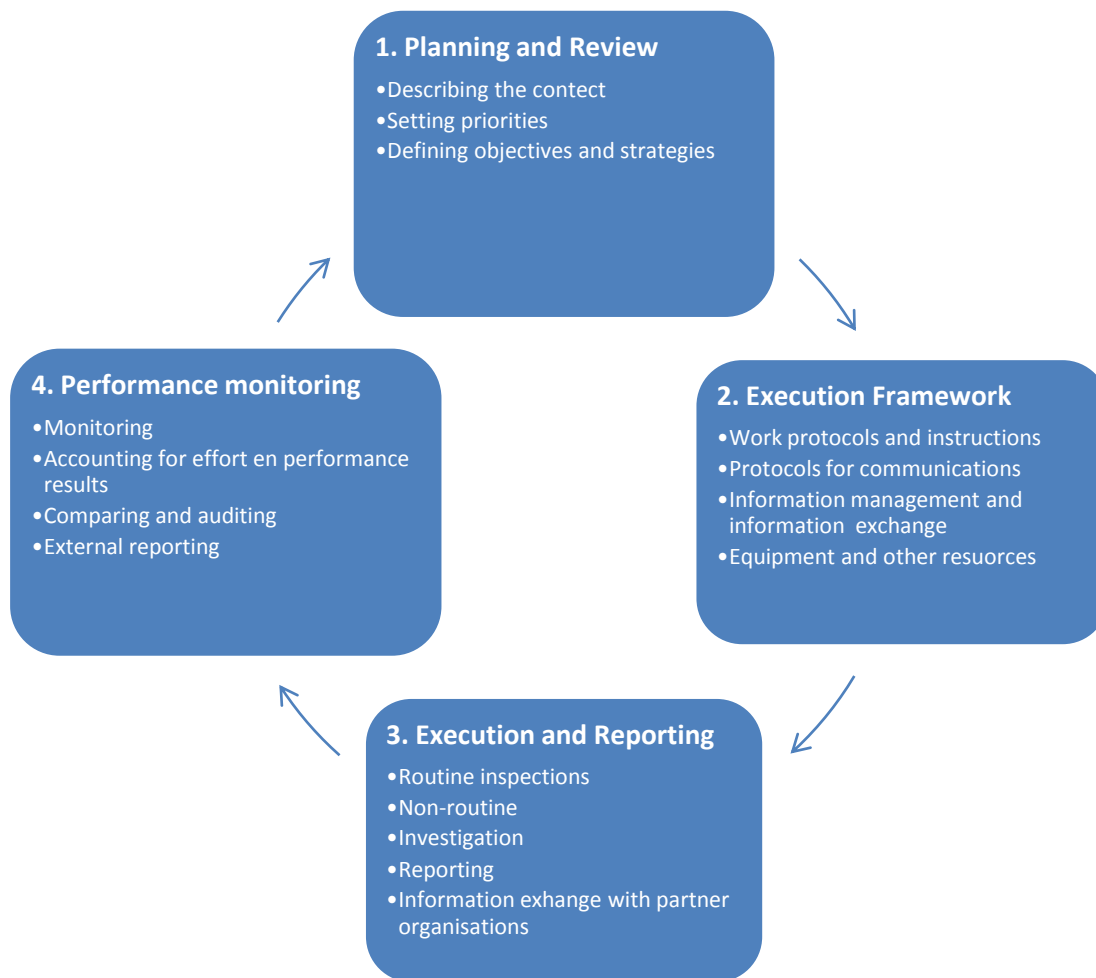


FIGURE 2: ENVIRONMENTAL INSPECTION CYCLE (SOURCE: IMPEL, 2007)

3.3.2 New developments

Even though planning was always considered an important part of the whole inspection cycle, this phase has gotten more and more priority recently.

Especially the performing of risk and threat assessments as part of the priority setting has become more prominent. By “risk”, we mean the potential for non-compliance with relevant rules and regulations. It is a combination of the effect and the probability. This assessment may provide, for instance, information on the risks associated with the compliant behaviour, an evaluation of the existence of illegal trends, and the impact of non compliance behaviour on human health, the environment and the economy. It is recommended to perform the risk assessment together with other relevant governmental entities, such as health, spatial planning and agricultural authorities.

The production of a risk assessment may rely on the following 3 phases: 1. risk identification; 2. risk analysis; and 3. evaluation and prioritization. Examples of questions that may be asked during the risk identification phase include for instance the following:

1. What? What kind of illegal activity is taking place and how do they occur (modus operandi)? What is the magnitude of the illegal trade/traffic? How many offences have taken place within a given time? What is the historical trend? What is the seriousness of these offences? What is the actual and potential impact of illegal activities on human health, the environment and the economy? What is the current risk for violators of getting caught? If offences are detected, what are the likely consequences for those violating the law? How do these consequences compare with the gains that may be generated by the illegal activity? What is the current enforcement response? How much effort goes into detecting and preventing illegal activities? How effective are these efforts
2. Why? Why do individuals or legal entities engage in illegal activities? What are the gains to be made? Is illegal behaviour associated with other violations of the law (tax fraud, forgery, corruption, unlawful competition for example)? Do contraveners act intentionally, recklessly or negligently? How far may a lack of awareness of a regulatory framework or the complexity of that framework explain illegal activities?
4. When? When does illegal behaviour take place? Are there seasonal trends or particular times within a month / year when illegal activities reach higher or lower levels? Or during night time or weekends?
5. Who? Who is violating the law? Are these individuals or legal entities? Is this “organized” crime? Are contraveners repeated offenders or occasional ones? Can profiles of contraveners be established? What other illegal activities have been committed by contraveners?
6. How? What is the modus operandi of the contraveners? How do they conceal their activities? How are they organised?

In order to answer these questions, data can be collected both from open and closed sources. Examples of closed sources of information are the law enforcement authorities. Internet, as an open source, holds information on news items on discovered illegal trade, court cases, research and study reports from NGOs and IGOs.

After analysing the information, priorities can be defined. The outcomes of a risk assessment could for example be a reason for environmental inspectorates to focus on certain industry activities, regions, stakeholders or to perform inspections outside ‘normal’ working hours.

