

Administrative controls in water and nature policing

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Ressources, territoires et habitats
Énergie et climat
Prévention des risques
Développement durable
Infrastructures, transports et mer

Présent
pour
l'avenir

Ministry of Ecology, Sustainable Development, Transport and Housing 1

Institutional stakeholders and collective organization in the water field



Levels of action

▪ Levels of action:

- **national,**
- **basins** (6 large basins + 5 overseas basins),
- **regional** (26 regions),
- **departmental** (100 departments),
- **community** (36,000 communities approximately),

- A collection of stakeholders at the watershed level for concerted and coordinated action



The operational organization at regional level

Prefect of Region

Regional Directorate for the Environment, Planning and Housing (DREAL)

- Organization of water and biodiversity policy.
- Technical and legal expertise
- **Police: instruction and inspection**(ICPE, Sites, part of biodiversity)
- Departmental Coordination

Regional Directorate of Agriculture, Food and Forestry (DRAAF)

- Agricultural and Forestry Policy

Regional Agency of Health

- Public health

The operational organization at the regional level

Prefect of Department

Departmental Directorate of Territories and the Sea (DDT (M))

- Itemization of water and biodiversity policy at departmental level.
- Police: instruction and inspection (water, hunting / wildlife, flora, forest, natural species and areas).

DREAL Territorial unit (UT - DREAL)

Installations classified for environmental protection

Departmental Directorate of Social Cohesion and Protection of Populations (DDCSPP)

- Veterinary Inspection
- ICPE breeding

Departmental branch of the ARS

Health / Environment



Other agencies involved in the implementation of the water and nature policy

Public Institutions:

- **Water Agencies (WA)**
 - financing operations in the field of water
- **The National Office for Water and Aquatic Environments (ONEMA)**
 - Knowledge of aquatic environment
 - Control in the field of water
 - Organization of information system on water (SIEaux)
- **The National Office of Wildlife and Hunting (ONCFS)**
 - Knowledge of wildlife
 - Hunting and wildlife inspection
- **The National Forest Office (ONF)**
 - National forest management
 - Forest control
- **National Parks**
 - Management of national parks
 - Inspections within the territory of national parks
- The National or Regional Nature Reserves
 - Managing nature reserves
 - Inspections within the territory of nature reserves



MISEN: Example of coordination at departmental level

MISEN = Inter-Services Mission for Water and Nature

Membership and terms are set by the Prefect of the department

- Prefecture.
- **DDT-M**: "environment" and "risk" services and the division of sea and coastline.
- **DREAL**, as part of its policing mission (ICPE Inspectorate, Inspectorate of Sites or Policy of water axis) and guidance of departmental services in charge of water and nature policies.
- **DD(CS)PP**, as part of veterinary inspection
- **ARS**, as part of public health policy
- **DRAAF** as part of plant protection and forest policy
- **Gendarmerie**
- Water Agency
- **ONEMA**
- **ONCFS**
- where applicable, ONF delegations, national parks, agency of protected marine areas, customs, or a departmental representative of nature reserves and the conservatory of the coastline.

MISEN: Example of coordination at departmental level

MISEN's role is to itemize at departmental level the water and nature policy, defined at the national level

It ensures coordination between the services under the authority of the prefect, including planning

It elaborates:

- the departmental strategic document
- Territorial operational actions = PAOT (three-year rolling plan)
- The inter-service control plan (annual)

These documents are subject to a formal approval by the prefect at an annual meeting chaired by the above (Strategic MISEN).

