



State Environmental Conservation  
Department (ECD), Sabah, Malaysia

# Environmental investigation, administrative enforcement and prosecution manual

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**Appreciation**

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## **Preface**

The passing of the *Conservation of Environment Enactment 1996* was an important step taken by the State of Sabah to provide a legal framework for the protection and enhancement of the environment in Sabah.

The overall objective of the Enactment is to monitor and mitigate activities associated with land development and the utilisation of natural resources. Environmental investigation, administrative enforcement and prosecution activities shall contribute towards achieving the overall objectives of the Enactment.

It is the goal of the Environmental Conservation Department to contribute towards responsible, effective and environmentally sound economic development in Sabah. Achieving such a goal is dependent upon transparency in procedures, collaboration between all parties and a commitment towards sustainable development within the State.

Effective environmental monitoring and enforcement is dependent on collaboration, commitment and transparency, and it is hoped that the present manual will contribute towards achieving such goals, thereby making environmental monitoring and enforcement a relevant and effective tool for the protection and enhancement of the environment in Sabah.

Eric Juin  
Director  
Environmental Conservation Department

## **Introduction**

The aim of this manual is to provide a guide for monitoring and enforcement officers in the Environmental Conservation Department (ECD) and other Departments faced with the challenge of protecting the environment in Sabah.

The manual describes the current procedures followed by ECD in relation to environmental investigation, administrative enforcement and prosecution. Work procedures will constantly change and improve in response to experience gained. However, it is believed that the procedures outlined and described in this manual will remain the core procedures for the Department in the years to come.

The manual is available to other Departments, developers, voluntary organisations, business associations and other interested parties that wish to assist in making environmental monitoring and enforcement activities as effective as possible.

In order to undertake environmental monitoring and enforcement, three procedural phases are followed, namely investigation, administrative enforcement and prosecution.

Details on each phase are found in chapters 1-3 of this Manual.

The manual has been prepared by an ECD working group consisting of the Director, the Deputy Director, staff of the Monitoring and Enforcement Division, and with occasional input from local and international consultants.

We hope you will find the Manual of use.

ECD would like to express their appreciation to the Danish Co-operation for Environment and Development (DANCED) for overseeing and assistance in preparation of these Guidelines through ECDs Capacity Building Project. Appreciation is also extended to all government agencies, organisations and individuals for their contribution and support in the formulation of these Guidelines.

## Environmental monitoring and enforcement in Sabah

The monitoring and enforcement procedure shall contribute towards better environmental management in Sabah. To achieve this goal the State Environmental Conservation Department (ECD) has chosen to implement a procedure as described in this manual, which will adhere to the following principles:

- **The proportionality principle.** The use of stronger measures than necessary will not be applied by ECD and measures will not be employed that are disproportionate to the purpose. For example, if compounding is sufficient to stop an unlawful activity, a stop work Order will not be issued
- **The principle of legality.** It is a fundamental principle that administrative legislation shall protect the individual against possible injustice by the authorities. ECD will always secure that it has the legal right to undertake any action it commences and will only make demands on citizens if it has the right to do so on the basis of an Act or a Statutory Order
- **The principle of dialogue.** A dialogue between the alleged offender and ECD is crucial for the creation of administrative justice, and ECD will secure that an alleged offender has the opportunity to express an opinion and defend himself. ECD will normally regard it as success for both parties if they can negotiate an agreement that effectively prevents the environmental offence and at the same time is convincing to the outside world
- **The principles of openness and transparency.** If the public understands and agrees with environmental decisions, any environmental legislation will be more effectively enforced. ECD will therefore implement a transparent and open monitoring and enforcement system in Sabah. All relevant information, including this manual, are available upon request and/or through the ECD homepage: [www.sabah.gov.my/jkas](http://www.sabah.gov.my/jkas)
- **Observation of non-compliance.** If obvious non-compliance is observed, it is the duty of ECD to announce the observation immediately to the offender and to make the character of non-compliance clear. The offender will also be informed that the observed non-compliance will be reported and that ECD will take action as appropriate
- **Code of ethics.** Observations of non-compliances or serious environmental problems may lead to conflicts. ECD will use experience, common sense, skill of negotiation and know-how to handle conflicts, to try to avoid offending anybody or behave as a juror, executioner or judge. In case of any attempt of bribery, a report will be made to Anti Corruption Agency
- **The polluter-pays principle.** The one who pollutes should also pay for the pollution, either in order to mitigate or, if this is not possible, pay a fee or 'green tax' for polluting. Environmental enforcement will seek to impose environmental costs upon environmental polluters by means of Orders, compounding and prosecution.



## Legal authority

The Conservation of Environment Enactment 1996 (CEE) is a State Enactment relating to the prevention and control of activities that may impact the environment and natural resources in Sabah. The CEE consists of three Parts and 22 Sections. The CEE covers the following main areas:

- Part 1. *Preliminary*
- Part 2. *Conservation and improvement of natural resources*, covering amongst others the right to issue Orders (Section 3), carry out mitigation works (Section 4) and require environmental reports (Section 5)
- Part 3. *General*, covering amongst others the right to summon witnesses (Section 8), the right to appeal (Section 9), the right of entry and seizure (Section 12 and 20), penalty for diverting storm water from its natural course (Section 13), destocking and limitation of stock (Section 14), delegation of powers (Section 17), specific offences (Section 18), default in compliance with Orders (Section 19), conduction of prosecution (Section 21) and the power to make rules (Section 22).

The Director of ECD is appointed by the Ministry of Tourism Development, Environment, Science and Technology to administer the CEE and any regulation and Order made under the Enactment (CEE, Section 2A), and therefore plays a pivotal role in the administration of the CEE. For example, as the Enforcer of the provisions in the CEE or as the *de facto* Judge as provided under CEE, Section 8 and 9, whereby the Director is entitled to, for example, summon any relevant person. The Director may delegate his powers, duties and functions, by appointment, to others (CEE, Section 17).

The Monitoring and Enforcement Division of ECD has been established for the enforcement of the environmental regulations and to administer related monitoring activities on behalf of the Director.

Under the provisions of the CEE, 1996, the Monitoring and Enforcement Division is responsible for, and must see that, unlawful situations are brought in line with the law, which in the CEE primarily includes:

- Specific regulations as stated in the CEE, Section 13 and 18, see Box A.
- Default in compliance (CEE, Section 19) with requirements laid down in specific Orders issued by the Department, see Box B.

*Box A. Unlawful situations under the CEE.*

According to the CEE, unlawful situations can be made by an owner or occupier, and by legal or physical persons who:

Section 13:

- *'by any act or by neglect, causes damage to another by diverting storm water from its natural course;*
- *by any act or by neglect injures any soil or water course;*
- *by any act or by neglect injures any soil or water conservation work.'*

Section 18:

- *'(a) burns, cuts or destroys vegetation in any conservation area;*
- *(b) does any act or conducts any activity which pollutes or contaminates any soil or inland water or causes damages on soil, ecological system or natural resource;*
- *(c) submits to the Director a report under Section 5 or any report deemed necessary by him containing any fact, data or information which he has reason to believe is false or calculated to deceive the Director.'*

*Box B. Unlawful situations under the CEE.*

According to the Conservation of Environment Enactment 1996, unlawful situations can be made by an owner or occupier and by legal or physical persons who:

Section 19:

- *default in compliance with notice or order under the CEE: 'Where any direction or notice or order requires any act to be done or work to be executed under this Enactment or to refrain from the doing of any act or activity within the period specified therein by the Director or the Environmental Authority and default is made in complying with the requirement of such notice or order, the authority, body or person in default shall be guilty of an offence and shall, where no penalty is specially provided in this Enactment for such default, on conviction, be liable to a term of imprisonment for five years and a fine of fifty thousand ringgit'.*

Apart from the above key CEE Sections, the following Sections are also related to monitoring and enforcement issues:

- The right to issue Orders (CEE, Section 3, primarily directed towards already implemented activities that is assessed as having had an adverse environmental impact)
- The right to require environmental reports (CEE, Section 5, primarily directed towards planned activities that might have adverse environmental impacts)
- The right to initiate mitigation works (CEE, Section 4, 5 and 6)
- The right to summon witnesses (CEE, Section 8)
- The right to appeal (CEE, Section 9)
- The right to entry, inspect and seizure (CEE, Section 12 and 20)
- The right to compound (CEE, Section 3 (3), 8 (4), 13, 18, 19 and 22 (aa))
- Destocking and limitation of stock (CEE, Section 14)
- The determination of who may prosecute (CEE, Section 21)
- The power to make rules (CEE, Section 22), including for example prescribing penalties (CEE, Section 22(aa)), prescribing offences which may be compounded (CEE, Section 22(bb)), prescribing rates of compensation (CEE, Section 22(cc)), and making prohibitions concerning specific environmental problems.

**Note from the Director - knowledge of jurisdiction**

*It is important that all monitoring and enforcement officers have a thorough understanding of the objective and scope of each of the regulations in the CEE. Before embarking on any monitoring and enforcement action against a possible non-compliance or environmental offence, the monitoring and enforcement officer shall read carefully the relevant provisions of the CEE and any of its subsidiary regulations or Orders to ensure that the possible non-compliance falls within the purview and jurisdiction of the CEE/ECD. Should there be any doubt as to jurisdiction of the CEE, the ECD shall consult the State Attorney's Chamber for further clarification. A clear determination of the jurisdiction of any non-compliance will ensure that ECD has the correct competence (or locus standi) to deal with the non-compliance. It shall be noted that the Courts in Malaysia are particular about the competence of any Governmental Department for any action initiated.*

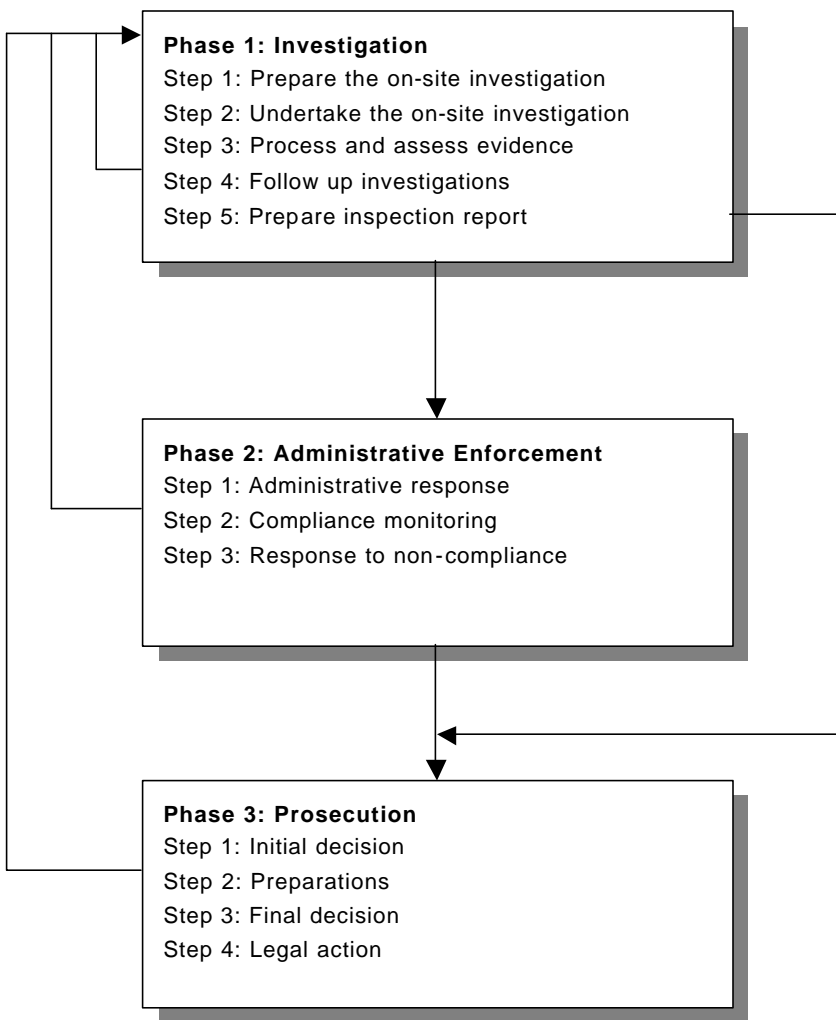
*It is also important to note that the State ECD and the Federal Department of Environment jointly share the responsibility for administering the environmental monitoring and enforcement system in Sabah. The Environmental Conservation Department is responsible according to the Conservation of Environment Enactment 1996, while the Federal Department of Environment is responsible according to the Environmental Quality Act 1974 (Act 127) and its Subsidiary Legislations.*

The **enforcement tools** used by the Monitoring and Enforcement Division include:

- Administrative enforcement and compounding (chapter 2 in this Manual)
- Prosecution of offences (chapter 3 in this Manual).