3.4 PERFORMANCE INDICATORS

In 2009 the UNEP/MAP – MED POL Network on Compliance and Enforcement of Regulations for the Control of Pollution resulting from land-based activities, agreed on a set of indicators to measure the performance of environmental inspectorates. These were further refined during their meeting in 2011. The indicators to be completed were the following:

$$I_2 = \frac{\text{Number of environmental inspectors}}{\text{Number of facilities}}$$

$$I_5 = \frac{\text{Number of inspected facilities}}{\text{Number of facilities}}$$

$$I_6 = \frac{\text{Number of non compliances}}{\text{Number of facilities}}$$

$$I_7 = \frac{\text{Number of judicial actions}}{\text{Number of non compliances}}$$

Optional indicators

$$I_9 = \frac{\text{Number of inspectors with an operational plan}}{\text{Number of environmental inspectors}}$$

$$I_{10} = \frac{\text{Number of facilities with self monitoring or environmental management system}}{\text{Number of facilities}}$$

$$I_{11} = \frac{\text{Number of administrative sanctions}}{\text{Number of inspected facilities}}$$

3.4.1 New developments

Over the recent years various organisations have been working on further development of performance indicators for environmental inspections and outcome indicators of environmental compliance assurance.

IMPEL for example performed several studies^{14,15} on performance indicators for environmental inspection. They clearly identify between numerical and non numerical indicators, whereas the numerical indicators are split as follow:

1. Inputs (or resources) - such as number of inspectors
2. Outputs (or Activities) - such as number of inspections
3. Intermediate Outcomes - such as level of compliance
4. Final Outcomes (or Impacts) - such as ambient environmental quality

¹⁴ IMPEL report: <http://impel.eu/wp-content/uploads/2010/04/2009-03-Developing-performance-indicators-for-environmental-inspection-systems-FINAL-REPORT-.pdf>

¹⁵ IMPEL report: http://impel.eu/wp-content/uploads/2012/06/Adopted-Final-Report_Exploring-Assessment-Tools_2012-03-30.pdf

Non numerical indicators are more qualitative and can often be answered “yes” or “no”. These are the type of ‘activity’ or ‘input’ indicators that could be used to see if an Inspectorate has the basic things in place to be able to properly undertake its function. Examples are:

1. inspection system in place
2. legal requirements in place to do inspections
3. inspector training system in place
4. presence or absence of inspection plans
5. use of risk assessment / rating (is it implemented?)
6. database of facilities /lists of permits

IMPEL argues that performance assessment tools are only as good as the indicators on which they rely.

The OECD studied outcome performance measures of environmental compliance assurance¹⁶ and they concluded that results of compliance assurance activities can be measured with intermediate and final outcome indicators. Intermediate outcome indicators characterise changes in compliance knowledge and behaviour of the regulated community. The study identified the following types of intermediate outcome performance measures in relation to compliance assurance activities:

1. Compliance rates
2. Measures of recidivism and duration of non-compliance
3. Pollution release indicators
4. Indicators of improved environmental management practices and reduced risk
5. Measures of effectiveness of individual compliance assurance instruments

Final outcomes are improvements of environmental conditions as an ultimate result of compliance assurance activities. Examples of final outcome indicators include improved ambient water or air quality, or reduced soil contamination. Final outcome indicators are widely used as environmental quality monitoring parameters, but it is often very difficult to associate them with specific compliance and enforcement actions.

Intermediate outcome indicators are widely regarded as a more practical performance management tool. The first reason for this is that most intermediate outcomes can be directly attributed to the activities of the compliance assurance programme. Secondly, intermediate outcomes almost always manifest themselves more quickly than final outcomes which often focus on changes in large-scale environmental conditions. Therefore, they lend themselves better to management response and reporting.

¹⁶ OECD Paper: http://inece.org/conference/9/proceedings/72_Mazur.pdf

3.5 MINIMUM CRITERIA ENVIRONMENTAL INSPECTIONS

Criteria for the planning, carrying out, following up and reporting on environmental inspections aim to strengthen compliance with environment law and to contribute to its more consistent implementation and enforcement in all involved countries.

Differences in inspections regimes are a result of local context and political culture. It can lead to some countries to establish innovative and efficient systems but also an uneven enforcement landscape in the region.

Some sets of minimum criteria on inspection and enforcement exist linked to certain EU environmental directives or regulations.

Example of legally binding elements for waste shipments inspection plans, based on the (EC) Regulation on Shipments of Waste N° 1013/2006, as amended by (EU) Regulation N° 660/2014.

Article 50, paragraph 2a:

'An inspection plan shall include the following elements:

- (a) the objectives and priorities of the inspections, including a description of how those priorities have been identified;*
- (b) the geographical area covered by that inspection plan;*
- (c) information on planned inspections, including on physical checks;*
- (d) the tasks assigned to each authority involved in inspections;*
- (e) arrangements for cooperation between authorities involved in inspections;*
- (f) information on the training of inspectors on matters relating to inspections; and*
- (g) information on the human, financial and other resources for the implementation of that inspection plan.*

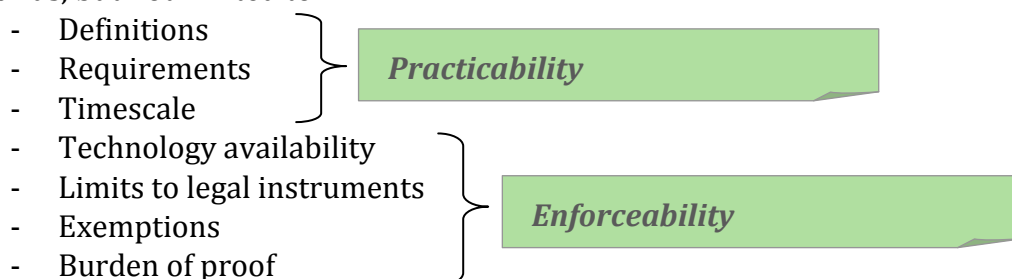
An inspection plan shall be reviewed at least every three years and, where appropriate, updated. That review shall evaluate to which extent the objectives and other elements of that inspection plan have been implemented.'

3.6 ENFORCEABILITY OF REQUIREMENTS

One of the challenges when implementing and checking compliance with legislation, is the practicability and enforceability of provisions. In order to encourage policymakers, legislators and stakeholders to devote more attention to likely problems of practicability in implementation and enforceability throughout the legislative process, new legislation should be assessed on its practical and enforcement aspects. There is a difference in vision between inspectors and enforcers on the one hand and policy makers and legislators on the other. Policy makers and legislators have a rather optimistic view on the willingness of companies to comply with environmental legislation. Enforcers however have learned that while many companies have taken up their responsibilities to actively protect the environment, other companies are still looking for ways to avoid compliance with the aim of saving costs.