It assesses the implementation of the water and nature policy in the department

It defines the communication strategy



Inspections in the field of water



The inspection, guaranteeing the implementation of the water and nature policy

- Guarantee for the implementation of texts at **national level**, with the obligation of reporting to the Ministry of Justice, Parliament, and to the public.
- Guarantee for the implementation of texts at **community level**, with the obligation of reporting to the European Commission



Departmental level: Unified water police service

Missions

Administrative police under the authority of the prefect: instruction, monitoring, enforcement

Judicial police under the authority of the prosecutor: prosecutor relations

Communication

Circular of 26
November 2004

POLICE

Organization: Head of Environmental Department of the departmental structure of water policing

Water policing (DDT, coordinated services)

Coordinated with:

ONEMA / ONCFS (species - habitats)

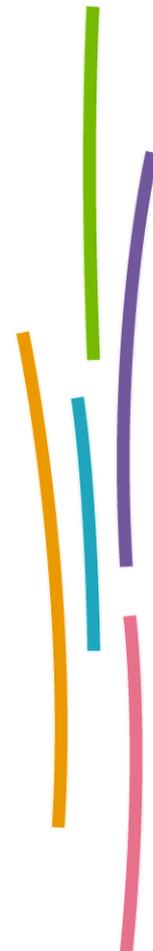
Gendarmerie / Police (support)

Policing of classified facilities (DREAL and DDCSPP for farms)

Inspection of hydraulic works (DREAL)

ARS (water – health)

Coordination: DREAL



An administrative policing under the Prefect's authority

- Environmental administrative policing is implemented by decentralized departments of the State **under the authority of the Prefect of the Department.**
- Environmental administrative policing is essentially organized by **DDT-M, DDPPs, DREALs, DRAAFs and ARSs**, aided by the controllers of public institutions (ONEMA, ONCFS, PN, AAMP, ONF).
- In case of non compliance with the requirements identified by a control officer or agent, the Prefect has the **authority to give formal notice** to the person concerned to comply within a specified period.
- If upon expiry of the deadline the person concerned has not complied with this order, the administrative authority may decide on **administrative sanctions**: logging, enforcement ex officio, suspension, withdrawal, rehabilitation, or a fine and penalty.



A judicial policing under the direction of the Public Prosecutor

- Environmental judicial policing is carried out **under the direction of the Public Prosecutor by the judicial police officers, officials and agents** designated by the Code of Criminal Procedure: Article 12 of the Criminal Procedure Code (CPC).
- Judicial policing includes:
 - judicial police officers and agents (all types of police)
 - **officials and agents who are assigned certain judicial police functions by law for special police forces.**
- **Each special law specifies the list of persons entitled to investigate and report infringements.**
- Under Article 40 of the CPC: "Any constituted authority, any public officer or official who, in the exercise of his duties, becomes aware of a crime or offense **shall give an opinion report immediately to the Public Prosecutor** and shall transmit to the judge all information, records and documents relating thereto."



A departmental control plan

A MISEN working group is responsible for developing the departmental control plan to:

- Create **synergies** between police teams without weakening their own powers;

- Set a **multi-annual inspection strategy** with regional steering;

- define inspection priorities by topic and geographic area;
- target facilities or activities to be monitored based on a risk analysis (diagnostic State / Pressure and risk of not achieving the objectives);
- clarify the contribution of each stakeholder (operational pilot project, related services);
- set the overall volume of inspections, recall the relevant inspection items for more effective interventions;
- formalize the follow-up strategy agreed with the Prefect for each type of non-compliant inspection.

A departmental inspection plan

- Every year, an inspection **plan** is approved by the Prefect and presented to the Public Prosecutor at the MISEN annual strategic committee;
- This inspection plan is broken down by inspection programs per department. It is released by State departments responsible for water and nature policing that spend **20% of their time on inspections** (preparation, implementation, monitoring) with the objective of a national average of 600 inspection operations (on-site + office) per year;
- Ensure **traceability** (time spent, breaches and follow-ups) and periodic monitoring by MISEN. The results are presented at the MISEN annual strategic committee;
- Develop **communication** upstream and downstream.

