



**RESEAU INTERNATIONAL DES ORGANISMES DE BASSIN
INTERNATIONAL NETWORK OF BASIN ORGANIZATIONS
RED INTERNACIONAL DE ORGANISMOS DE CUENCA**

**DRAFT OF A HANDBOOK ON WATER LAW ENFORCEMENT
POSSIBLE TOPICS AND KEY POINTS**

1. FRAMEWORK FOR ACTION IN WATER LAW ENFORCEMENT

- The regulatory framework (law, decree and enabling texts) must clearly define Water Law Enforcement, its foundations, both at national and local level, for both the administrative police and the judicial police.
- It is advisable that the texts be collected in a single document (water code), knowing that some parts may refer to other regulations (town planning, agriculture, industry, etc.) and this must be indicated precisely.
- International legislation (conventions for waters shared by several countries, EU cooperation framework) must be taken into account in the country's Water Law Enforcement.
- The relationship between the administrative police which deals with authorizations and controls and the judicial police which ascertains infringements and gives a follow-up to these infringements must be precise.
- The operational service in charge of water law enforcement must be located at a level close to the field (county, basin...) and be unique.
- At the national level, only one Ministry should oversee Water Law Enforcement.
- Legislation should specify the stakeholders and bodies having a role to play in water law enforcement, at which level and with which responsibilities, taking care to avoid overlapping and facilitating coordination between these stakeholders.
- The people involved in water law enforcement must be grouped in a single unit under the local administrative authority.

2. TRAINING

- Water Law Enforcement requires advanced technical skills and strong legal knowledge.
- It is necessary to have an adapted framework which allows the training of the enforcement officers by relying on one or several institutions certified to deliver the suited training.
- The training programme can be based on a basic training, corresponding to the officers' recruitment curricula and advanced courses on the various aspects of water law enforcement.
- The necessary technical and legal skills are targeted in these two types of training courses.
- The officers' appropriation of texts relating to Water Law Enforcement must be facilitated by any suitable means, beyond strict training.

3. COMMISSIONING AND OATHS

- In order to effectively perform their duties, the enforcement officers must be authorized to search for and record the infringements targeted by the regulations.
- The conditions for their authorization to record infringements of the water law must be defined by legislative texts.
- The officers must be commissioned by the administrative authority with a precise delimitation of the area in which they can exercise their mission of water law enforcement.
- The commissioning must be carried out after having verified the experience and qualification of the officer concerned.
- The officers must be approved by the judicial authority and be sworn in, i.e. to have taken an oath in front of the judicial authority (Regional court for example), a procedure which guarantees the loyalty of the acts and the confidentiality of the information.

4. NON-STATE-OWNED WATERCOURSES

- The regulations must distinguish state from non-state-owned waters in order to have regulations adapted to the water ownership regime.
- In the case of non-state owned watercourses, the law must define the rights and obligations such as the obligation of regular maintenance, the layout of water and bed materials, the structures contained therein, the conservation of water to ensure free flow, the circulation of machines and boats, the residents' right of fishing, work in the watercourse.
- The regulation must provide for the reconciliation of the interests of different owners and holders of water rights.
- The situation of an abandoned watercourse or a watercourse abandoning its bed must be included in the rules, especially as regards the owners of the old bed and those of the land on which the new bed is established.
- Work for restoring the watercourse must be codified, particularly with regards to the conditions.
- The case of rights of way for execution of work must be provided, indicating the procedure and the role of the administration in charge of water law enforcement.
- Under certain conditions, the State must be able to exercise its enforcement power by modifying authorizations or permits granted for structures built in watercourses; e.g. this may be the case to prevent floods, or in the interest of public health (drinking water).
- It is advisable that local authorities may substitute residents for general interest purposes to carry out maintenance operations in accordance with the law.

5. AUTHORIZATION AND DECLARATION

- An authorization scheme for operations that may impact water and the aquatic environment (water abstractions/discharges) must be established. This scheme can operate in three stages: no agreement needed, declaration needed, authorization needed.
- The operations concerned must include facilities, structures, works or activities that cause changes in watercourses, lakes and aquifers or that affect the aquatic environment.
- Operations subject to this scheme and therefore to water law enforcement must be listed in detail in a specific regulatory text; this text must specify the conditions: volumes concerned, thresholds, surfaces, length etc.

- It is advisable to concurrently define in detail the procedures to obtain an authorization or to present a declaration.

6. ACTION IN CASE OF ACCIDENT OR INCIDENT

- The law must provide for an accident or incident situation.
- The regulations must define the responsibilities of the person who caused the incident or accident, the operator or the owner.
- It must specify the role of public authorities in the event of an incident or accident such as the prescription of measures to be taken to put an end to the reported damage.
- The Water Law Enforcement Service must be able to take all possible measures to end the cause of danger or of reaching the aquatic environment, assess the consequences of the incident or accident and remedy it.
- It must be able to make the appropriate legal follow-up (report if infringement).
- The population's right to be informed is to be provided by appropriate means and under the responsibility of the public authority and the elected officials concerned.

7. APPEALS

- The right to appeal, i.e. the right to challenge an administrative decision, must be retained as a principle applicable to water law enforcement. It is necessary to provide the mechanism that allows this appeal.
- It is recommended to have several possibilities of appeal ranging from the administrative appeal to the decision-making authority up to the judicial or contentious remedy to the administrative jurisdiction.
- The procedures for appeals must be precise and accessible to all (time, process, form, type of decision concerned, admissibility, etc.).
- The power of the administration, on the one hand, of the judge, on the other, must be specified.
- The Water Law Enforcement Service is involved in the appeals process, especially in the drafting of the statement, which must include elements on the context, the admissibility of the appeal and the merits of the application.

8. CONTROLS

- The time spent by enforcement officers on controls must be defined, especially in relation with the time devoted to the administrative examination of applications.
- The Ministry in charge of water management should prioritize the development of control plans for services policing water and aquatic environments.
- The Water Law Enforcement Service must identify the stakes of the State's policy in the area that concerns it and makes them a priority for action. This provisional action programme must include the component relating to the controls of facilities, structures, work and activities that have been authorized or declared.
- The programme must be validated by the local administrative authority.
- The control plan must be selective, e.g. according to the identified black spots, and correspond to the action priorities decided at local level. It must be established in coordination with the services concerned.
- Controls can be of two kinds: Document Controls or Physical Controls.
- In carrying out controls, the coordination of services must be sought and facilitated, especially when the controlled activity is subject to several regulations. The support of the gendarmerie or the national police may prove useful for some control operations.

- It is recommended to develop a guidance document for the control of water law enforcement to be distributed to all officers concerned.
- All controls must lead to the drafting of a report, a working document which enables the service to assess compliance with the requirements of the authorization and / or the declaration and to keep a record of the control in the archives.
- All checks must lead to written information indicating to the petitioner the consequences of the control.
- In the event of an infringement, the judicial proceedings must be instituted according to the procedures defined by law.

9. ADMINISTRATIVE AND JUDICIAL CONSEQUENCES

- The controls must always have consequences, either to indicate to the petitioner that his activity is in order, or to take administrative or judicial action.
- Controls revealing non-compliance with technical requirements must result in either administrative or judicial consequences or both.
- A graduation in administrative consequences is advisable ranging from additional technical requirements up to formal notice or enforcement or withdrawal of authorization.
- The judicial consequences must be decided by the judicial authority concerned.
- The judicial consequences must result in a prosecution in court with the possibility of a plea bargain.

10. PLANNING

- Basin or sub-basin management plans must comply with regulations on water law enforcement.
- The Water Law Enforcement Service must participate in the development of the basin management plans.