Legislation must therefore be accompanied by good conditions for enforcement and should not provide easy opportunities for non-compliance.

It could be considered to develop a list of questions to assess legislation; whether it concerns new legislation or the revision of existing legislation. These questions could relate to topics, such as, but not limited to:



Examples of practicability and enforceability checklists are developed by IMPEL¹⁷ and the European Network of the Heads of Environment Protection Agencies¹⁸ (NEPA).

¹⁷ Link to P&E checklist: <http://impel.eu/projects/developing-a-checklist-for-assessing-legislation-on-practicability-and-enforceability/>

¹⁸ Link to NEPA Document on 'Barriers to Better Legislation':
file:///C:/Users/Rui/Downloads/ep412_barrier.printable_v.pdf

4. INSPECTION METHODS

4.1 EXISTING METHODS

Traditionally inspections are divided in “administrative” inspections and “on-site” inspections¹⁹, as also mentioned in chapter 7 of the ‘Guidelines on Environmental Inspection Systems for the Mediterranean Region’.

Administrative inspections cover all the paperwork, starting with the application (if the application is considered part of the authorization) and the administrative requirements set out in the permit. These may include data records of the operation, monitoring of the performance of the enterprise, self-monitoring information in accordance with the permit conditions and the reporting of measurements by certified laboratories. In some cases, certified accounts of expenditure (for example, on waste disposal) or bookkeeping records may be checked in cases of doubt concerning actual emissions (for example, of waste), the fuel used and disposals for which charges are levied, etc.

On-site inspections take place on the premises of the facility and must also follow strict procedures. The preparation of inspection visits entails acquiring a thorough knowledge of the history of the facility from existing databases, excellent knowledge and information of the application and permit conditions, the relevant laws and regulations and, where possible, an overview of recent economic and technical developments at the enterprise.

Key phases in the inspection are:

1. Preparing the visit
2. Determining the goal and depth of the inspection
3. The site visit itself
4. Reporting
5. Follow-up

An example checklist for inspections is available in annex III.

The reasons for on-site inspections can however vary. They can either be part of routine or scheduled inspections, or they have a more ad-hoc or responsive character; for example based on complaints or in case of accidents.

Note that inspections of transboundary movements of (hazardous) waste, not only should be carried out at sites, but also at other points during transport (ports, roads, railway, inter-mediate storage) and at different actors involved in the waste transport and management chain (brokers, dealers, shipping lines, expeditors, stevedores, etc)

¹⁹ Chapter 7 MAP Technical Report Series N^o. 149

4.2 NEW DEVELOPMENTS

Intelligence led enforcement

In a time where resources (staff, time and budgets) are decreasing, it is important to use the available resources in the most efficient manner. The efforts in performing inspections and enforcement actions should be well thought out. The use of intelligence to target 'suspicious' companies or activities has gotten more focus.

Risk indicators

To this, also the use of indicators is crucial, as they can assist in indentifying objects of interest. Risk indicators are normally one of the outcomes of the risk assessments, as referred to in paragraph 3.3.2.

Risk indicators can relate to for example the object of the trade, documents, packaging, concealment methods, or to individuals/companies.

Chain approach

Another important development relates to the so-called 'chain enforcement'. The monitoring efforts should not only focus on an isolated site, but include also events that place upstream and downstream. It is recommended to create an overview of the whole chain (point of generation, interim treatment or activities, final treatment) and identify possible weak spots to focus the inspections on. Below an example of the management of e-waste.

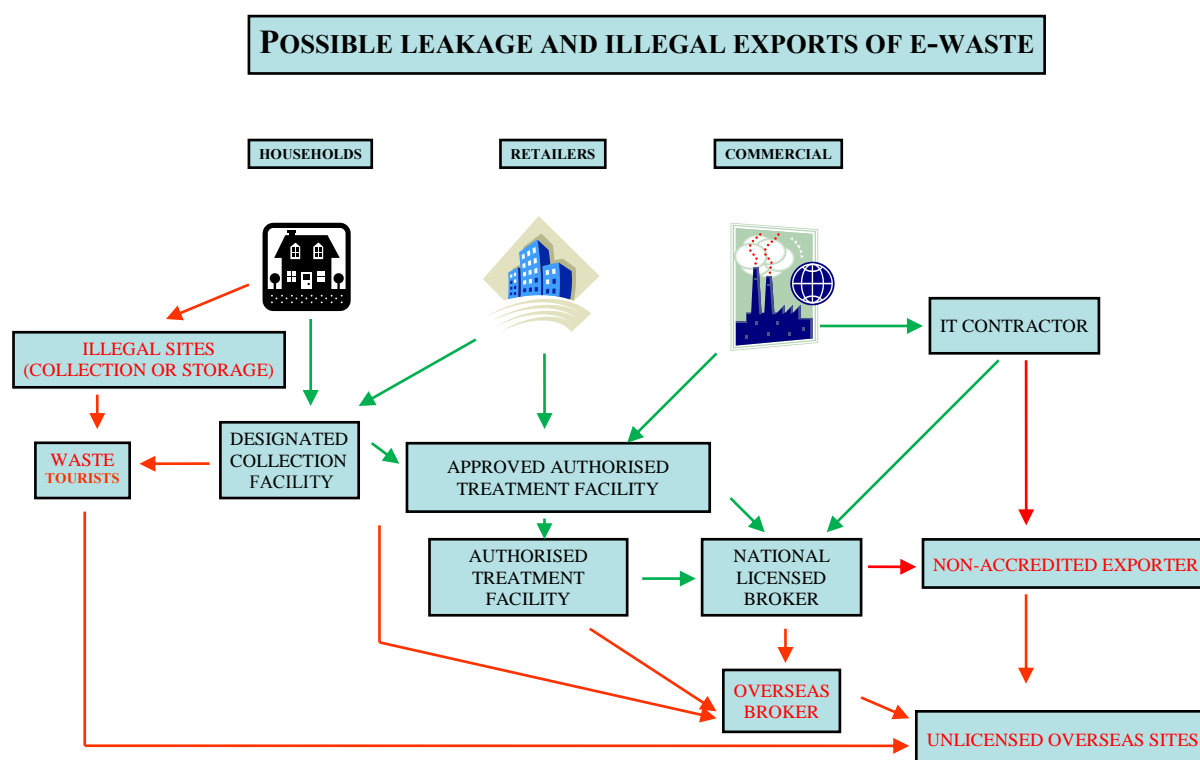


FIGURE 3: EXAMPLE OF A DIAGRAM WITH POSSIBLE ESCAPES OF THE LEGAL E-WASTE MANAGEMENT PROCES (SOURCE: IMPEL E-WASTE PROJECT)

Use of new technologies

Environmental inspectorates also aid from the developments of new technologies. For example the use of tracking devices and satellite images to either follow movements of dangerous goods/chemicals/waste or to detect illegal activities, such as illegal dumping or illegal disposal.