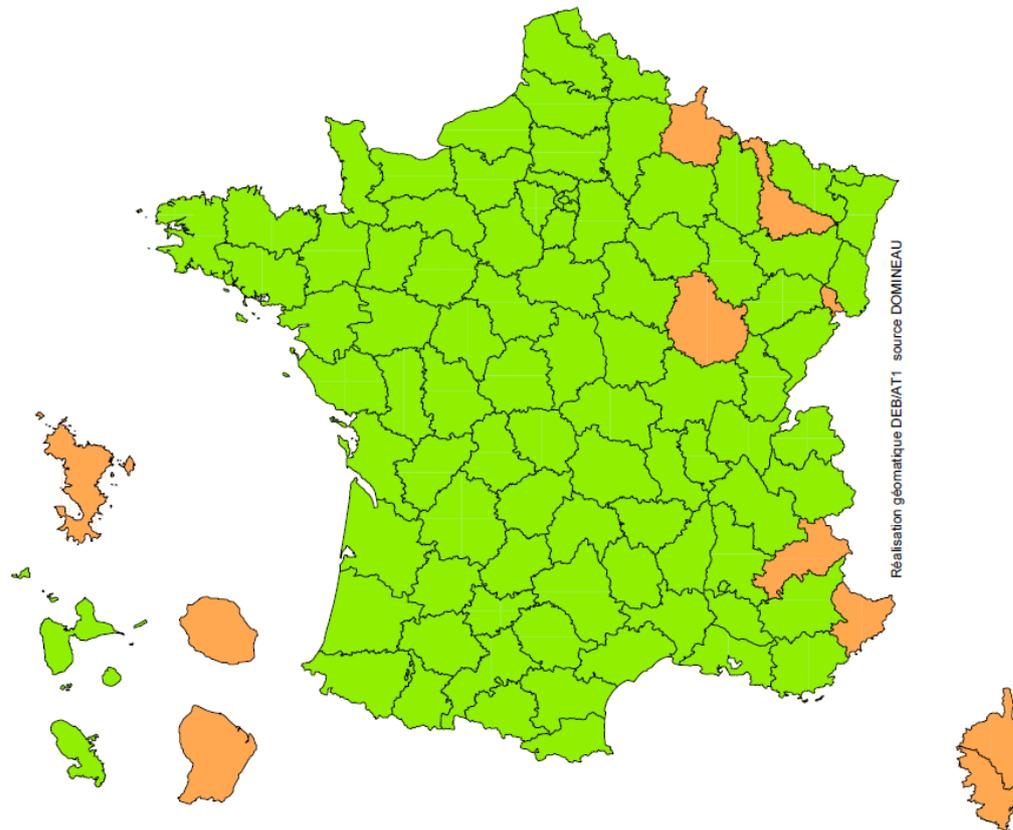
A departmental inspection plan

The successful completion of the inspection plan is based on the implementation of two protocols:

- A protocol between the Prefect, ONEMA and ONCFS for effective coordination of inspections (state organization and key public institutions)
- A protocol between the Prefect and the Public Prosecutor linking ONEMA and ONCFS in order to ensure consistency of inspection follow-up between administrative and judicial follow-ups (organization of judiciary and administrative powers).



MISE EN PLACE D'UN PLAN DE CONTRÔLE INTER-SERVICE EAU ET NATURE



Existence d'un Plan de contrôle

■ Oui (90)
■ Non (11)

2011

86% of departments have a Prefect / DG ONEMA ONCFS agreement signed

88% of departments are granted authority over coordination of water and nature policing

96% of departments have an inter-service inspection plan for Water and Nature

57% of departments have signed a Public Prosecutor's protocol

2012

An itemized inspection plan according to national classification

National classification:

- Itemized per Sector / Theme / Mandatory action to be observed by departments (example: Water quality / Fight against urban pollution / wastewater treatment plant),
- Which takes into account the different types of inspection:
 - Individual inspection: inspection of requirements laid down in the context of a statement or an individual permit;
 - Thematic inspection: inspection of a special requirement on an identified area;
 - Area monitoring: multi-thematic inspections over a defined area
- Identifying objective indicators: time spent, number of inspections (if applicable)

National reporting of inspection records

A simple and shared computer reporting tool (Monitoring Tool for Inspection Plans - OSPC) for ensuring the feedback of inspection records at all levels.