However, before administrative enforcement or prosecution can take place, the ECD Monitoring and Enforcement Division establish evidence mainly by undertaking on-site investigations. The procedures used for undertaking investigations are described in chapter 1 of the Manual.

### A quick reference



## 1 Phase 1: Investigation

<i>Phase</i>	<i>Steps</i>
Phase 1 Investigation	This phase includes the following five steps: <ul style="list-style-type: none"> <li>• Step 1: Prepare for the on-site investigation</li> <li>• Step 2: Undertake the on-site investigation</li> <li>• Step 3: Process and assess evidence</li> <li>• Step 4: Undertake follow up investigations</li> <li>• Step 5: Prepare inspection report.</li> </ul>
Phase 2 Administrative enforcement	
Phase 3 Prosecution	

This chapter describes how an on-site investigation is prepared and undertaken by ECD, how evidence is processed and assessed and finally how the inspection report is prepared.

The **objective** of an investigation may include:

- Check compliance with defined environmental requirements
- Investigate an attention/complaint
- Identify specific environmental problems
- Check if any previous injunctions have been fulfilled
- Check the location's own recordings and self-monitoring, if any
- Make the location aware of any environmental problems
- Collect information for further enforcement activities, e.g. to collect evidence for prosecution in the case of serious non-compliance.

**Attention of non-compliance** and the need for an investigation can come from either a complaint or a non-complaint (media, routine investigation, non-intentional discovery, etc.). However, the same procedures for any investigation are generally applicable for all types of non-compliance.

## 1.1 Step 1: Preparation of the on-site investigation

Eight activities structures the preparation of the on-site investigation visit, namely the:

- Recording and opening of a file for the attention
- Selection and invitation of investigation participants
- Gathering of site information
- Undertaking of a table top exercise
- Announcement of the upcoming site investigation
- Arrangement of transport and accommodation
- Arrangement of logbook and equipment
- Undertaking of a last check meeting.

### Preparation Part I: Recording and opening a file

Upon being notified of a possible violation of the Enactment, the officer receiving the attention first records how the possible violation was brought to attention. Information recorded for a complaint and non-complaint situation include:

- Names of the complainant
- Occupation or designation, if any
- Their address
- Their telephone, fax and mobile numbers
- Date and time of attention received
- Mode of attention (by telephone, fax or letter)
- Type of attention (erosion, open burning, etc)
- How they came to know of the possible violation
- Attending ECD officer.

The **filing** system is based on area, activity, attention number and so on. An overview of the presently used filing system is shown in **Annex A**.

### Preparation part II: Investigation participants

The investigation visit is conducted by a minimum of two ECD staff (minimum one officer joined by technical or supporting staff). This is in order to collect and corroborated legal evidence, if necessary.

In some cases, a joint investigation with other relevant Government departments is necessary. The following situations may require a joint investigation:

- Multiple nature of attention, e.g. land development affecting other land owners downstream (soil erosion, destruction of fruit trees, road flooding)
- Multiple approvals, e.g. palm oil mill discharging effluent into a river.

ECD co-ordinates with the relevant Government Departments, statutory bodies and local authorities at either head-office or district level, and arranges for their representative to accompany the investigation party. The following may be required for a joint investigation:

- District Office – issues related to Development Plan
- Land and Surveys Department – land issues
- Department of Environment – industrial facilities or scheduled wastes
- Department of Mines – quarry operations
- Fisheries Department – activities along river
- Forestry Department – logging activities or forest fires
- Drainage and Irrigation Department – activities concerning rivers, river reserves or water catchment areas.

### **Preparation Part III: Gathering site information**

Good basic knowledge of the location in question is established before the actual on-site investigation. Accordingly, information is collected on the activities, environmental impacts, the surroundings and potential environmental problems. The amount of data/information may vary considerably from case to case, depending on the size of the location and whether or not it is a well-known and the problem previously inspected. In the case of a first time investigation, the amount of existing data and information may be limited and therefore basic information from the location is required before the site visit.

For a *short-notice investigation*, basic data is obtained prior to the site visit, and includes:

- Full name, address, telephone, fax; and name, position and mobile phone of location's manager or contact person
- ECD file on environmental approvals (EIA, discharges, etc.) or previous attentions or investigations
- Topographic map (scale 1:10,000 or 1:50,000) to identify approximate location, access route, site elevations, slope, river system, nearby landmarks
- Basic layout map for use during the field visit.

When sufficient time is available, or is needed, e.g. depending on type of complaint, *more details* are obtained in addition to the basic data, and includes:

- Land owner, land title and approval conditions obtained from Land and Surveys Department, City Hall or relevant District Office
- Corporate information (if the offender is a company) as to who the directors and shareholders obtained from the Registrar of Companies at Ba ngunan KWSP, Kota Kinabalu
- Development Plan approval and conditions obtained from City Hall or relevant District Office/Council
- Other basic information obtained from other relevant authorities, e.g. approvals from Department of Irrigation and Drainage or Forestry Department
- Literature and guidelines check on the technical aspects of the activity
- Cadastral map (if land title is known) from District Land & Survey Department for exact locality
- Land zoning map from the Town Regional Planning Department to determine gazetted land use
- Information from JKKK, nearest dwellings or villages.

This information might also be collected later during the investigation process (step 4).

#### Preparation Part IV: Table top exercise

Prior to site investigation, a simple tabletop exercise is sometime performed to determine for example:

- General assessment of topography
- Catchment or project area determined by planimeter or GIS analysis
- Boundary of catchment area.

#### Preparation Part V: Announcement

The site-visit investigation can be announced or unannounced. The normal and most used practice is an announced investigation. Only under special circumstances are unannounced on-site investigations undertaken. The announcement includes:

- Inform the location of the intended site-visit by phone
- Request for participation in the on-site investigation by a representative from the location management
- Official confirmation by fax or letter detailing the objective, investigation programme, date, time, location, inspecting party and vehicle registration number (See **Annex B**: Standard announcement letter).

#### Preparation Part VI: Transport and accommodation

In view of possible geographical and infrastructure constraints, transport and accommodation is planned to facilitate the site-visit:

- Four-wheel drive vehicle with winch and appropriate tires to be used for all investigation site-visits
- Boat may be required and to be arranged with relevant authorities
- For announced investigation, the location is sometime requested to provide transport and accommodation
- For non-announced investigation, transport or accommodation of the location is not used, as doing so may be construed as being biased.

#### Preparation Part VII: Logbook and equipment

Appropriate equipment relevant to the investigation is prepared prior to the visit.

**A field logbook** is required to record investigation activities, sampling results and other relevant data. A draft logbook is shown in **Annex C**.

Appropriate **sampling equipment** to undertake anticipated sampling and testing. Table 1.2 shows the equipment most often used by ECD.



Table 1.2. Sampling Equipment

Subject	Equipment	Use
Water/ wastewater	Water quality meter Sampling bottles Dipper; sampler Cooler box/ ice	Measures temperature, pH, turbidity, DO Store water samples To collect samples Preservation/storage of samples
Soil erosion	Clinometer Measuring rods/tape	Slope
Hazardous waste	Sampling bottles Sampling bags Scoop	To store liquid sludge samples To store solid or semi-solid samples To collect samples
Hydraulic	Measuring tape	River width, depth, water level
Location	GPS	Latitude, longitude, altitude
Accessories	Rope; boxes; parang. permanent marker pens	Supporting equipment
Protective gear	Gloves; hard hat; boots; goggles; mask	Personnel safety
Photographic	Camera; 2-3 rolls of film	Photographs of investigation

#### Preparation Part VIII: Last check meeting

A short meeting is held immediately prior to the investigation visit in order to:

- Ensure that appropriate checklists are available
- Be clear of mission and objective of the visit
- Assign responsibilities to each inspecting officer
- Clarify any last minute pressing issues (e.g. approval by the Director).

The meeting is attended by either the Director, the Deputy Director or the Head of Monitoring and Enforcement Division and the inspecting party (officers, technicians, driver).

#### **Note from the Legal advisor. Legal considerations**

**Rights of entry:** *ECD Officers shall have the right to enter upon any land or premises at all reasonable times together with such men, animals, vehicles, appliances and instruments and to carry out all such acts thereon as are necessary for, or incidental to the exercise of the aforesaid powers or the performance of the aforesaid duties. Section 12(1) of the CEE*

**No warrant needed:** *The powers under CEE, Section 12 (1) does not mention any need for a search warrant or a court warrant but only requires an authorisation in writing by the Director*

**Give a short notice when possible:** *Notwithstanding the aforesaid, the ECD officers should give a short notice to the owner or occupier of the land or to the officers of a Com-*

*pany unless such short notices may be detrimental to the very purpose of the investigation.  
CEE, Section 12 (1)*

**Assistance from the police:** *The ECD officers should seek assistance from the Police if the officers have reason to suspect or foresee that such exercise of powers under CEE, Section 12 (1) may cause possible harm or resistance by the owner or occupier of the designate land or premise*

**Inter-departmental co-operation:** *Every Government department, statutory body and local authority shall generally co-operate with and assist ECD in carrying out the provisions of the Enactment, CEE, Section 10.*

## 1.2 Step 2: Undertaking the on-site investigation

Three activities structures the on-site investigation visit, namely the:

- Introduction of the on-site investigation
- Collection of evidence
- Finalisation of the on-site investigation.

### On-site investigation Part I: Introduction

All on-site investigations start with an introduction, either through a gathering or a formal meeting. The introduction is made to the representative(s) of the location; a member of the management, for example, the Director, the site manager or the operation manager. The officer will in the introduction:

- Introduce himself and the team (identification card or letter of authority)
- Thank the representative for allowing the investigation
- Explain the overall purpose of the visit
- State the background and reasons for the investigation
- If necessary, explain the formal mandate and rights of the investigation
- If necessary, inform the representative that photos might be taken and that sampling and other collection of data and evidence will be carried out
- Make proposals concerning which parts of the location and its operations should be included or highlighted in the investigation activities
- If necessary, present the on-site investigation programme to the location representative. The programme will be discussed and agreed on by both parties and will stipulate specific sites and issues to be checked and an approximate time schedule. It is important to ensure that the location representative is committed to allocate the time necessary for participating in the entire investigation visit. Time should also be allowed for a concluding session.

### **Note from the Director - Communication**

*Common-sense and experience shall be drawn upon in order to select an appropriate way of communicating. ECD will try to apply the following code of conduct:*

- *Establish a good contact and dialogue from the beginning of the visit*
- *Be courteous*
- *Avoid showing off authority/expertise - even if the inspecting officer has the valid mandate of ECD, he should in most cases avoid behaving as a police officer, personified authority or technical specialist*
- *Be professional – use checklists and appropriate in-situ testing equipment during an investigation to assist a professional appearance*
- *Mutual respect - ensure a common atmosphere of mutual respect and understanding.*

### On-site investigation Part II: Evidence collection

Collection of evidence includes for example: (i) taking notes in the field logbook, (ii) collecting documents, (iii) taking photographs, (iv) taking videos, and (v) collection of samples or *in-situ* testing. Any evidence collected or seized is handled with care to ensure that it cannot be tampered with in any way. In general the following is applied:

**Logbook notes.** Each officer records all data/information in a field logbook (**Annex C**). The following is noted in the field logbook:

- Inspecting party; name(s) and title(s)
- Basic investigation data; date, time, condition. Equipment investigated should be described by serial number, size, colour, make pattern, initials or other identifying marks
- Information on the site, description, plan, measurements, sketches
- Information about the site; locality, map, diagram, sketches
- Environmental conditions; weather, wind, hydrology, etc.
- Description of sampling, if any; number of samples, parameters, description of stations, preservation techniques, handling procedures
- Evidence collected/found; by whom, where it was found, how it was labeled, how and where it was taken to a secure area
- Statements from location representative(s) and witnesses
- Any change in information relating to the case as it develops
- All information regarding the evidence is noted in the logbook
- The location where the evidence was found is recorded on a site map or recorded with a GPS reading.
- The conditions of the site such as slope, size, distance to river
- Any nearby dwellings, sensitive receptors or pollutant sources
- Any landmarks to aide in site identification.