PHOTO 1: OPTICAL SATELLITE IMAGE OF A LONG ILLEGAL OIL DISCHARGE, 70 KM IN LENGTH (PHOTO CREDIT: INTERPOL)

Wastes are often shipped across border in sea containers. To check the inside of a sea container, one could consider performing an x-ray scan first. This will help to see how the container is loaded and if materials are hidden.



PHOTO 2: X-RAY SCAN OF A CONTAINER SHIPPING WASTE (PHOTO CREDIT: HUIB VAN WESTEN)

Applications on mobile devices could support both inspectors with for example their reporting. Applications also exist for reporting of suspicious activities of companies by residents or NGOs.

5. ADDRESSING NON COMPLIANCE AND POSSIBLE ENFORCEMENT STRATEGIES

5.1 DEALING WITH NON-COMPLIANCE

Chapter 9 and 11 of the ‘Guidelines on Environmental Inspection Systems’ deal with responses in the event on non-compliance and enforcement. Responses in the event of non-compliance are a logical reaction when a violation is observed during an inspection visit. The steps to be followed should be set out in a document for inspectors with a view to ensuring consistency of approach and the fair treatment of offenders. This adoption of a code of conduct for inspectors helps to improve the credibility of the inspection system’s enforcement activities.

The following general guidelines should be followed under any system:

- a visit by an inspector is never non-committal and therefore has to be recorded, with arrangements being made for feedback;
- observations of violations, even when they are small, have to be recorded and clearly indicated to the offender;
- any verbal commitment or promise by the offender should be recorded in writing, and this approach must be made clear from the beginning of the visit; this holds for the inspector, as well as the offender, and is summarized in the well-known phrase “Anything that is said may be used in evidence against you”;
- the inspector must always make clear what happens if cases of non-compliance are not resolved;
- follow-up action must be timely and appropriate;
- a penalty must deter the offender from repeating the violation (proper educational value).

5.2 ENFORCEMENT STRATEGIES

Enforcement means any action we take where an offence is suspected, has occurred or in some cases is about to occur. This may range from providing advice and guidance, serving notices through to prosecution, or any combination that best achieves the desired outcome.

In the guidelines the definition is narrowed to initiating any legal (administrative, civil or criminal) proceedings where compliance checking has disclosed (possible) violations and compliance promotion has failed to resolve the situation. The step of compliance promotion is not always possible (e.g. in case of emergency) or it this is not included in the enforcement strategy of the concerned environmental inspection system.

The enforcement strategy itself should describe clearly what enforcement actions will be taken for each type of possible violation and by whom. Enforcement actions in many cases will include more than one (enforcement) authority; one can think of authorities related to remedial actions or authorities dealing with sanctioning or sampling. The roles and responsibilities of each of them, should be clearly laid down in the enforcement strategy.

Informal mechanisms

Informal responses include phone calls, site visits, warning letters, and notices of violations. They advise the facility manager what violation was found, what should be done to correct it, and when. The goal of informal action is to bring the violator into compliance. Environmental authorities prefer using informal, cooperative methods to gain compliance. Informal responses themselves do not penalize and cannot be enforced, but often lead to more severe response if they are ignored.

Formal mechanisms

Formal enforcement mechanisms are backed by the force of law and are accompanied by procedural requirements to protect the rights of the individual or of the company. Formal mechanisms may be either civil or criminal. Many countries have both civil and criminal remedies, while some have only criminal and administrative options. Civil actions may be either administrative (i.e., directly imposed by the enforcement program) or judicial (i.e., imposed by a court or other judicial authority). Law must provide authority enabling the enforcement program to use formal enforcement mechanisms.

Typical enforcement measures by the inspection system include:

- Undertaking second inspections with the specific purpose of confirming violations;
- Preparing official notices of violations;
- Closing down (in part or fully) an operation on a temporary or permanent basis;
- Immediately revoking a permit;
- Remedying immediate dangers to the population and the environment (together with the police and other competent authorities);
- Seeking compensation for damages through the civil courts;
- Imposing fines and penalties;
- Assisting the courts as specialists and investigating inspectors in criminal cases.

5.3 HANDLING EVIDENCE

The gathering of evidence first aims to support a decision by the Competent Authorities on what to do in a case of non-compliance. Second, the investigation aims to discover who is involved and where the responsibilities may lie. Third, it aims to collect as much proof as possible, keeping in mind an enforcement action; for example a court case.

It is important to collect and report as much information related to the case as possible. Elements of a case file should include the inter alia the following:

- Document details: who is the investigating officer, when, how and where the non-compliance was detected, who are the involved parties;
- A written report on the findings: describe all the steps of the investigation and the evidence gathered. It is important to include the circumstance of the case including what triggered the inspection in the first place, what actions were taken, why the situation was deemed to be illegal, recommendation for further action and once concluded, an update of any enforcement action taken;

- Originals or copies of documents that contain evidence. All the paperwork should be carefully assessed;
- Copies of any forms completed during the inspections;
- Statements from persons involved or witnesses;
- Photographs or footage; and
- Analyses results, if samples have been taken.

The evidence further must be clearly identified (e.g. a label, a photograph showing the evidence at the site, an original signature, officers testimony to support it, which standards were followed methods to collect the evidence). Also it must be proven that the chain-of-custody has not been broken. Chain-of-custody is “The meticulous process of showing the succession of persons who handled or had access to the evidence”. It is imperative to demonstrate that a piece of evidence, such as a sample, was never tampered with, altered or changed between the time it was collected and the time it is presented in court.

6. COLLABORATION MECHANISMS

6.1 NEED FOR COLLABORATION

Preventing, detecting and combating non compliance behaviour requires in many cases the cooperation of several enforcement agencies at the local, regional and national (and sometimes international) level. Various agencies, including environmental, public health, agricultural, spatial planning, trade and safety, are involved in regulating and enforcing environmental laws. Each relevant authority has its own area of expertise and access to specific information related to a certain situation or company. Through good cooperation and coordination between these agencies at the national level an adequate response can be formulated to promote the compliance and to prevent unlawful activities.

Obviously it is up to individual the organisations to decide how they will organise themselves internally. This document only includes suggestions on how to promote cooperation between the involved agencies.