- established according to national classification
- deployed in all inspection services in 2012
- accessible to all services in charge of inspection
- Possibility to store all inspection records and follow-ups.
- Obligation for periodic entry of synthesis data assigned to each MISEN head of policing department

For all departments (State / EP) in 2011

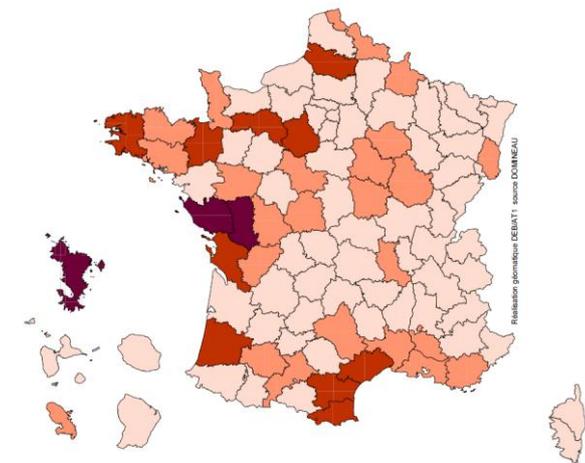
44,200 administrative inspections on sites, of which 29% non-compliant

43,142 administrative inspections on items, of which 32% non-compliant

12,442 administrative follow-ups

38,284 offenses recorded

CONTRÔLES DE TERRAIN EAU ET NATURE EFFECTUÉS PAR LES DDT(M)



| Nombre de contrôles de terrain entre parenthèses le no de MISE | |
|---|------|
| 0 à 250 | (61) |
| 250 à 600 | (24) |
| 600 à 1 000 | (10) |
| 1 000 à 3 500 | (3) |


 Opérations Suivi du temps Plan prévisionnel **Plan de contrôle** Onema Oncfs Carto - Réduire

Sélectionnez l'année : 2011 - Sélectionnez le département : 1 afficher

Recalculer

Département : 1 - Année : 2011

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> Qualité de l'eau | <input checked="" type="checkbox"/> Milieu marin | <input checked="" type="checkbox"/> Chasse |
| <input checked="" type="checkbox"/> Gestion quantitative | <input checked="" type="checkbox"/> Pêche | <input checked="" type="checkbox"/> Nuisibles |
| <input checked="" type="checkbox"/> Sécurité publique / risque inondation | <input checked="" type="checkbox"/> Surveillance du territoire | <input checked="" type="checkbox"/> Espèces protégées |
| <input checked="" type="checkbox"/> Milieux aquatiques | <input checked="" type="checkbox"/> Braconnage | <input checked="" type="checkbox"/> Habitats et patrimoine naturel |

| Thématique eau et nature | | | Prévisionnel | | | | | | | | | | Suivi de la mise en oeuvre | | | | | | | | |
|--------------------------|--|--|--------------------------------|-----------|-------------|-------------|--------------|-------------|--------|-----------|-------------|-------------|----------------------------|-------------|---|--|---------------------------|--------------------------------|--|------------------------------|--------------------------|
| Domaine | Theme | Action | Niveau de priorité du contrôle | DDT (H/j) | Onema (H/j) | Oncfs (H/j) | Autres (H/j) | Total (H/j) | Nb ope | DDT (H/j) | Onema (H/j) | Oncfs (H/j) | Autres (H/j) | Total (H/j) | Nb de contrôles administratifs réalisés | Nb de contrôles administratifs non conformes | Nb d'infractions relevées | Nb de rapports de constatation | Nb de PV de constatation d'infractions | Nb de suites administratives | Nb de suites judiciaires |
| Qualité de l'eau | Lutter contre les pollutions urbaines | Station d'épuration | 1 | 10 | 8 | 7 | 6 | 31 | 5 | 40 | 26 | 29 | 30,5 | 125,5 | 102 | 304 | 325 | 314 | 336 | 347 | 358 |
| Qualité de l'eau | Lutter contre les pollutions urbaines | Plan d'épandage des boues des Systèmes d'assainissement collectif | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Qualité de l'eau | Lutter contre les pollutions urbaines | Contrôle des déversoirs d'orage et trop plein des postes de relèvement | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Qualité de l'eau | Rejet d'eaux pluviales | Rejets des eaux de ruissellement des infrastructures linéaires de transport et des zones imperméabilisées des agglomérations | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Qualité de l'eau | Eau potable | Préservation des captages d'AEP | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Qualité de l'eau | Lutte contre la pollution par les pesticides | Zones non traitées | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Qualité de l'eau | Lutte contre la pollution par les pesticides | Equipements cours de ferme (aire de remplissage et de lavage du pulvérisateur, local de stockage) | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Qualité de l'eau | Lutte contre les pollutions par les nitrates | Exploitations en zones vulnérables (programmes d'action Nitrates : contrôles documentaires et contrôles terrain) | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Qualité de l'eau | Lutte contre les | | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |



Fiche de l'opération : 2011-11 - DDT/DDTM

Description de l'opération

Libellé de l'action : Obstacles à la continuité

Numéro de l'opération : 2011-11
 Date : 2011-05-06
 Organisme pilote : DDT/DDTM

Localisation

Département : 18
 Commune de l'opération : BOURGES

Type d'opération :

- contrôle adm conforme
- contrôle adm non conforme
- infractions pénales

Procédure

Suite administrative :

- oui
- non

Suite judiciaire :

- oui
- non

- Modifier
- Supprimer l'opération



Constatation

Ajouter

| Mod. | Sup. | Date | Type | Commentaire |
|------|------|------------|--------------------------|-------------|
| | | 2011-05-06 | PV de constatation (jud) | |

Overview and activities of water and biodiversity policing (excluding ICPE)

Missions of territory monitoring and inspection, tied in with educational missions aimed at the public.

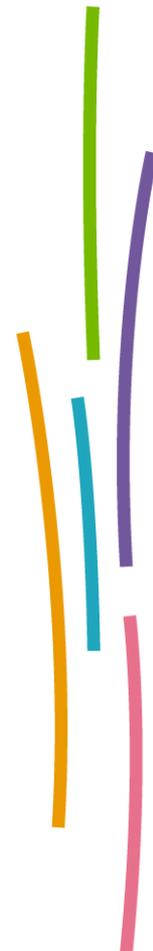
In addition to OPJ and APJ (including the Gendarmerie), 4,000 employees and agents undertake inspection missions in water and nature policing

- 1,000 agents commissioned to water policing in DDT and DREAL
- approximately 73 veterinary inspectors in DDPP
- 660 agents in ONEMA
- 1,350 agents in ONCFS
- 330 coast guard officers
- 250 national park wardens
- 100 agents of marine protected areas
- 250 natural reserves wardens

| Sectors | Administrative police | | | | | Judicial police |
|----------------------------------|--------------------------|---------------|--|---------------|---------------------------|----------------------|
| | Administrative controls* | | Non-compliant administrative controls* | | Administrative follow-up* | Criminal violations* |
| | On items | On site | On items | On site | | |
| Water | 41,737 | 38,783 | 12,537 | 10,361 | 10,493 | 8,157 |
| Sea and Coastal areas** | 191 | 202 | 43 | 28 | 36 | 350 |
| Fishing | 142 | 46 | 658 | 25 | 808 | 3,825 |
| Hunting and Harmful | 0 | 0 | | 39 | 0 | 10,872 |
| Species and Habitat | 510 | 784 | 88 | 208 | 230 | 3,589 |
| Natural areas | Not indicated | | | 420 | 71 | 10,798 |
| Obstructions to functions | N/A | | N/A | | N/A | 99 |
| Other | 562 | 4,385 | 359 | 987 | 804 | 594 |
| Total | 43,142 | 44,200 | 13,685 | 12,068 | 12,442 | 38,284 |

*data from DDT, DDCSPP, ONEMA, ONCPS, PN, AMP, RN and Gendarmerie

**excluding CGV



A reorganization of environmental policing



Order of January 11, 2012

Initially the Environmental Code included 25 special police units

(environmentally-classified facilities, water, fishing, hunting, protected sites, protected species, national parks, nature reserves, etc.)