As many appropriate *questions* as possible are asked, and important answers are noted in the logbook. Often used questions includes for example:

- Does any environmental approval for the project exist?
- Does the owner or occupier know of any environmental problems?
- What steps have been taken to minimize environmental problems?
- What costs are involved?
- Does the project know of any sensitive areas in the immediate vicinity or downstream of the project site?

The following rules of maintenance of a field logbook are used:

- Each ECD officer to use only one logbook at a time
- All entries are made in permanent ink i.e. ballpoint
- All entries are legible and understandable by anyone
- Errors are corrected immediately and corrections signed
- Entries are kept in chronological order
- No blank spaces or lines are left
- Any names, addresses or personal information about people are recorded
- The logbook is used for work only, not personal notes
- The logbook is kept in the officer's possession at all times.

**Note from the Legal Advisor. The importance of the field logbook**

*The field logbook is one of the most essential tools of the trade, particularly for prosecution. In all investigations, a report is required, and since accuracy in the report is of critical importance, the investigating officer maintains complete notes, recording in chronological order and in detail, all matters that come to attention during the investigative visit. The field logbook is regarded as evidence that may be entered as an exhibit and become part of the case. An investigating officer will have an easier time testifying in court if the logbook contains detailed, professional and accurate notes with explicit details.*

**Documents.** Important documents found at the location are seized or copied as evidence. A written record of all documents and other information handed over to the officer is made.

**Photographs.** Photos (and videotapes) are used as evidence in order to determine and document, for example, where everything on-site 'was' or the condition of the location. The following is adhered to in relation to using photographs as evidence:

- A camera, which can print date on the photograph, is used
- Colour film is used
- Sufficient photographs are taken to accurately represent what is found at the location. Aerial photographs may be taken when the impact extends over large areas
- Only pure photographs taken, i.e. people or vehicles not connected with the offence are excluded
- An item is used for scale, for example pencils, rulers, pens and similar familiar objects to provide a size reference
- The logbook is used to ensure systematic documentation of photographs taken and includes each film roll number, frame number, location, date, weather and lighting conditions
- A sketch map of the location might be drawn indicating the spot and direction of photographs taken
- Developed film and negatives are filed
- Photographs are scanned into the Departments photo-database.

**Videos.** Video camera is used when possible and feasible. The following is adhered to:

- The alleged environmental offence is videotaped from the outside perimeter inward-moving from the general to the detailed
- The video is (re)viewed immediately to verify accuracy
- No editing of videos to remove unimportant or blank portions
- In case of serious offences, recordings are duplicated by using another tape
- All videotapes are labelled and filed.

**Sampling.** If the location has an identifiable discharge point, sampling and testing is undertaken to ensure compliance to environmental regulations or to provide evidence of the impact on ambient conditions.

Guidelines to ensure that samples are representative and valid are provided in **Annex D and E.**

### **On-site investigation Part III: Finalising the investigation**

A meeting or gathering concludes the investigation visit, attended by officers and location representatives, with the purpose of:

- Summarising the key observations and findings
- Clarify and confirm any agreement made
- Announce formal follow-up by ECD as to non-compliance.

#### **Note from the Director. Code of ethics**

*Observations of non-compliances or environmental problems may lead to conflicts during the visit. It is important that the ECD officers possess skills of negotiation and know-how to avoid conflicts and get away from difficult situations. As a general rule, it is important to stay calm and to be fully informed and knowledgeable about ECD formal rights. This will enhance the reputation and credibility of the investigation. The ECD officer shall:*

- *Be friendly and open*
- *Be helpful and not produce statements that can be considered as threatening*
- *Offer informal suggestions and ideas as to the improvement of the environmental performance of the location*
- *Avoid offending anybody and refrain from making unnecessary comments*
- *In cases of serious non-compliance which shall be followed-up by legal action, avoid giving information or holding discussions with the representative of the location on issues that may in any way compromise the credibility of the subsequent prosecution.*

*In case of any attempt of bribery, a report shall be made to the Anti Corruption Agency. The attempt should be noted in the inspection report and the Anti Corruption Agency shall be informed in writing.*

*If the ECD officer observes obvious non-compliance, it is his or her duty to announce the observation immediately to the location representative and to make the character of the non-compliance clear. The representative shall also be informed that the observed non-compliance will be reported and that ECD will take action as appropriate. The representative shall be given the opportunity to explain any reasons or background for the observed non-compliance.*

#### **Note from the Legal Advisor. Legal considerations**

**At 'reasonable times':** *Although the Enactment states that the rights to entry should be made at all 'reasonable times' (normal working hours), there are circumstances whereby ECD officers may justifiably exercise this power even during 'after-hours'. Such circumstances may occur when the activity or non-compliance of the Enactment is reasonably believed to be on-going after-hours i.e. open burning or waste disposal, etc. CEE, Section 12 (1)*

**Refusal of entry:** *Notwithstanding that the right to entry is available under the Enactment, in case of a resistance by the owner or occupier of the land or premise, the ECD officers should immediately leave the land or premise and should not make any attempts to force their presence. Any resistance to the officers' entry may lead to an undesirable outcome and*

*they should thereafter seek the assistance of the State Attorney General Chambers or the Police. CEE, Section 12 (1)*

**Restrictions on right to enter:** *The rights to entry are subject to the following restrictions: (i) not to enter any building or any enclosed yard attached to a dwelling without the consent of the owner; and (ii) not to cause any major damage to any land or premises. The ECD officers should strictly comply with these requirements, as any failure to observe may result in a civil trespass or civil damage claim against ECD. CEE, Section 12 (2)*

**Penalty for entry refusal:** *If any person prevents an entry to any area or wilfully obstructs or hinders ECD officers in carrying out their duties, then he is liable to imprisonment for six months and a fine of one thousand Malaysian Ringgit for the first offence, to imprisonment for one year and a fine of two thousand Malaysian Ringgit for the second and subsequent offence. CEE, Section 12 (3).*

### 1.3 Step 3: Processing and assessing evidence

Returning from the on-site investigation, the evidence is processed and assessed.

#### Part I: Processing evidence

The raw data and information collected from the site investigation will be processed systematically to ensure that only reliable and good data are used in concluding the investigation. This includes for example:

**Logbook data** is checked. Any corrections or additions are initialled by the person that took the notes.

**Photographs/video.** Accuracy of developed photographs and videos is checked. Re-visits to the site may be undertaken in order to take new photographs.

**Sampling data.** Data received from sampling is regarded as raw data and is reviewed as such: Some readings may be wild data, which cannot be used, for example, decimal point in the wrong place or significantly different figures. Sampling data is verified by (i) correction/reduction ('mistaken' data is corrected), and (ii) validation/rejection ('not valid' data is rejected).

#### Part II: Assessing evidence

Passing judgement based on evidence collected is often not as clear-cut as it looks. *The final assessment* depends on factors, which include but are not limited to the following:

- The *severity* of the offence
- The *legality* of the activity
- The *magnitude of public damage*, if any
- The *impact level* of the offence, whether significant or trivial (for example regarding test results, where e.g. cyanide is significant but a pH of 9.6 is minor)
- The *cumulative impact* of the offence, (for example oil content 20 mg/L discharged once versus daily discharges of 2 mg/L over one month period)
- The *reliability of evidence* and test results
- The *duration* of the offence
- The *cause* of the offence, whether accidental or by negligence.



## 1.4 Step 4: Follow up investigations

Several on-site investigations are sometime undertaken to complete the investigation. The main aim of follow-up on-site investigations is to ensure that all relevant information is collected, registered, filed and made usable.

The need for follow-up investigations often reveals itself during the writing of the inspection report, but depends in general on the:

- Seriousness of the possible non-compliance
- Amount and quality of evidence gathered during the first visit
- Results from the processing and assessing evidence
- Preparation of the inspection report.

### ***Note from the Director. Other reasons for follow-up investigations***

*Follow-up investigations shall also be undertaken in order to contribute to a demonstration of ECDs commitment to the enforcement of the Conservation of Environment Enactment and to increase the awareness and understanding by environmental offenders of the environmental performance requirements.*

## 1.5 Step 5: Preparation of the inspection report

The results of the site visit and the subsequent assessment is recorded in an inspection report. All reports are structured in the same way and according to a uniform layout. Standard table of contents and report format is shown in **Annex F**.

The report is submitted to the Director of ECD detailing the on-site investigation, evidence collection, processing and assessment, findings and recommendations.

The report is submitted to the ECD Director within:

- 3-5 working days for high priority cases (e.g. high political or media attention)
- 5-15 working days for normal cases.

The Director determines the next steps to be taken, which might be

- Collection of additional evidence (back to step 3 in this chapter)
- Administrative enforcement (go to phase 2 as per chapter 2 in the Manual)
- Prosecution (go to phase 3 as per chapter 3 in the Manual)
- Transferral of case to other legal authorities
- No further actions (step down).

### **Note from the Legal Advisor. Summon of witnesses**

*The final inspection report is a formal document, which, among others, serves as evidence in case of prosecution. Special attention is therefore given to correct and clearly structured documentation of any recorded non-compliance. The report is compiled in such a way that the relevant information can be extracted quickly from the report by non-inspecting officials.*

*When determining which action to take, ECD may use CEE, Section 7 and Section 8 (1-4), which provides for ECD to summon witnesses and all interested parties for the determination of relevant facts for a specific environmental issue. This power provides for a hearing and determination of facts by ECD and can be undertaken informally as opposed to a judicial/criminal process.*



## 2 Phase 2: Administrative enforcement

<i>Phase</i>	<i>Steps</i>
Phase 1	Investigation
Phase 2	Administrative enforcement
	This phase involves the following three steps: <ul style="list-style-type: none"> <li>• Step 1: Administrative response</li> <li>• Step 2: Compliance monitoring</li> <li>• Step 3: Response to non-compliance.</li> </ul>
Phase 3	Prosecution