6.2 HOW TO FACILITATE INTER-AGENCY COLLABORATION

There are various ways of setting up inter-agency collaboration: either on an informal basis or on a formal basis. The formal or informal nature of the cooperation will depend on the specificities of the national or local context. Agreeing on a formal basis for cooperation may take more time than establishing informal modes of cooperation. However, formal cooperation has the advantage of clarity and legal certainty. It also usually means that a higher level of management is involved in the process, with the associated benefit of stability in the joint or shared efforts that are to be undertaken to enforce environmental rules and regulations.

Examples of formal cooperation are the signing of an agreement between relevant agencies (e.g. a Memorandum of Understanding), the establishment of rules of procedure for communication between relevant authorities, and the adoption of joint-guidelines.

Useful steps to set up the cooperation between agencies are to:

1. Identify ministries, concerned agencies, and within these organisations the key personnel with (environmental) enforcement responsibilities;
2. Establish communication channels;
3. Clarify the relevant competences of each agency;
4. Discuss and develop means of cooperation;
5. Formalize cooperation by agreeing upon, signing and implementing an agreement.

If a Party has decided to draft an official agreement as a means to formalize collaboration, the content of it will depend on its objective. In some instances, agencies will aim at establishing a framework for cooperation at the strategic level, while in other cases operational cooperation will be the primary objective. Such an agreement may also be of a long term nature or aim at addressing short terms needs. For instance, agencies may partner to undertake one inspection exercise. In that case, the participating agencies will probably form a “task force” and describe when the action will take place and what will be their amplitude. The “task force” prepares an

inspection action in the port, the members of the 'task force' meet and agree on the details of such an action and specify these in an MoU for example.

In every case, an agreement should specify the legal bases for cooperation:

- What legal basis specifies the responsibilities of the parties entering the agreement;
- What are the specific rights and responsibilities for each party to the agreement in relation to the environmental regulations covered;
- How these rights and responsibilities are exercised (eg. geographical, temporal scope).

An agreement focusing on operational cooperation will specify for instance how to:

- Designate focal points for cooperation and exchange of information;
- Develop risk indicators and profiling methods;
- Conduct inspections and control measures;
- provide legal and technical support;
- Deal with the non compliance.

Agreements aimed at putting in place strategic cooperation will for instance allow partners to:

- Set common priorities;
- Develop an enforcement plan;
- Ensure that staffs of both agencies are appropriately trained and equipped;
- Evaluate the value of the cooperation and update the agreement as needed.

An example of an agreement is available in annex II.

6.2.1 Formal enforcement collaboration mechanisms

Other collaboration mechanisms are in place to support the implementation of related agreements and support cross-border collaborations. This paragraph will only include some examples and is not extensive.

Basel Convention

The Basel Convention requires that its Parties designate two kinds of entities that will have a role at the international level: Focal Points are responsible for sharing information through the Basel Convention Secretariat; Competent Authorities are governmental authorities responsible for receiving the notification of a transboundary movement of hazardous wastes or other wastes and for responding to such a notification. The exchange of information between Competent Authorities is crucial to ensure that Parties are equipped with the necessary information to allow them to take informed decisions on the transboundary movement and subsequent management of hazardous wastes. The Competent Authorities can also be contacted by other countries in case of questions or concerns related to potentially illegal transboundary movements of wastes. The Secretariat of the Basel Convention is also mandated to assist Parties upon request in their identification of cases of illegal traffic.

The list of Focal Points and Competent Authorities is available at the website of the Basel Convention (link): <http://www.basel.int/Countries/CountryContacts/tabid/1342/Default.aspx>

Regional offices and centres associated with the Basel, Rotterdam and Stockholm Conventions

The *Basel Convention* provides for the establishment of Regional Centres for Training and Technology Transfer (BCRCs) regarding the management of hazardous and other wastes, and the minimization of their generation. 14 such Centres are therefore part of the institutional framework of the Basel Convention at the regional level. The main purpose of the BCRCs is to assist the Parties they serve in their efforts to implement the Convention. Supporting Parties in their efforts to prevent and combat illegal traffic is part of the BCRCs' mandate.

Website: <http://www.basel.int/Partners/RegionalCentres/Overview/tabid/2334/Default.aspx>

The *Rotterdam Convention* works with a range of partners and, in particular, the existing regional entities including FAO regional offices and Stockholm and Basel conventions regional centres. The FAO regional and sub-regional offices through the technical officers have supported the Rotterdam Convention Secretariat in developing and delivering technical assistance activities, including awareness raising and training, development of national action plans, thematic activities on proposals for severely hazardous pesticide formulations, trade related issues and working with individual countries.

Website:

<http://www.pic.int/Partners/RegionalOffices/tabid/1363/language/en-US/Default.aspx>

The *Stockholm Convention* also calls for the establishment of regional and subregional centres. These centres are to provide capacity-building and promote the transfer of technology to assist developing country Parties and Parties with economies in transition to fulfil their obligations under the Stockholm Convention. 15 centres have been designated for a period of 4 years to-date. Six of them are also Basel Convention Regional Centres.

Website:

<http://chm.pops.int/Implementation/RegionalCentres/Overview/tabid/425/Default.aspx>

The Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic

The mission of the Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (ENFORCE) is through a network of relevant experts, to promote parties' compliance with the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal pertaining to preventing and combating illegal traffic in hazardous wastes and other wastes through the better implementation and enforcement of national law. This will be achieved by bringing together existing resources and enhancing and improving cooperation and coordination between relevant entities with a specific mandate to deliver capacity-building activities and tools on preventing and combating illegal traffic.

Website:

<http://www.basel.int/Implementation/TechnicalAssistance/Partnerships/ENFORCE/tabid/3479/Default.aspx>

INTERPOL

INTERPOL is the world's largest international police organization, with 190 member countries that facilitates cross-border police co-operation, supports and assists all organizations and authorities whose mission it is to prevent or combat international crime, including environmental crime. INTERPOL has a General Secretariat and seven regional bureaus strategically placed around the world and at the national level, INTERPOL is connected to the National Central Bureau. INTERPOL has developed the Ecomessage system, specifically for the exchange of information related to environmental crime. Law enforcement officers that come across an illegal shipment of wastes are encouraged to complete the Ecomessage form and submit it to the INTERPOL Environmental Crime Programme, via their National Central Bureau. For more information you can contact: environmentalcrime@interpol.int.