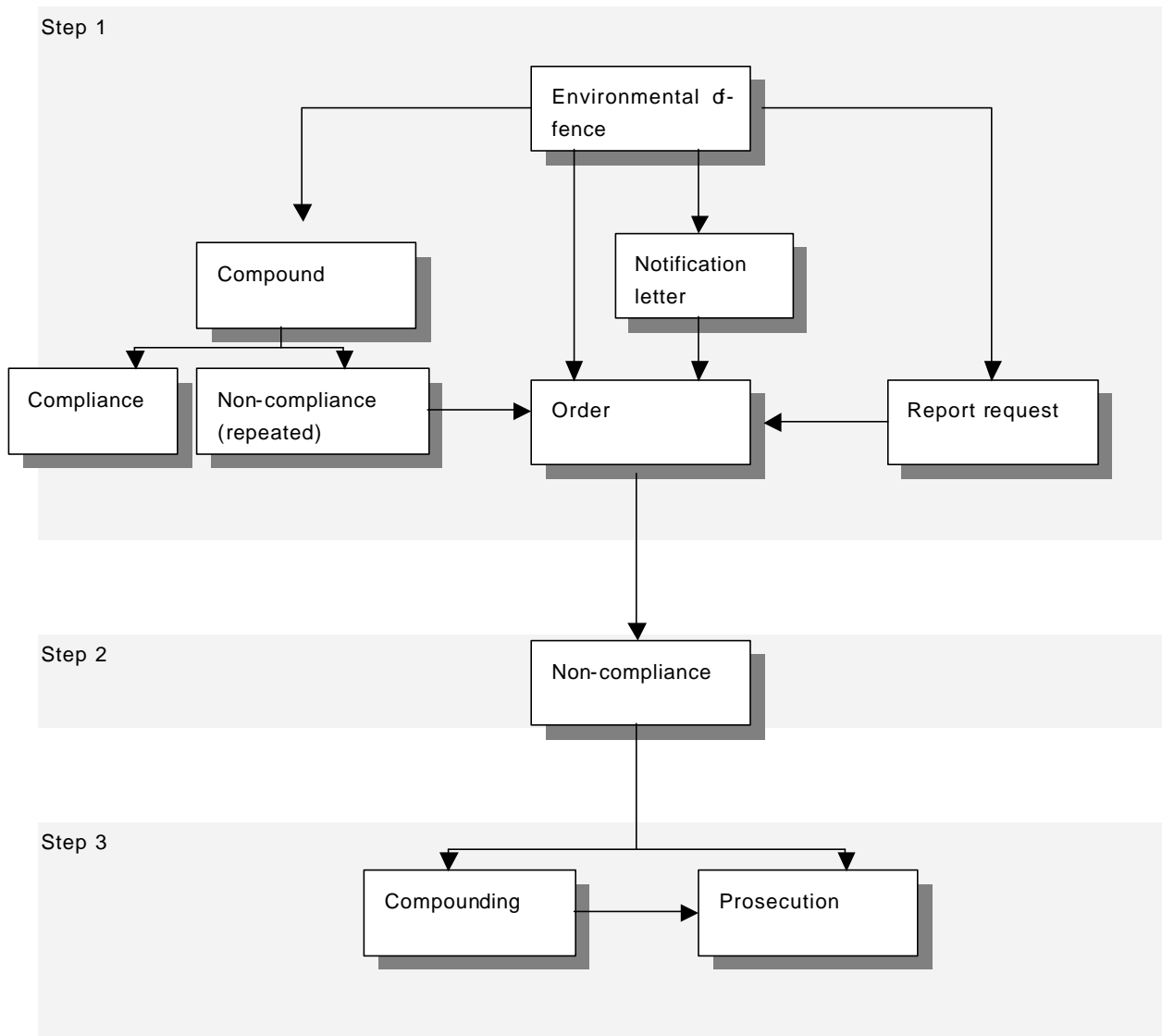
ECD will bring unlawful situations in line with the law by dealing directly with the matter by way of administrative enforcement - or by initiating legal action by prosecuting and bringing the offender to the relevant courts.

In most cases it will be sufficient and most practical to use the administrative enforcement response. However, in cases of severe environmental offences and in cases where it is clear that an administrative response will not be sufficient, it will be necessary to apply judicial responses immediately following the inspection report, see phase 3 (chapter 3 in this manual).

Administrative enforcement is the exercise of the powers conferred on ECD ranging from permitting an activity such as the Prescribed Activities (CEE, Section 5), to issuance of Orders and compounding.

The standard flow of the administrative response tools used in case of an environmental offence is shown in Chart 2.1, and contains three main steps, namely administrative response, compliance monitoring and response to non-compliance.

Chart 2.1 The standard flow of the administrative response tools used by the Monitoring and Enforcement Division in case of an environmental offence:



## 2.1 Step 1: Administrative response

Four administrative response options are available, see also Chart 2.1:

- Issuing notification and compliance agreement letters
- Issuing request for a report
- Issuing orders and consent order
- Compounding.

The administrative response tools used by the Monitoring and Enforcement Division of ECD are:

- The issuance of a **notification letter**, followed by negotiation and if possible a signed agreement to comply letter by the offender
- The issuance of a **report request** under CEE, Section 5 e.g. for the investigation of appropriate mitigation measures possibly followed by issuing an Order
- The issuance of a letter in the form of an **Order** under CEE, Section 3, and in case of non-compliance, compound and/or prosecute
- **Compound** directly under CEE, Section 13 or 18, and in case of repeated non-compliance, issue an **Order**.

### Option 1: Notification and compliance agreement letters

A notification letter is issued after an environmental offence is assessed as having taken place. The letter states the alleged offence and calls for a meeting with ECD.

The offender is, after negotiations, offered to sign a compliance agreement letter, stating the measures, standards and otherwise, the offender has to comply with.

Notification letters, followed by a compliance agreement letter is used mostly when the offence is minor and when possible mitigation measures are known, practical and easy to implement, and when the offender shows a willingness to immediately follow the requirements of ECD.

Using notification and compliance agreement letters results in settlement of the offence by the use of least administrative force.

### Option 2: Request for a report

Where an environmental offence has taken place the offender can be requested to submit to ECD an environmental mitigation report upon which it can be determined how to make the activity meet ECDs environmental requirements.

The request for report option is used in circumstances when the technical mitigation measures available are complex or when the financial implications are not clear and have to be studied further. This request is only to be used when it is likely that an agreement can be reached later and will be complied with fully by the alleged offender. The request is normally followed by an (negotiated) Order.

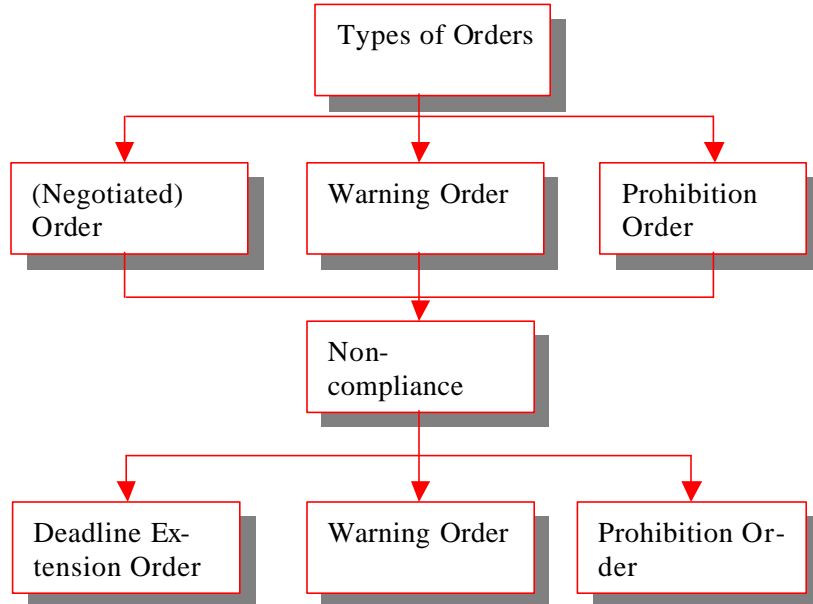
**Option 3: Orders**

An Order, provided for under CEE, Section 3 is only issued after an investigation has been conducted; an inspection report prepared and an environmental offence is assessed as having taken place and/or non-compliance has been determined.

The type of Orders used by ECD in the initial phase in the initial phase of proceedings and issued under CEE, Section 3, are:

- An Order (normally negotiated)
- A Warning Order
- A Prohibition Order.

Chart 2.2 Types of Orders used by ECD



**An (negotiated) Order.** In some cases environmental offences can be easily mitigated when the correct technical solutions are available and it is financially feasible to implement them. In such cases ECD may issue an Order containing the specific actions, activities, and/or mitigation measures required to be undertaken.

In the preparation of this type of Order the offender will normally be involved in negotiations as to the specific actions, activities and mitigation measures that are available and should be implemented. Through negotiation it is ensured that the action, activities and mitigation measures agreed upon are practicable and effective, and can be implemented at reasonable costs.

An (negotiated) Order typically requires allocation of sufficient time from ECD for collection of information and assessment of the required specific action, activities and mitigation measures, before the Order is issued.

An (negotiated) Order is usually a relatively mild administrative enforcement response and is primarily used when it is likely that the agreement will be fully complied with by the environmental offender.

**A Warning Order.** In cases of clear and obvious lack of respect for the environmental requirements of ECD a Warning Order is issued to the offender. The Warning Order contains a clear written notice that in case of continued or similar offences in the future, ECD will immediately initiate judicial action in order to ensure that the offender will be prosecuted. The tone used in a Warning Order is formal and severe.

**A Prohibition Order.** A Prohibition Order contains an order to, immediately or within a short, clearly defined time period, close down the production or activity. This Order is used in cases of serious environmental offences causing considerable pollution and where no possible or immediate mitigation measures are available.

Due to the seriousness of the case, a Prohibition Order is often followed by judicial enforcement and is used because of the need for immediate action to prevent further environmental damage.

As the consequences for the offender of a Prohibition Order are severe, ECD will ensure that clear evidence and legal authority exists before issuing such Orders.

***Note from the Legal Advisor: Additional option: Order followed by work undertaken by ECD***

*Whenever the Director decides that the offender has failed to comply with an Order related to Section 3 (2) (f), (g) or (h) of the CEE, ECD may carry out or complete any necessary works to give effect to such Orders. The costs incurred pursuant to the works done by the Environmental Authority will be a debt due and owing by such owner or occupier of such conservation land to ECD and such debts will be imposed with an interest at the rate of three per cent per annum (3%) until the actual payment by the offender. Any costs incurred by ECD in carrying out the works aforesaid will remain as a debt due and owing by the alleged offender (CEE, Section (3)4 and 4).*

After considering the available options for the type of Order to be used, the monitoring and enforcement officer *drafts an Order*, which is submitted to the Prosecution officer and Director for review and final approval.

In deciding which type of Order to be used the following issues will be assessed:

- How serious is the environmental offence
- How long has the environmental offence been taking place
- What recommendations are given
- How long will it reasonably take for the alleged offender to execute the recommendations given
- Who is the offender i.e. is it the owner of the land or the occupier.



The Order *contains minimum*.

- The specific offence committed or the non-compliance caused as a result of the alleged offender's work, operation or neglect i.e. in relation to CEE, Section 3(2) (a)-(j)
- A clear description of the measures towards correcting the environmental offence
- The timeframe to comply with the Orders
- The repercussions of any failure to comply with the Order. The Order shall state that any failure by the alleged offender to comply with the Order shall be met with a fine or compound against the alleged offender (CEE, Section 3 (1) (a) (b)), namely, upon conviction a first offender shall be liable for one year imprisonment and a fine of RM 10,000 and in the case of a second or subsequent offence, imprisonment of two years and a fine of RM 20,000
- The specific CEE Section under which the non-compliance falls.

Orders are formulated *specific and enforceable*. This not only gives the offender an accurate idea of what ECD wants but also protects ECD if the offender defaults.

**Note from the Director - the importance of being specific**

*If an Order is vague or confusing it will be difficult to enforce, or be of little value in the case of prosecution. Examples of typical problems with vague corrective Orders include: (i) failure to include a specific time by which an action must be taken, (ii) failure to require all the steps needed to complete the corrective action, not just start it, and (iii) failure to state the procedure for addressing situations that can arise in the implementation of corrective actions that were not or could not be anticipated.*

The Order is *issued in the form of a letter* to the alleged offender, and is *delivered* by hand or by registered post to ensure certainty of actual delivery and avoidance of any dispute as to receipt of notice. An acknowledgement of receipt is received from the recipient or, if the recipient is not found, the Orders is pasted to i.e. the entrance door or the gate.

**Consent Order.** If the offender responds to an Order, a Consent Order may be drawn up. The Consent Order stipulates the alleged offenders undertaking to perform the recommendations made by ECD together with repercussion if there is failure to perform.

Upon any breach of a Consent Order, ECD will enforce the Order or give the penalties agreed to by the alleged offender in the Consent Order.