Website:

<http://chm.pops.int/Implementation/RegionalCentres/Overview/tabid/425/Default.aspx>

World Customs Organisation

The World Customs Organization also provides a global network for Customs officers. As information and intelligence exchange is one of the pillars of the WCO's enforcement strategy, the WCO has set up a global network of Regional Intelligence Liaison Offices (RILOs). The RILO is a regional centre for collecting, analysing and supplementing data as well as disseminating information on trends, modus operandi, routes and significant cases of fraud. The RILO mechanism is supported by the Customs Enforcement Network (CEN), a global data and information-gathering, analysis and communication system for intelligence purposes. The aim of this mechanism is to enhance the effectiveness of global information and intelligence exchange as well as co-operation between all the Customs services tasked with combating transnational crime. The WCO ENVIRONET, launched in June 2009, is an internet-based global communication tool dedicated to environmental protection. It provides a secure platform for officers from Customs, law enforcement authorities, and international organizations as well as their regional networks, to cooperate with each other and share real-time information in the course of their daily operations. In order to get access to ENVIRONET, you can contact the WCO.

Website:

<http://www.wcoomd.org/~media/WCO/Public/Global/PDF/Topics/Enforcement%20and%20Compliance/Activities%20and%20Programmes/Environmental%20Crime/Environment/Concept%20Note%20EN.ashx?db=web>

6.2.2 Informal enforcement cooperation mechanisms

A variety of informal networks and partnerships have been developed at the regional and global levels to prevent and combat the illegal trade in environmentally sensitive goods, for instance hazardous chemicals and wastes. These include inter alia:

Green Customs Initiative

The Green Customs Initiative (GCI) is an unprecedented informal partnership of international organisations including for instance MEA secretariats, Interpol and WCO cooperating to prevent the illegal trade in environmentally-sensitive commodities - such as ozone depleting substances (ODS), toxic chemical products, hazardous wastes, endangered species and living-

modified organisms - and to facilitate their legal trade. Green Customs is designed to complement and enhance existing customs training efforts under the respective agreements.

Website: <http://www.greencustoms.org/>

INECE

The International Network for Environmental Compliance and Enforcement (INECE) is a global network of environmental compliance and enforcement practitioners dedicated to raising awareness of compliance and enforcement; developing networks for enforcement cooperation; and strengthening capacity to implement and enforce environmental requirements.

Website: www.inece.org

IMPEL

An example of a regional enforcement network is the European Network for the Implementation and Enforcement of Environmental Law (IMPEL). This network is committed to contribute to a more effective application of European environmental law by building capacity, raising awareness, sharing good practices, providing guidance and tools, cooperating on enforcement and providing feed back to lawmakers and regulators on the practicability and enforceability of environmental legislation. One of the clusters of IMPEL, focuses solely on the area of transboundary movements of waste: the IMPEL TFS cluster. The IMPEL TFS cluster brings together National Contact Points in most EU member countries. Together they perform joint inspection projects throughout the EU, they seek collaboration with non-EU countries and they share practical experiences, information and best practices.

Website: www.impel.eu

ANNEX I: OVERVIEW OF REFERENCE MATERIAL, TOOLS AND RESOURCES

	DOCUMENT	SOURCE
LEGAL TEXTS	Text of the LBS Protocol and its amendments	http://195.97.36.231/dbases/webdocs/BCP/ProtocolLBS80_eng.pdf http://195.97.36.231/dbases/webdocs/BCP/ProtocolLBS96amendments_Eng.pdf
	Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal	http://195.97.36.231/dbases/webdocs/BCP/ProtocolHazardousWastes96_eng.pdf
	EU Legislation on Waste Shipments (EU)	http://ec.europa.eu/environment/waste/shipments/legis.htm
	Basel Convention (UNEP)	http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx
	Stockholm Convention (UNEP)	http://www.informea.org/treaties/bamako/summary/
	Rotterdam Convention (UNEP)	http://www.pic.int
	Bamako Convention	http://www.informea.org/treaties/bamako/summary/
	MARPOL Convention (IMO)	http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx
INSPECTION SYSTEMS	Guidelines on Environmental Inspection Systems for the Mediterranean Region (MAP/MEDPOL, 2004)	http://195.97.36.231/acrobatfiles/MTSAcrobatfiles/mts149eng.pdf
	Reference Handbook on Environmental Compliance and Enforcement in the Mediterranean Region (MAP/MEDPOL, 2004)	http://195.97.36.231/acrobatfiles/MTSAcrobatfiles/mts150eng.pdf
	Environmental Inspections in the EU Member States (EU)	http://ec.europa.eu/environment/legal/law/inspections.htm
	Guiding Principles for Reform of Environmental	http://www.oecd.org/countries/latvia/2511656.pdf

	Enforcement Authorities in Transition Economies of Eastern Europe, Caucasus and Central Asia (OECD, 2003)	
	Reference book for Environmental Inspections (IMPEL, 1999)	http://impel.eu/projects/impel-reference-book-for-environmental-inspections/
	Doing the Right Things, phase II, Guidance book (IMPEL, 2007)	http://impel.eu/projects/doing-the-right-things-ii-step-by-step-guidance-book-for-planning-of-environmental-inspections/
BETTER REGULATION	Checklist for assessing legislation on practicability and enforceability (IMPEL, 2006)	http://impel.eu/projects/developing-a-checklist-for-assessing-legislation-on-practicability-and-enforceability/
	Better Regulation Checklist (IMPEL and NEPA, 2010)	http://impel.eu/wp-content/uploads/2010/04/IMPEL-and-NEPA-Better-Regulation-Checklist-FINAL.pdf
INDICATORS	Developing performance indicators for environmental inspection systems (IMPEL, 2010)	http://impel.eu/projects/developing-performance-indicators-for-inspection-systems/
	Outcome indicators of environmental compliance assurance in OECD countries: challenges and avenues for further development (E. Mazur, OECD, 2011)	http://inece.org/conference/9/proceedings/72_Mazur.pdf
SECTOR SPECIFIC	Discharge from Municipal Wastewater Treatment Plants into Rivers Flowing into the Mediterranean Sea (MAP/MEDPOL, 2009)	http://195.97.36.231/dbases/acrobatfiles/09WG334_Inf4_eng.pdf
	Waste Sites Project, phase II: Waste Sites Manual (IMPEL, 2012)	http://impel.eu/wp-content/uploads/2013/01/2012-11-8-Waste-Sites-Manual-final.pdf
	Environmental Inspection Guidelines for the Tanning Industry (IMPEL, 2004)	http://impel.eu/projects/inspectan-environmental-inspection-guidelines-for-the-tanning-industry/
	Environmental inspections of industrial installations in accordance with the Industrial Emissions Directive (IED)	http://impel.eu/projects/environmental-inspections-of-industrial-installations-in-accordance-with-the-industrial-emissions-directive-ied/