**Note from the Legal Advisor. Legal considerations**

*The Order shall fit the nature/severity of the offence committed by the alleged offender and shall be issued on a case-by-case basis at the discretion of the Director.*

*An Order creates a new legal situation, as when it is issued, the Order becomes 'the law' in that any breach of the Order can be compounded and/or prosecuted against. Strict care shall therefore be taken before any Order is made. A thorough investigation by the investigation officer shall be made in accordance to the practice described in chapter 1 of the Manual. Any allegations by ECD, which on the issuance of an Order are subsequently found to be without merit, may result in legal action being instituted against ECD.*

*After drafting an Order, if in doubt ECD shall refer the Order to the Ministry's legal section and/or the State Attorneys Chamber for comments.*

#### **Option 4: Compounding**

If the offence falls under the jurisdiction of CEE, Section 13 or 18 (or if specific rules have been established under CEE, Section 22), ECD can compound an offence *directly* after evidence of non-compliance has been established. On-the spot compounding will normally only be offered to offenders of minor environmental offences.

ECD may also offer the offender to pay a compound in accordance with the amount allowable as stipulated in the Conservation of Environment (Compounding of Offences) Rules 1999, *after an Order is made* to those offences under CEE, Section 3(3), 13, 18 and 19.

The acceptance of the compound by the offender is noted in the relevant form as prescribed in the Rules (Form A of the Schedule to offer the compound, Form B for acceptance by the offender and Form C as receipt) and will, whenever possible, be followed with an oral reminder to the offender not to repeat the offence.

The Compound Rules are used as a discretionary form of enforcement.

In the event that the offer to compound is not accepted and the offence still continues, ECD may then initiate prosecution proceedings against the offender.

## 2.2 Step 2: Compliance monitoring

Correct, complete and systematic compliance monitoring is crucial to the effectiveness of administrative enforcement. The aim of ECDs compliance monitoring is to:

- Ensure that the Order is implemented as required, and if not, to collect evidence of this and take the necessary action to ensure a proper and sufficient enforcement response and compliance
- Demonstrate ECDs commitment to enforcement of the CEE and make non-compliers aware of, and understand, the environmental requirements.

Based on the findings of the compliance monitoring a compliance monitoring report is prepared and submitted to the Director. The format for the compliance monitoring report is shown (**Annex G**).

### 2.3 Step 3: Response to non-compliance

The response to non-compliance of issued Orders varies depending on the seriousness of the breach of compliance.

If the non-compliance is of a serious nature, ECD may decide to prosecute the offence immediately, after non-compliance has been established.

Otherwise three types of Orders are used to respond to non-compliance, namely:

- A Deadline Extension Order
- A Warning Order
- A Prohibition Order.

**A Deadline Extension Order.** If good technical or financial reasons for non-compliance of deadlines as laid down in the earlier issued Order exist, or if the offender has shown willingness to comply, for example, by initiation of mitigation measures, a proper response can be to issue a Deadline Extension Order. This Order gives the offender additional time to comply with the previously issued Order. In certain cases a deadline extension Order may be appropriate to solve technical or financial problems faced by the offender.

A Deadline Extension Order will normally be issued together with an offer to compound. Deliberate or subsequent offences with regards to defined deadlines shall, however, be met with more severe responses, either through a Warning Order, Prohibition Order or prosecution.

**A Warning Order.** In cases of repeated non-compliance or obvious lack of respect for the environmental requirements of ECD, a Warning Order shall be given to the offender. The order will contain a clear written notice that, in case of future similar non-compliance, ECD will issue a Prohibition Order and/or immediately initiate judicial actions in order to ensure that the offender will be prosecuted. The tone used in the Warning Order will be formal and severe.

A Warning Order responding to non-compliance to earlier issued Orders will normally be issued together with an offer to compound.

**A Prohibition Order.** A Prohibition Order based on non-compliance of earlier issued Orders, contains an order to close immediately or within a short, clearly defined period. The Order will contain a clear written notice that, in case of non-compliance, ECD will immediately initiate judicial actions in order to ensure that the offender will be prosecuted. The tone used in the Prohibition Order will be formal and severe.

A Prohibition Order responding to non-compliance of earlier issued Orders will normally be issued together with an offer to compound.



### 3 Phase 3: Prosecution

<i>Phase</i>	<i>Steps</i>
Phase 1	Investigation
Phase 2	Administrative enforcement
Phase 3	Prosecution

This phase involves the following four steps:

- Step 1: Initial decision
- Step 2: Preparations
- Step 3: Final decision
- Step 4: Legal action.

Prosecution will only be used in cases of serious and/or deliberate breaches or violations of the environmental legislation and/or in cases where administrative enforcement is clearly insufficient. Prosecutions are resource demanding and require clear evidence. Lost cases will in general not stimulate respect with regards to environmental protection and management.

However, it is important to demonstrate a stringent, transparent environmental enforcement policy. The following cases will often lead to prosecution:

- Pollution leading to serious irreversible environmental damage and/or danger to public health and welfare
- Clear violation of previously issued Orders
- Serious river pollution
- Open burning during a haze period.

This chapter describes ECD procedures for preparing and undertaking legal actions against an offender.

### 3.1 Step 1: Initial decision

#### Initial preparation Part I: Initial considerations

Before initiating prosecution the following are considered:

- The type of offence
- Whether or not the offence is *trivial* or *serious*
- Whether or not the prosecution has a reasonably *good* cause for action
- Whether or not the evidence collected is enough to prosecute the offenders.

The initial decision will be based on the Criminal Procedure Code (F.M.S Cap 6), Evidence Act 1950 (Act 56) and the rules governing the Judiciary.

#### Initial preparation Part II: Initial legal consultation

Before proceeding with legal action ECD seeks the legal opinion from its *legal section*, the *State Attorney General's Chambers* and/or the *Public Prosecutors* office at Kuwasa Building. Based on the inspection report and the collected evidence, an initial consultation with these legal experts is undertaken.

Referring the alleged non-compliance offence to the State Attorney's Chambers and/or the Public Prosecutors office gives a more complete evaluation of the offence, the possibility of prosecution success and whether such an offence should be prosecuted or otherwise.

The initial consultation determines whether ECD will proceed with the next preparatory step (step 2), which includes:

- Selection of a prosecution officer
- Opening a confidential file
- Preparing an investigation paper
- Preparing a charge sheet.

Following this step a final decision is made in collaboration with the legal section or the State Attorney General's Chambers and/or the Public Prosecutor on whether legal action should be taken (step 3).

## 3.2 Step 2: Preparations

### Preparation Part I: The prosecution officer

ECD appoints a prosecution officer from among its senior officers. The appointment is made in writing and shown to the judge on the prosecutor's first appearance before that court, thereby informing the judge formally of the prosecutor's presence/*locus standi* as an officer of the court. The appointment letter is carried at any hearing to resolve any questions raised by any parties as to the prosecutor's standing to appear before the court.

#### **Note from the Legal Advisor. Legal considerations**

*The Conservation of Environment Enactment (CEE), Section 21, states that any public officer authorised by the public prosecutor may prosecute offences under the Enactment. The Section empowers a public officer appointed by the public prosecutor to appear in court and prosecute all offences under the CEE 1996.*

### Preparation Part II: A confidential file

The already opened file will be closed, and a new confidential file will be opened containing all relevant documentations and evidence in relation to the case.

### Preparation Part III: The investigation paper

The prosecutor is briefed thoroughly by the investigating officer of the nature of the case and as to what evidence and supporting documents are available to prosecute the alleged offender.

The prosecutor then prepares an investigation paper based on the briefing and the inspection report prepared during the investigation phase (chapter 1). The correct preparation of the paper is an important factor for a successful outcome of the prosecution.

The investigation paper records properly and thoroughly all facts, and evidence necessary for prosecuting the case and contains a chronology of the *facts* and evidence produced by the investigation activities and as stated in the inspection report.

#### **Note from the Legal Advisor - facts**

*Facts and facts alone, as supported by the available evidence, shall be the basis for prosecution. Imagination and opinion shall never be considered.*

*The findings of facts shall, however, not be conclusive. In other words, they shall relate either observed or inferred facts and not factual conclusions or legal conclusions drawn from those facts. For example, assume that garbage and trash deposited in the water on respondents' property have been observed. A proper way of reciting that fact in the investigation paper is to write, 'Bags of household garbage, tree limbs and leaves were placed in the pond on respondents' property'. This relates specifically to what was observed. It is not correct to write, 'Solid waste was improperly deposited by respondent', without also specifically alleging the facts that support that conclusion, even though legally this is what occurred. The terms 'solid waste' and 'improperly deposited' are legal conclusions drawn from the facts*



*observed. Those terms are more appropriate in the Conclusions of Law subsection. The distinctions between findings of fact and conclusions of law can, however, be difficult to make at times.*

*Allegations in the findings of fact must be supported by evidence known to be in the possession of, or readily obtainable by ECD. It may also include expert opinion, such as a statement that contaminated soil is leaching into the groundwater. However, mere speculation shall never be the basis of an allegation.*

The investigation paper is a formal paper made in accordance with the Criminal Procedure Code (F.M.S Cap 6) and the Evidence Act 1950 and contains specifically:

- The exact offence and the jurisdiction of the environmental authority
- The conceptual scenarios of the offence i.e. a flow-chart or a step by step account leading to the discovery and eventual investigation of the alleged offence
- The exact location and sketch of where the offence was committed
- The names and identity of the offender and who is responsible for the offence (their titles must be clear i.e. company name (company no.), Datuk, Haji, Puan, Dr, Encik, Cik, etc)
- The cause and effect of the offence i.e. how, when, why
- Witnesses and statements by them
- The evidence collected together with the methods used to collect such evidence
- The names of the officers undertaking the investigations. This is required as they will later need to present evidence in the event of a trial
- Whether the offender is a first time offender or otherwise
- The lists of items seized pursuant to investigations
- Whether the offender has any permits or license that were applied for or issued to the offender
- If photographs were taken, a tagging/log of the same with the exact location, time taken, the type of camera used and who took the photographs
- Ensure that the environmental authority's appointed prosecution officer has the "right of appearance" before the courts and there is a written appointment by the public prosecutor.

In cases where the police have assisted the investigation, the police report shall be included in the investigation paper. The Lists of Contents for the investigation paper used by ECD is provided (**Annex H**).

#### **Preparation Part IV: Charge sheet**

A complaint to the court is made in the form of a properly framed charge sheet. The Charge Sheet stipulates accurate information, as follows:

- The nature of the complaint in brief
- The exact date and time of the alleged offence
- The exact venue and place of the alleged offence
- The exact nature of the offence
- The exact CEE Section of offence as stipulated in the enactment.

An example charge sheet is given (**Annex I**).

**Note from the Legal Advisor. Reference**

*It is essential that the charges are correct, stipulate the right offence under the correct CEE Sections and that the offence is clear for the defendant/offender to understand. Reference shall be made to Section 152 and 153 of the Criminal Procedure Code for more details on the preparations of the Charge Sheet.*

### **3.3 Step 3: Final decision**

After preparation of the draft investigation paper and charge sheets, the perusal and approval of the legal section and/or the State Attorney General's Office and/or the *Public Prosecutors* office is sought.

The legal experts will peruse through the charge stated and give comments i.e. whether to pursue with the prosecution or whether evidence is still required to further complete the prosecution. Any correction or improvement at this state ensures a proper drafting of the complaint and charge sheets.

### 3.4 Step 4: Legal action

#### Legal action Part I: Registration

Upon the approval by the State Attorney's Chambers and/or the public prosecutors office of the complaint and charge sheets and of the satisfactory preparation by the prosecutor of the case, the prosecutor proceeds to register the complaint together with the charge sheet at the Sessions Court at Kota Kinabalu, Tawau, Sandakan or the First Class Magistrates Court at Kota Kinabalu, Tawau, Sandakan or the particular District (if there is a First Class Magistrate in that District), where the offence was committed.

Upon registration, the court issues a summons compelling the defendant to appear before the courts at a stipulated date of hearing.

To facilitate this procedure, the prosecution shall:

- Upon registration of the case, lodge and seek an issuance by the courts of a summons compelling the alleged offender to appear before the courts at the date and time fixed by the courts. The prosecution must ensure that the summons complies with Section 34 of the Criminal Procedure Code (FMS Cap 6) or the relevant Courts Acts
- Ensure that the summons must be served in accordance with Section 35 (1), (2), (3) and (4) and Section 36 of the Criminal Procedure Code (FMS Cap 6). It is also required that the person serving the summons should affirm an affidavit of service to be lodged with the courts
- Ensure that a subpoena against any potential witness be applied for by the prosecutor from the court and if that witness fails to appear the prosecutor may apply for a warrant of arrest against the witnesses
- Undertake that a warrant of arrest may be issued by the courts if the offender/ defendant fails to appear in court
- If the defendant/offender is a company, make a service of the summons against the known Director of the company and that the company appears in court using the services of a lawyer.

#### Legal action Part II: The hearing

At the mention date, the prosecution opens the case by reading the charge sheet against the offender, who will then be ordered by the courts to give a plea of either 'guilty' or 'not guilty'.

It is common that the offender will not be represented and then two possibilities exists:

- *Undefended defendant/offender.* If the defendant/offender is undefended, he will either admit guilt and mitigate or he will plea not guilty and will usually seek legal help from private practitioner
- *A defeneded defendant/offender.* If the defendant/offender is defeneded, he will either (i) plead guilty and let his defence lawyer mitigate his sentence, or (ii) plead not guilty.

If the *defendant/ offender* pleads not guilty, then it is usual that the parties will argue as to whether there is a *prima facie* case or not. The courts will make the final decision and if

there is no *prima facie* case to answer, the case will usually be thrown out by the courts who shall then direct the prosecutor to return all seized evidence, and/or the prosecutor will be given leave to appeal.

Alternatively, if the courts decide that there is a *prima facie* case to answer, the defendant will be ordered to prepare his defence.

The prosecution officer will make the first examination of each witnesses followed by the defence counsel's cross-examination. The prosecution officer can re-examine the witness before calling the next witness.

After all witnesses have been called, the prosecution officer closes the case. The court then releases witnesses who have testified. Those witnesses who were not called to give testimony are then made available to the defence. The defendant has to raise a reasonable doubt on his guilt. Other witnesses can then be called for their testimony before the defence closes the case.

The counsels for prosecution and defence will then debate the case and the court will make its decision. If the court agrees with the defendant, the defendant would then be acquitted and discharged, and instruction will be given on the disposal of exhibits given in evidence.

If the court does not agree with the evidence of the defendant, the defendant will be convicted. The defence can appeal in mitigation before the sentence is given. After the sentence, the court will direct the disposal of the exhibits.

An appeal can be made by any party to the high court or any local court in the country within 10 days from the date of sentencing.

***Note from the Legal Advisor. Court etiquette***

*The prosecutor is advised to wear white shirt, dark tie, dark suit and black shoes. The appropriate attire code in the courts shall indicate the prosecutors respect of the courts.*

*The prosecutor should at all times refer to the judge as 'Your Honour' or 'Yang Arif' and should always start his presentation by saying as follows: 'May it pleases your Honour' ...My name is \_\_\_ and I appear for the prosecution in this matter. Any reference to the defendant's advocate should be as 'My Learned Friend'.*

*The prosecutor should always stand-up whenever addressing the judge and should be clear in his tone of speech, in particular when presenting his case.*

*The prosecutor is advised that each judge may have different approaches to presenting a case in court. Recent changes have also been introduced in several courts in Malaysia. Therefore, it is important that the prosecutor should have a clear knowledge of who the judge he will be appearing before is and the practice and style of that judge. This can be obtained by seeking some comments from lawyers and court staff.*

*The prosecutor is reminded that whenever the judge enters the court, the prosecutor must stand-up and bow. The prosecutor should also bow to the judge when leaving the court.*

**4 Annexes**

**Annex A: Draft filing system**

(S) Confidential  
(S)-IP Confidential Investigation

(EIA) EIA Approval  
(EA) EA Conditions

Numbering according to incidents of the activity of the District

**JKAS/PO/700-District/Activity/ Running Case (Folio)**

Code	District
00	General (other areas that are not included in any district, eg: boundaries of state/ nation)
01	BEAUFORT
01(1)	Menumbok
01(2)	Membakut
02	BELURAN
02(1)	Telupid
03	KENINGAU
03(1)	Sook
04	KOTA BELUD
05(1)	KOTA KINABALU PROPER (Luyang, Kolombong, Tg. Aru, Likas)
06	KOTA KINABATANGAN
07	KOTA MARUDU
08	KUALA PENYU
09	LEMBAGA BANDARAN KUDAT
10	KUNAK
11	LAHAD DATU
12	NABAWAN/ PENSIANGAN
13	PAPAR
14	PENAMPANG
15	PITAS
16	RANAU
17	SANDAKAN
18	SEMPORNA
19	SIPITANG
20	TAMBUNAN
21	TAWAU
22	TENOM
23	TUARAN
24	TONGOD

Code	Activity
00	General
00(1)	Seminars/ Workshop
01	Quarry
02	River Sand Stone Mining
03	Livestock
04	Aquaculture
05	Marine
06	Logging
07	Housing & Residential
08	Commercial
09	Mills
10	Recreation
11	Agriculture
12	Mining
13	Gen. Construction
14	Workshops/ Crevice Centers
15	Open Burning
16	Industry
17	Earth Works/ Hill Cutting
18	Sea Reclamation
19	Pembuangan Waste Disposal

Note:

- 1 Letters from the Director must be recorded in the "Record Book-Incoming Mail".
- 2 Follow-up for the letters above case must be filed in first.
- 3 Letters regarding new subjects must be filed in the General file for the district concerned.
- 4 Movement of file should always be recorded in the "file movement card".

**Ordinary File:**

JKAS/PO/700-District/ Activity/ Running Case (Folio)

**Confidential File** (Section 3 or 5):

JKAS(S)/PO/700- District/ Activity/ Running Case (Folio)

**Investigation File:**

JKAS(S)-IP/PO/700- District/ Activity/ Running Case (Folio) (*original file ref*)

**Confidential File** with EIA approval (Section 3):

JKAS(S)/PO(EIA)/700- District/ Activity/ Running Case (Folio)

**Investigation File:**

JKAS(S)-IP/PO(EIA)/700- District/ Activity/ Running Case (Folio) (*org file ref*)

**Confidential File** with EA conditions imposed (Section 3):

JKAS(S)/PO(EA)/700- District/ Activity/ Running Case (Folio)

**Investigation File:**

JKAS(S)-IP/PO(EA)/700-District/Activity/Running case (folio) (*org. file ref*)

## Annex B: Announcement letter



JABATAN KONSERVASI ALAM SEKITAR  
(ENVIRONMENTAL CONSERVATION  
DEPARTMENT)

Tingkat 2 dan 3, Wisma Budaya  
Jalan Tunku Abdul Rahman

Beg Berkunci No. 2078

88999 Kota Kinabalu, Sabah, MALAYSIA

No. Tel. : **088-251290/251291** No.Faks : **088-238120**

E-Mail : **[jkas@sabah.gov.my](mailto:jkas@sabah.gov.my)**

(Sila Catatkan **Rujukan Fail Jabatan Ini** Apabila  
Menjawab



Rujukan:

**Tarikh:**

PENGESAHAN PEMERIKSAAN BERSAMA KE:

-----

Dengan hormatnya, perkara di atas adalah dirujuk

2. Sukacita dimaklumkan persetujuan yang telah dicapai bagi pemeriksaan bersama di atas adalah seperti berikut:

Tarikh : \_\_\_\_\_

Tempat Perjumpaan: \_\_\_\_\_

Masa : \_\_\_\_\_

Perkara-perkara lain:

-----

-----

Kerjasama dan perhatian tuan/ puan dalam perkara ini amatlah dihargai dan diucapkan terima kasih.

(            )

b.p. Pengarah.



## Annex C: Draft logbook

### CATATAN PEMERIKSAAN

(Investigation notes)

Bil (reference). : JABATAN KONSERVASI ALAM SEKITAR  
( ENVIRONMENT CONSERVATION DEPARTMENT )  
Kepada (To) : TINGKAT 2 & 3, BANGUNAN WISMA BUDAYA,  
JALAN TUNKU ABDUL RAHMAN  
88999 KOTA KINABALU  
Tarikh (date):

#### PEMERIKSAAN:

(Inspection of)

1. Tarikh Pemeriksaan:	Date of inspection
2. Masa Pemeriksaan	Time of inspection
3. Keadaan cuaca masa pemeriksa	Weather Condition
4. Nama Pengadu:	Name of complainer (in capital letters)

#### 5. Nama Pemeriksa (Name of Inspecting officer(s)):

Bil	Nama (Name)	Agensi (Agency)	Jawatan (Position)	Alamat Perhubungan (Contact)

#### 6. Nama Peserta:

(Name of person(s) involved during inspection)

#### 7. Jenis Aktiviti:

Type of activity

#### 8. Lokasi/ Daerah :

Location/ District

#### 9. Masalah alam sekitar masa kini (Jika ada):

(Present environmental problems)

#### 10. MAKLUMAT LAIN-LAIN:

(Additional information regarding the nature of complaints)

#### 11. ULASAN/ KESIMPULAN AWAL:

(Preliminary Findings and/ or deduction)

#### 12. REKOMENDASI AWAL:

(Preliminary Recommendations)

#### 13. Pensampelan/ Penggambaran (Sampling/ Photographs/ Documents)

Bil	Perkara (Item)	No. Siri/ Ruj. (Serial/ Ref. No.)	Catatan (Notes)

(Prepared by)

(Signature)

## Annex D: Sampling equipment

### (A) WATER SAMPLING EQUIPMENT

**Equipment type.** Water sampling and analysis are usually two separate activities, except where parameters are subject to physical and chemical changes due to storage, aeration or transportation. For these sensitive parameters, sampling and analysis are done *in-situ* using commercially available water sampling equipment. There is a wide selection of equipment, ranging from simple single parameter hand-held sensors to multi-function water quality meters.

**Water quality meters.** Water quality meters or testers are portable, self-contained, battery powered instruments with an indicating meter, providing either a digital or analog reading.

<i>Parameter</i>	<i>Testing instrument</i>
pH	Portable pH meter
Temperature	Thermometer or temperature meter
Dissolved Oxygen	Portable DO meter
Conductivity	Portable conductivity meter

### (B) NOISE MEASURING EQUIPMENT

**Equipment type.** There is a wide range of equipment available for the measurement of noise, ranging from simple general purpose type sound level meters to determine overall noise levels or to the more accurate and versatile precision sound level meters which, depending on specification, may also be capable of measuring impulse noise and/or integrating sound pressure levels over time periods ranging from a few seconds to a full day. If noise spectra are required, sound level meters with built-in octave filters are available.

**Sound level meters.** Sound level meters are portable, self-contained, battery powered instruments with an indicating meter, either digital or analog reading. There are several categories of meter, with Type 2 as standard for measurement of noise levels.

Type 0: Laboratory reference meter
Type 1: Precision grade meter
Type 2: Industrial grade meter
Type 3: Survey meter

### **(C) HAZARDOUS WASTE SAMPLING EQUIPMENT**

For the sampling of hazardous wastes, the following equipment is normally required:

- Scoop; for sludge, solid or semi-solid materials
- Hollow glass, metal tube or hand-held extraction pump; for liquid materials
- Containers of glass or plastic bottle; for liquid or sludge materials
- Containers of polyethylene; for solid or semi-solid materials.

**Protective equipment.** The following equipment should be worn by the sampler:

- Gloves; chemically resistant
- Boots; chemically resistant and with safety toe protection
- Goggles
- Respirator (or full face respirator, if hazardous gases are present)
- Apron (or chemical suit, if hazardous materials present).

### **(d) Supporting equipment**

Additional information such as weather, hydrology and water body characteristics maybe important in assessing the overall situation of a particular sampling station. Different types of equipment are available to measure these characteristics including flow velocity, water depth, wind speed, wind direction and ambient temperature

Selected supporting equipment - available commercially - include the following:

- Flow meters or use in rivers, estuaries, canals, sewer outfalls, pipes, and harbour entrances to determine velocity and distance information
- Anemometer; wind meter that measures wind direction, wind chill, current, and ambient temperature
- Global Positioning System (GPS) to record site position in terms of latitude, longitude and altitude
- Depth meter to record depth as well as temperature for use in fresh or salt water
- Dipper; long handle dipper for easy sampling
- Swing sampler to collect water samples at different angles, perfect for steep stream banks
- Tripod for mounting of sound level meter
- Cooler box for preservation and temporary storage of water samples.