ANNEX II: EXAMPLE OF TEMPLATE TO ORGANISE INTER-AGENCY COLLABORATION

FRAMEWORK AGREEMENT BETWEEN [AUTHORITY X] AND [AUTHORITY Y] DATED [DATE]

COLLABORATION RELATING TO LEGISLATION ON WASTE MOVEMENTS

1 Regulations and task

- a Legislation* [List relevant legislation]
- b Objective of legislation* The objective of [regulation x, y, and z] is to control transboundary movements of waste by the application of various procedures in accordance with the type of waste and its destination, including the question of whether it is to be disposed of or recovered.
- c Task* The [[Customs Authorities]] supervise the import and export of waste into, through and out of the country. Inspections are carried out to see whether waste is involved and, if so, whether the provisions of [regulation x, y, and z] have been met.
- In the first instance, inspections focus on the documents accompanying the goods and, if necessary they can be followed up by an actual inspection of the goods.
- In the event of violations, the [Customs Authorities] draw up an official report. The [EPA or MoE] takes action under administrative law.
- d Powers* The Decision on assignment of supervisory officials, regulations of the [EPA or MoE] stipulates that Customs officials, amongst others, are responsible for supervision of compliance with [Regulation xxx] in so far as supervision can be exercised in conjunction with the activities Customs officials are legally authorized to carry out.
- In exercising their duties, Customs officials make use of the powers included in xxxx (Customs Law).
- Customs officials' investigative powers are derived from article xxx (Offences Act).

2 Implementation

- a Methods of enforcement* **SPECIFIC INSPECTIONS**
- On the basis of declarations for import, transit or export, inspections are made to see whether waste is involved and, if so, whether the provisions of [Regulation xxx] have been met.
- The inspections are carried out on the basis of risk signals which are jointly determined by the [EPA or MoE] and the [[Customs Authorities]] and laid down annually in the enforcement plan. If there is reason to do so, extra risks can be covered between times.
- Integrated inspections
- If waste is found during inspections carried out for other reasons and/or other customs regulations, compliance with [Regulation xxx] is always checked. If

necessary, the goods themselves are inspected.

Monitoring actions

The [[Customs Authorities]] participate in road transport monitoring actions on request. Requests are addressed to the Customs Information Centre.

Implementation

In the first instance, inspections focus on the documents accompanying the goods and these can, if necessary, be followed up by an actual inspection of the goods.

If inspection of the documents or the goods indicates that there is reason to do so, the customs official handling the case calls in the information service relating to [Regulation xxx]. The information service is the only body authorized to apply to the [EPA or MoE] for information and advice (including outside office hours). The information service can also request on-the-spot support during office hours.

The procedures for the enforcement methods are laid down by the [[Customs Authorities]] in customs regulations.

b Handling non-compliance

When supervising and dealing with violations, the [Customs Authorities] work in accordance with the procedures of the [EPA or MoE]. Every violation observed is immediately reported to the [EPA or MoE].

If the [Customs Authorities] handle a violation independently, they draw up the official report themselves. Copies of the official report are sent to the Inspectorate for Housing, Spatial Planning and the Environment's National Reporting and Information Point. If the official report is extensive, the core data suffice.

If necessary, the [Customs Authorities]' information service official can request advice and support from the [EPA or MoE].

Complex cases are, in principle, handed over after consultation with the [EPA or MoE] employee of the region concerned. In such cases, the information gathered and, where appropriate, an official report of the findings are provided. After a case has been transferred, the [EPA or MoE] employee informs the Customs official handling the case how it has been handled and of the final results.

c Customs laboratory

If the [Customs Authorities] decide to take samples, the [EPA or MoE] is contacted regarding the necessity of sampling and how this is to be carried out, in advance.

If sampling is necessary for a case which is being handled independently by the [Customs Authorities], the analysis is carried out by the Customs laboratory.

If a case is being handled in collaboration with the [EPA or MoE], sampling is carried out by or in collaboration with this organization. The [EPA or MoE] determines the best laboratory for testing the sample. If the [EPA or MoE] decides to have the sample tested by the Customs Laboratory, the [Customs Authorities] handle the actual instruction. In all other cases the [EPA or MoE] handles the instruction.

Projects and actions requiring sampling and laboratory testing will, as far as possible, be carried out by the Customs laboratory.

d Enforcement plan

The [Customs Authorities] draw up an annual enforcement plan in collaboration with the [EPA or MoE]. The plan is officially established within the [Customs Authorities] by the national meeting of risk managers. The risks and the way in

which they are covered within the [Customs Authorities]' processes are described in the enforcement plan on the basis of the enforcement priorities indicated by the [EPA or MoE].

The [Customs Authorities] look for and analyse risks for the purpose of this plan. This also takes place in collaboration with the [EPA or MoE]. Both parties provide data to this end.

e Priorities

The enforcement priorities are laid down annually by the [EPA or MoE] and form the point of departure for the Custom Authorities' enforcement plan. Violations and other signals are reported to the [EPA or MoE] so that, if necessary, the priorities can be adjusted.

In the implementation of the priority enforcement tasks, [EPA or MoE] supports the [Customs Authorities] in bringing criminal proceedings for violations (or suspected violations) and takes responsibility for proceedings under administrative law. Regardless of the prioritization, the [EPA or MoE] is responsible for the necessary actions under administrative law if, after illegal trafficking has been observed, the waste is not voluntarily returned to the country of export in question.

f Annual plan - objective

Collaboration during the previous year is evaluated annually, in consultation, and the objective for the following year is discussed. This takes place by [date] at the latest. The evaluation of the enforcement in the previous year and the [EPA or MoE]'s enforcement priorities are taken into account here. This objective is subsequently included in the decision-making process for all the [Customs Authorities]' objectives. The [Customs Authorities] give feedback on the result to the [EPA or MoE].

The objective and the information to be provided on the results of the objective are then jointly laid down in the Custom Authorities' enforcement plan.

g Reports

The [Customs Authorities] are responsible for evaluating the enforcement laid down in the enforcement plan and for the annual report of enforcement results for the [EPA or MoE].

Criteria for the evaluation are laid down in the enforcement plan in consultation. The objective of the evaluation is, in particular, to examine whether the risks have been adequately covered. The questions are, inter alia, whether the required inspections were carried out and whether they were effective.