## Annex E: Sampling techniques

### (A) WATER AND WASTEWATER

The objective of water sampling is to obtain a representative and valid sample for laboratory analysis.

The pre-requisite prior to actual sampling include the following:

- Preparation of adequate number of containers, with additional containers as spare in case of breakage or contamination (i.e. additional 20 % of number of stations or one set, whichever is less)
- Preparation of appropriate containers (e.g. glass or plastic; clear or dark containers; sterilized or not, as the case warrants)
- Ensure that bottles and sampling accessories are clean and do not leak
- Provisions for sample preservation or ice storage during transit to the laboratory
- Provisions for labels or tags of samples
- Provisions for photographic equipment and field log book.

During water sampling, the following general guidelines are applicable:

- Rinse the container and relevant sampling accessories two to three times with the water being collected
- Take water sample as per sampling procedures, use different containers for different group of determinands
- Fill container full for organic determinands or leave an air space of approximately 1 % container capacity to allow for expansion of samples during transportation
- Add respective preservative agents and follow preservative techniques for the corresponding determinands
- Label or tag every sample collected
- Record all information in the field logbook.

In the collection of samples, the following procedures are applicable:

#### *Box Annex 4.5.1 Sampling from river or stream*

##### Preferred method: 'Complete' sample

Use the grab sampler and take three separate samples in the middle of the stream:

- From the surface
- From mid-depth
- From near the bottom

##### Acceptable method: Composite sample

Use the grab sampler and integrate the three separate samples of manual grab samples into one composite sample for testing

##### Alternative method: Spot sample

If only a single grab sample can be collected or for enforcement purposes, take samples in the middle of the stream and at mid-depth

*Box Annex 4.5.2 Sampling from sea, lake and reservoir*

Preferred method: 'Complete' sample

Using the grab sampler, take separate samples along a transect perpendicular to the coastline at:

- Surface
- Mid-depth
- Near the bottom

Alternative method: Spot sample

If only a single grab sample can be collected or for enforcement purposes, take samples in the middle of the stream and at mid-depth

*Box Annex 4.5.3 Sampling from distribution piping system*

Flush line sufficiently to clear the sampling line of remnant liquid from previous sampling, taking into account the diameter and length of pipe to be flushed. Use either plastic bucket or glass jug to take sample, depending on the determinant to be tested.

**Manual samples** are usually taken over a limited time period and are referred to as 'spot' or 'grab' samples. This type of sampling is flexible in both space and time and there are various devices for manual sampling adapted to conditions and needs. There are two common methods of manual sampling:

- Direct grab technique – the sample bottle is immersed directly in the water. This is the preferable method
- Indirect grab technique – the use of plastic bucket or glass jug to collect sample. It is desirable to stir the water in the bucket while pouring it into the sample container to prevent suspended matter settling out. This method may be used in situation where direct grabbing is not possible.

**Sample preservation.** Once a sample has been taken, changes in the sample will begin. Some changes will be fairly rapid while others may be protracted. Few if any parameters exhibit permanent stability. The consequences of these changes will be that the water analysed will become less representative of the water sampled. An essential factor in the planning procedure is the arrangement for transport of the samples from the sampling station to the testing laboratory. Maximum holding time between sampling and analysis for recommended and regulatory requirements for different determinants are available for reference, see Table 4.1.

Samples are normally preserved by various methods, but the effect is one of retardation rather than fixation and they do not reduce the urgency of sample transport (Table 4.1).

**Sampling labelling.** The sample collector should label all samples and complete all field measurements and records before leaving the station. Any attempt to depend upon memory from one station to the next or until the end of a sampling run is likely to result in errors. Furthermore, another sample can be obtained to correct any error in field determination, if the collector remains at the station until all procedures are completed. A waterproof label or tag is required to protect the information.

#### Box Annex 4.5.4 Sample labelling

Label or tag each sample bottle recording:

- Sampling location
- Station identification
- Sampling date
- Sampling time
- Test parameters
- Preservative added (if any)
- Name of sampling officer

**Photographs** should be taken for each sampling activity and for each sample, as means of proof and description of sampling. All photographs shall be dated and snapped in duplicate. Each station requires three photographs as a minimum:

- During sampling – standard photograph
- During sampling - overview
- Close-up of all sample bottles.



*Annex 4.5.1. Standard photograph*



*Annex 4.5.2: Overview photograph*



*Annex 4.5.3. Close-up photograph of samples showing labels*

Field logbook. The sampling officer shall record sample and relevant data for each station in a field log book. This logbook permits the collector to retain records for reference use by other officers and if necessary, for litigation. Information to be recorded in a field logbook shall include the following:

- Sampling location and station identification
- Detailed description of the station including map, indicating nearest landmarks, other sources of discharges, including GPS reading
- Sampling date and time
- List of parameters or determinands for which sample is to be tested
- Preservative added, if any
- Appearance of water body and water sample (e.g. turbid, clear, floating rubbish)
- Weather conditions (e.g. sunny or cloudy; heavy rain or not; windy or not)
- Status of project at time of sampling (e.g. production rate; construction of road; shut-down)
- Name of sampling officer.

**Sample in transit.** In view of logistical problems with the Sabah geography, it may be necessary to provide temporary storage for samples between sampling stations, transit station (e.g. ECDs office) and testing laboratory. The following provisions are required:

- Cooler box with ice for samples requiring preservation shall be used between sampling station and transit station or laboratory; or between transit station and laboratory
- Freezer may be needed at transit station to keep samples during weekends or public holidays, prior to transfer to testing laboratory.

**Sample containers** must be made of materials that do not affect the composition of the water sampled, must be easy to clean and must not bear any residues from previous samplings. Sample container may be made of either glass or plastic; usually polyethylene and must be capable of being tightly sealed either by stopper or cap. Use appropriate containers for specific determinands based on the following chemical considerations to prevent contamination of samples:

- From container to the sample, e.g. organic materials from plastic
- From the water to the container, e.g. sorption of trace metals by glass
- Direct reaction with the container, e.g. fluoride and glass.

Information on type of containers for specific determinants is shown in Table 4.1.

**Sample volume.** An adequate volume of water sample shall be collected to ensure that laboratory testing can be carried out for specific determinants. Minimum volumes of sample for selected determinants are shown in Table 4.1.

**Testing.** All samples collected shall be immediately sent to an approved laboratory for analysis using a standard submission form. Approved laboratories include the following:

- Government's Chemistry Department
- SAMM accredited private laboratories.

**Sampling facilities.** There is a range of sampling facilities possible and their availability will be controlled by local circumstances; all have advantages and disadvantages and are described below:

#### Box Annex 4.5.5 Sampling facilities

- *Bridges* – Sampling from bridges is usually preferred by sample collectors because of the ease of access, the exact identification of the sampling point, the ability to control the lateral and vertical positions of sampling, and the capability to sample safely under all conditions of flow and weather. Bridge sampling is normally the most expeditious and economical form of river sampling
- *Boats* – Boats permit sampling to be carried out at any point along or across the river, sea or lake. It is, however, necessary to identify the sampling points, usually by reference to one or more landmarks. There may be hazards from other boats or from high flows or storm conditions. Life jackets should be available
- *Wading* – Where rivers or stream are sufficiently shallow, it is possible to take samples by wading. They must be taken upstream of the wader who inevitably disturbs the substance
- *Bankside* – This form of sampling should only be used when no alternative is available. The sample should preferably be taken where the water is turbulent, or from the outside bank of a bend where the water is usually fast and deep
- *Helicopter* – Sampling by helicopter has the advantage of flexibility, for a sample may be taken at any point on a river, sea or lake, however, difficult the access, and its speed. It is possible to visit and sample a large number of stations in a short time and the operation of sampling is easy and quick. The cost is high but should be considered in relation to the total cost of sampling and analysis of the number of samples.

**Special considerations.** In general, the following factors shall be considered:

- Representative samples of some sources can be obtained by making composites of samples. These can be an accumulation of samples collected at certain intervals over a time period at one point or at many different sampling points, especially in cases of variable or irregular discharges and operation
- Sometimes it is more informative to analyse many separate samples instead of one composite so as not to obscure the maximum or minimum levels of the different parameters analysed for
- When a contaminant source is known to be fairly constant in composition over a period of time or over substantial distances, then it may be represented with a single grab sample
- For enforcement purposes when there must be compliance at all times, it may be sufficient to take a grab sample.



Table Annex 4.5.1: Selected list of major determinants and sampling considerations

Determinand	Container	Minimum sample volume (ml)	Preservation	Maximum storage recommended/regulatory
BOD	P,G	1000	Refrigerate	6 hours/48 hours
COD	P,G	100	Analyse as soon as possible or add H <sub>2</sub> SO <sub>4</sub> to pH < 2; refrigerate	7 days/28 days
Colour	P,G	500	Refrigerate	48 hours/48 hours
Conductivity	P,G	500	Refrigerate	28 days/28 days
Faecal Coliform	G (S)	500	Refrigerate	6 hours/24 hours
Nitrogen Ammonia	P,G	500	Analyse as soon as possible or add H <sub>2</sub> SO <sub>4</sub> to pH < 2; refrigerate	7 days/28 days
Nitrate	P,G	100	Analyse immediately or refrigerate	48 hours/48 hours
Odour	G	500	Analyse as soon as possible or refrigerate	6 hours/No standard
Oil & grease	G, wide-mouth	1000	Add H <sub>2</sub> SO <sub>4</sub> to pH < 2; refrigerate	28 days/28 days
Oxygen, dissolved	G, BOD bottle	300	Analyse immediately	0.5 hour/No storage allowed
pH	P,G	100	Analyse immediately	2 hours/No storage allowed
Phosphate	G(A)	100	For dissolved phosphate filter immediately; refrigerate	48 hours/No storage allowed
Salinity	G, wax seal	240	Analyse immediately or use wax seal	6 months/No standard
Suspended solids	P,G	100	Refrigerate	7 days/28 days
Temperature	P,G	100	Analyse immediately	No storage allowed/No storage allowed
Turbidity	P,G	100	Analyse immediately; store in dark up to 24 hours; refrigerate	24 hours/48 hours

Notes: Refrigerate = storage at 4 °C in the dark; P = Plastic; G = Glass; G(A) = rinsed with 1 + 1 HNO<sub>3</sub>; G(S) = Sterilised

## (B) NOISE

The objective of noise measurement is to (i) determine compliance to noise regulations, and (ii) assess the disturbance to the local community.

The pre-requisite prior to actual measurement include the following:

- Select appropriate type of sound level meter
- Ensure the sound level meter frequency is set to correct weighting
- Ensure that the slow meter characteristic is used with the sound level meter
- Use microphone windshield for outdoor measurement to avoid wind noise
- Check the battery condition prior to each measurement period, replace when necessary and always carry spare batteries
- Ensure that the sound level meter has been acoustically calibrated, both before and after each measurement series.

During noise measurement, the following guidelines are applicable:

- The noise meter shall be located at 1 m from the boundary of noise source
- The microphone located 1.2 m above the ground or personnel platform
- The microphone shall be pointed facing the noise source
- Avoid noise reflection by holding the sound level meter away from the body (more than 0.5 m) or use tripod to support it
- Record sound noise levels for average, equivalent, maximum or minimum values as per procedures and report to the nearest decibel
- Record all information in the field logbook.

For noise measurement, the following guidelines are applicable:

- L Leq, Lave, Lmax or Lmin. Measurement should be made in triplicates at each measuring point and only considered valid if the range of the three measurements made immediately one after the other is not greater than 2 dB(A). The arithmetic mean value given by these measurements shall constitute the sound level for that point and the time measured.

**Photographs** shall be taken for each measurement, as means of proof and description of measurement. All photos shall be dated and snapped in duplicate. Each noise measurement station shall have at least one standard photograph.



*Photo Annex 4.5.4. Standard photograph of sampling*



*Photo Annex 4.5.5 Standard photograph (with tripod)*

**Field logbook.** Each noise level measurement relates to a particular set of operating or other circumstances. Accordingly, it is essential that sufficient information be recorded so that each individual result is fully defined as a specific event. This is important to help in the immediate assessment of the data, for subsequent comparison purposes, and for litigation, if necessary. Information to be recorded in a field logbook shall include the following:

- Measurement location and station identification
- Detailed description of the station including map, indicating nearest landmarks, noise sources and sensitive receptors
- Measurement date, time and duration
- Type of measurement, e.g. spot,  $L_{eq}$ , noise contour, octave band
- Instrumentation used, e.g. name, manufacturer, model no, ANSI type, serial no, accessories used, date of last calibration
- Meteorological conditions at 1.5 m above ground at time of measurement, e.g. air temperature, wind velocity, wind direction, weather
- Nature of noise control at measurement station, e.g. walling, enclosure
- Status of project at time of measurement (e.g. production rate; construction of road)
- Name of personnel performing and observing the measurements.

**Weather conditions.** Measurements shall not be made under wind velocity exceeds 3 meters/ second (7 mph) measured at 1.5 m above the ground or during rainy weather.

**Compliance noise.** When conducting noise compliance measurements the following are relevant:

- Project site – measurements at north, east, south and west position along boundary, at a standard distance of 1 m from fence or wall
- Machinery – measurements at the four cardinal positions for a single and at eight positions, 45 degrees apart, for multiple machines, at a standard distance of 120 m.

**Annoyance noise.** To assess whether any noise is likely to give rise to complaints from the local residents, compare the noise level while the offending noise is present against the background noise level in the absence of the source. If the difference between the two levels is 10 dB(A) or more, then complaints are likely (which to the human ear is as if the sound level intensity has doubled). Other factors affecting human perceptions include (i) whether occurrence is during day or night, less tolerance to noise at night and (ii) existing background noise levels, good acceptance for high background noise.

In general, the following factors shall be considered:

- An integrating sound-level meter may be used in cases where the noise level fluctuates rapidly
- Noise with an impulse character requires special consideration; a sound level meter with an impulse facility shall be used
- Calibrate the sound level meter in a quiet area before and after each measurement period using the manufacturer's recommended procedure. Although some sound level meters have built-in electrical calibration for the amplifiers and meter circuit, acoustic calibration using a sound level calibrator or piston phone of known sound pressure level is essential on each occasion of measurement to check the accuracy of the complete sound level meter system.

### (C) HAZARDOUS WASTE

The objective of hazardous waste sampling is to:

- Obtain a representative and valid sample
- Determine the hazardous nature of the waste components.

**Basic information.** The nature of the hazards may or may not be known. The following information may be relevant:

- Hazardous wastes may be in solid, semi-solid or liquid materials
- When possible, segregation of different types of wastes shall be done at source
- Wastes may be found in drums, bags, or other containers; or located in haphazard piles on land or shallow waters.

**The sampling.** During sampling, the following guidelines are applicable:

- Prior to sampling liquid hazardous waste, stir (using a rod or air bubbling) to homogenize the waste
- If stirring is not possible, multi-depth sampling shall be carried out, wherein the different samples are composited as one.

**Precautions.** During sampling, the following guidelines are applicable:

- Care shall be taken to avoid causing any splashing out of the liquid waste
- Extra care is needed if the liquid starts fuming or bubbling by itself, especially during stirring
- Proper protective clothing shall always be used together with other safety precautions when sampling and handling hazardous materials.

The **procedures** for hazardous waste sampling are dependent on waste fluidity.

- Sludge, solid or semi-solid materials: Use a simple grab sampler in the form of scoop
- Liquid materials: Use either a hollow glass or metal tube or extraction pump.

**Photographs** shall be taken for each measurement activity, as a means of proof and description of measurement. All photographs shall be dated and snapped in duplicate. Each waste sampling point shall have three photographs as a minimum.



*Annex 4.5.5. Standard photograph*



*Annex 4.5.6. Close-up sample photograph*

**Field logbook.** The sampling officer shall record sample and relevant data for each sample in a field logbook. This logbook permits the collector to retain records for reference, use by other officer and if necessary, for litigation. Information to be recorded in a field logbook shall include the following:

- Sampling location and station identification
- Detailed description of the station including map, indicating nearest landmarks, positions of other wastes, GPS reading
- Sampling date and time
- Appearance and state of wastes and sample (e.g. semi-solid, liquid, black, foaming)
- Weather conditions (e.g. sunny or cloudy; heavy rain or not; windy or not)
- Status of project at time of sampling (e.g. production rate; construction of road; shut-down)
- Name of sampling officer.

## Annex F: Draft inspection report

### MEMO

Bil (*reference*). : Daripada:  
**JABATAN KONSERVASI ALAM SEKITAR**  
 Kepada (to) : (*ENVIRONMENT CONSERVATION DEPARTMENT*)  
**TINGKAT 2 & 3, BANGUNAN WISMA BUDAYA,**  
**JALAN TUNKU ABDUL RAHMAN**  
**88999 KOTA KINABALU**  
 Tarikh (*date*):

### LAPORAN PEMERIKSAAN

(*Title of report*):

1. **TARIKH PEMERIKSAAN:**

2. **NAMA PENGADU:**

*Name of complainer*

3. **JENIS AKTIVITI:**

*Type of activity*

4. **LOKASI/ DAERAH :**

*Location/ District*

5. **MASALAH ALAM SEKITAR MASA KINI.**

*(Present environmental problems)*

6. **MAKLUMAT LAIN-LAIN:**

*(Additional information regarding the nature of complaints)*

7. **ULASAN/ KESIMPULAN:**

*(Findings and/ or deduction)*

8. **REKOMENDASI:**

*(Recommendations)*

9. **Lampiran (Appendices)**

*(Copy of licences or approvals, Maps and layout plan of location, Sampling & test results, Any correspondence, Statement from representative(s) and witnesses, Any other relevant information/ documentation)*

(*Prepared by*)

(*Signature*)

**Annex G: Draft compliance report**

**MEMO**

Bil . : (Reference)  Kepada : (To)	Daripada: <b>JABATAN KONSERVASI ALAM SEKITAR</b> ( ENVIRONMENT CONSERVATION DEPARTMENT ) <b>TINGKAT 2 &amp; 3, BANGUNAN WISMA BUDAYA,</b> <b>JALAN TUNKU ABDUL RAHMAN</b> <b>88999 KOTA KINABALU</b>
	Tarikh : (Date)

**LAPORAN PEMERIKSAAN PEMATUHAN ARAHAN:**

**(Title of compliance report)**

**1. TARIKH PEMERIKSAAN:** *Date of inspection*

**2. NAMA PEMERIKSA:**  
*(Name of Inspecting officer)*

**3. RUJUKAN ARAHAN:**  
*(Reference of Order)*

**4. LOKASI/ DAERAH:**  
*(Location/ District)*

**5. Order**

<i>Bil.</i>	<i>Arahan/ Perkara</i>	<i>Status Pemuhan</i>
1	<i>(Order/ Item)</i>	<i>(Compliance status)</i>
2	-do-	-do-
3	-do-	-do-
4	-do-	-do-
5	-do-	-do-
6	-do-	-do-
7	-do-	-do-
8	-do-	-do-

**6. MAKLUMAT LAIN-LAIN:**

*(Additional information regarding the nature of compliance)*

**7. ULASAN/ KESIMPULAN:**

*(Findings and/ or deduction)*

**8. REKOMENDASI:**

*(Recommendations)*

**(Prepared by)**

**(Signature)**

## **Annex H: Investigation paper**

The Investigation Paper shall contain cover and documents as follows:

- The IP Cover
- The Minute Paper
- The Summary of evidence 'Y'
- Facts of the case 'X1'
- Copy of Charge 'X2'
- Consent to prosecute 'X3'
- Copy of Police Report 'A', 'AA', etc.
- Statement of witnesses 'A1', 'A2', etc.
- Statement of accused persons 'B1', 'B2', etc.
- Investigation Diaries 'C1', 'C2', etc.
- Other Documents, such as letters, plans, photographs 'D1', 'D2', etc.
- Instruction Sheet 'Z'.



### Annex I: Charge sheet

(Mahkamah 114) (Court 114)		<b>TANAH MELAYU/MALAYA</b>		Saman/Summons No. _____ tahun 19____ No. _____ of 19____	
Dalam Mahkamah <u>Sejyen</u> di _____ <u>Majistret</u>		In the <u>Sessions</u> Court at _____ <u>Magistrate's</u>		Waran/Warrant No. _____ tahun 19____ No. _____ of 19____	
Nama orang yang dituduh Name of accused		<b>Kertas Pertuduhan/Charge Sheet</b>		Tangkapan/Arrest No. _____ tahun 19____ No. _____ of 19____	
Alamat orang yang dituduh Address of accused					
Pertuduhan/Charge:					
Tarikh Saman dikembalikan (jika waran, tinggalkan kosong) Return date of summons (If warrant, leave blank.)		19____		Pukul Time	pagi a.m.
Tarikh Waran dikeluarkan Date of issue of Warrant		19____		Tandatangan pihak berkuasa mengeluarkan Signature of issuing authority	
				Yang Dipertua/President Pendaftar/Registrar Majistret/Magistrate	
Butir-butir jaminan Polis yang ditawarkan: Particulars of Police bail offered:		Tarikh dikembalikan Return date		Banyaknya Amount \$	Penjamin/Surety Penjamin-penjamin/Sureties
Jaminan Polis diambil pada Police Bail taken on		19____			
Nama pengadu (jika ada) Name of complainant (if any)		Tarikh pengaduan Date of complainant		Nilai yang dikatakan bagi harta yang terlibat Alleged value of property involved	
Alamat pengadu (jika ada) Address of complainant (if any)					
Jika pertuduhan dipinda pada bila-bila masa, sahkan butir-butir pertuduhan yang dipinda dan masukkan di sini tarikh pindaan If the charge is amended at any stage endorse particulars of the amended charge and insert here the date of amendments					
Tarikh ditangkap Date of arrest		Tarikh hadir kali pertama (Date of first appearance)		Keturunan orang yang dituduh Nationality of accused	Umur orang yang dituduh Age of accused
Rayuan Plea		Butir-butir Jaminan Particulars of Bail		Bon Jamin No Bail Bond No	
Waran Menahan No. dan tarikh dikeluarkan Remand Warrant No. and date of issue		Jika semudiannya jaminan diberi, tarikh dilepaskan If bail subsequently given, date of release		Catatan Remarks	
Peguam atau pegawai pendakwa Prosecuting Advocate or officer			Peguam pembela Defending Advocate		
Penangguhan Adjournments					
Hingga (tarikh) To (date)		Sebab Reasons	Tandatangan ringkas Initial		Pendapat Findings
					Sabitah yang dahulu (melainkan jika tiada catatan butir-butirnya) Previous convictions and evidence of character (Unless nil, endorse particulars)
					Rayuan untuk meringankan hukuman (melainkan jika tiada catatan butir-butirnya) Plea in mitigation (Unless nil, endorse particulars)
					Hukuman dan /atau lain-lain perintah dan/atau bon Sentence and/or other order and/or bond
Tarikh memamatkan pembicaraannya Date of termination of proceedings				Ditandatangani Signed	
Resit denda No. Fine Receipt No.		Watan Memamatkan No. Warrant of Committal No.			

Yang Dipertua/President  
Mahkamah/Magistrate

## **Annex J: References**

State of Sabah (1996). Conservation of Environment Enactment 1996. Kota Kinabalu

State of Sabah (1999). Conservation of Environment (Compounding of Offences) Rules 1998. Kota Kinabalu

State of Sabah (1999). Conservation of Environment (Prescribed Activities) Order 1999. Kota Kinabalu

Department of Environment. Training course on Practical Enforcement 2, Enforcement Techniques for On-site Investigation

Danish Ministry of Environment (1992). Haandhaevelse af Miljobeskyttelsesloven (Enforcement of the Environmental Enforcement Enactment).