The annual report concerning enforcement by the [Customs Authorities] in the previous year is sent to the [EPA or MoE] by [date] at the latest. In any event this includes the number of inspections for each object, violations observed, official reports drawn up and a description of trends and particulars.

3 Exchange of Information and Training

a Exchange of information

The [Customs Authorities]

- report violations observed to the [EPA or MoE];
- send copies of official reports to the [EPA or MoE];
- send a report of their environmental enforcement activities during the previous year to the [EPA or MoE] annually before [date] every year;

[EPA or MoE] can also request other information from the [Customs Authorities] on an ad hoc basis.

[EPA or MoE]:

- informs the [Customs Authorities] of the required prioritisation for enforcement in the following calendar year in [date], if possible;
- informs the [Customs Authorities] how the reported violation has been handled and of the final results;
- informs the [Customs Authorities] of changes in legal stipulations, additional regulations, new policy standpoints and case law in good time;
- informs the [Customs Authorities] of any changes in the enforcement policy.

Information on specific waste streams required by the [EPA or MoE] in the framework of projects etc. can be obtained from the Customs Information Centre. Parties will make further agreements on the sort of information to be exchanged and how and to what extent this can take place.

b Training

The [Customs Authorities] deploy specialists, to ensure good enforcement. The specialists are trained and receive periodic refresher courses under the responsibility of the Tax Authorities/Centre for knowledge and communication, with the aid of experts from the [EPA or MoE].

c Helpdesk function

The information service officials fulfil the primary helpdesk function for their colleagues within the [Customs Authorities].

The helpdesk function regarding the rules and the application of [Regulation xxx] is fulfilled by the [EPA or MoE]. Any questions the [Customs Authorities] may have are submitted via the information service official.

4 Consultation

a Consultation

Consultation takes place at least once a year between the [EPA or MoE] and the [Customs Authorities] on the enforcement and functioning of the collaboration in accordance with this appendix and the enforcement plan.

b Contacts

On behalf of the [EPA or MoE].

On behalf of the [Customs Authorities]: The Customs Information Centre, covenant management and risk control non-fiscal tasks of the [Customs Authorities].

[Organization]

[Organization]

[Title]

[Title]

[Signature]

[Signature]

ANNEX III: EXAMPLE CHECKLIST FOR SITE VISITS

A. Preparing the inspection

The checklist example merely serves as a reminder when taking the necessary preparatory steps and while assembling a basic set of information.

1. HEALTH AND SAFETY ASSESSMENT

- ✓ Is the site operator potentially hostile?
- ✓ Background check with other agencies
- ✓ Supportive actions from other agencies?
- ✓ Safety clothes and safety shoes
- ✓ Invite additional enforcement officer to join

2. EQUIPMENT

- ✓ Map and ground plan
- ✓ Mobile phone
- ✓ List of contact details (operator, owner, police etc.)
- ✓ Business cards
- ✓ Camera
- ✓ Recorder
- ✓ Yardstick/metre
- ✓ Torch
- ✓ Binoculars
- ✓ Sampling equipment
- ✓ Other: ...

3. NECESSARY GUIDANCE AND LEGAL DOCUMENTS

- ✓ Permits and licenses for the specific site
- ✓ History of inspection visits, compliance records, both from your organisation and from other authorities
- ✓ Legal provisions
- ✓ Guidelines

B. Determining the goal and the depth of the inspection

The following questions should assist the inspector to bring specific focus into the planned inspection visit. This can be done by making a description of the Site that will be inspected, based on the information that has been collected in the preparatory stage. This description serves to list a number of possible violations, to decide by what means information will be collected at site and subsequently what the team composition for the Site Inspection will be.

1. GENERAL DESCRIPTION

In this stage it is necessary to give a general description of the site, its physical characteristics, its activities and legal status.

- ✓ Name and contact details of the company
- ✓ Type of company
- ✓ Ownership status (e.g. part of a larger holding)
- ✓ Company size (capacity in tonnes per annum, no. of staff, etc.)

2. COMPANY SPECIFIC RISKS / POSSIBLE VIOLATIONS

- ✓ What led to the intended inspection? (Routine inspection, specific complaint, request for assistance made by other authority, etc.)
- ✓ What is the kind of irregularity that one could most likely expect at this site?
- ✓ May violations be expected? If yes, which?

3. INSPECTION SET-UP

This set of questions is meant to determine how exactly the inspection will be carried out, as far as the intended inspection differs from a routine inspection.

- ✓ Will it be an announced or un-announced visit? Consider pros and cons.
- ✓ With regard to the specific risks or possible violations expected on site, where exactly or in which section / department / unit of the company do you expect to collect your information?
- ✓ Which methods of information collection will be used?
 1. Interviewing, if yes, whom?
 2. Sampling, if yes, which material, by which method?
 3. Administrative inspection, if yes, how?
- ✓ What will be the team composition for the inspection visit? Do you need to bring in specific technical, legal or financial expertise?

C. Carrying out the site inspection

These questions are designed as open questions and the purpose is to collect all necessary information on the site that the officer visits. The officer must in the end summarize the information and in some cases also ask for clarification on different issues before taking any actions.

1. START OF THE VISIT

- ✓ Introduction and explanation of the visit
- ✓ Explain procedures, facility visit, follow-up and reporting (including timescale)
- ✓ Ask for general changes (process, equipment, workforce, etc)
- ✓ Review permit situations
- ✓ Go through the process and activities of the facility

2. FOCUS AREAS OF THE SITE VISIT

Not all visits need to cover all the aspects, depending on the purpose of the visit and as decided during the preparation phase. Considered should be:

- ✓ Water
- ✓ Waste
- ✓ Air
- ✓ Noise
- ✓ Soil
- ✓ Groundwater
- ✓ Risks

3. VERIFICATIONS MEASURES

- ✓ Visual inspection
- ✓ Administration, inter alia:
 - invoices
 - weighing slips
 - contracts
 - internal monitoring reports
 - balance sheets
 - etc.
- ✓ Sampling
- ✓ On the spot interviews

4. ENDING THE VISIT

- ✓ Return to office of the site
- ✓ Give an impression of the visit and a brief overview of your findings
- ✓ Explain follow-up (especially in case of suspicion of non-compliance)

D. Summary of reporting and follow-up

- ✓ Prepare a report (facility may provide comments and views)
- ✓ Report violations to relevant authorities
- ✓ Share information with other agencies if relevant
- ✓ Plan follow-up visits