The order of January 11 has brought together all of these police units into **a single environmental police force** with 2 major specialties: Water and Nature, and Facilities classified for Environmental Protection

It **aligns the different procedures at both the administrative inspection and judicial inspection levels**, as well as penalties, taking the positive elements of each



I am going to present to you the context of administrative policing and the conditions for its exercise, as well as the penalties associated with it

We will cover the judicial police aspect in the presentations on Monday, June 17



Administrative police

General principles:

Any administrative inspection is recorded in an administrative report transmitted to the administrative authority and the specified person who can express his/her remarks to the administrative authority.

Rules on access to buildings are clearly defined: when, in what locations, what happens in case of refusal of the owner.

Access to documents is defined

In case of established non-compliance, a formal notice **must be made.**

At the expiry of the formal notice, if the terms are not complied with, the administrative authority may proceed to various sanctions

Note: Failure to comply with a formal notice is also a criminal offense and may be subject to an official police report and prosecuted by the Public Prosecutor



Administrative Police: access to sites (1/2)

Art. L. 171-1.-I. — Inspection officials and agents have access to:

"1 **Confined spaces and sites** hosting installations, structures, works, facilities, operations, objects, devices and activities subject to the provisions of this Code, **excluding houses or the part of the sites reserved for residential use.**

They can enter these places **between 8:00 and 20:00, and, outside these hours, when they are open to the public or when operations are underway** for production, manufacture, processing, use, packaging, storage, deposit, transport or marketing referred to by this Code;

"2 **Other places, at all times**, where activities subject to the provisions of this Code are or are likely to be exercised;

"3° **Vehicles**, ships, boats, crafts and aircraft used for **business** purposes for the holding, transportation, storage and marketing of animals, plants or any other material that could constitute a breach of the requirements of this Code.

"II. — Inspection officials and agents do not have access to **residences and the part of the sites reserved for residential use unless in the presence of the occupier and with the latter's consent.**



Administrative Police: access to sites (2/2)

"Art. L. 171-2.-I. — **When agents are refused access to sites** referred to in paragraphs 1 and 2 of Article L. 171-1, or when the access conditions mentioned in point II of the same article are not met, **visits may be authorized by order of the Judge of the Court of Liberties and Detention.** "

- The visit is conducted **in the presence of the site occupier or the representative thereof.**
- In the absence of the site occupier, the agents undertaking the visit may not proceed unless **two witnesses** are present who are not under the agents' authority.
- **A report is drafted on site** by the agents who have conducted the visit. The report is signed by these agents and the occupier of the site or, if applicable, his representative and the witnesses.
- In case of refusal to sign, this is recorded in the report. When drafted, the report is **returned to the judge who has authorized the visit.** A copy of the same document is sent or posted by registered post with acknowledgment of receipt to the occupier of the site or their representative. The report **refers to the time period and manner of remedy.**

Administrative Police: collection of documents and statements - information exchange

"Art. L. 171-3.-Inspection officials and agents may **contact and make copies of documents** relating to the object of inspection, **regardless of support and holder**, and which are necessary to fulfill their mission.

"They may not take **the original documents unless they have compiled a list countersigned by the holder**. The original documents are **returned within one month** after the inspection.

"When documents are in electronic form, officials and agents have **access to software and data**. They may ask for a transcript of this data by any appropriate processing in documents directly used for inspection purposes. "

"Art. L. 171-4.-I. — Inspection officials and agents **may collect all information and evidence** required to fulfill their mission, upon notification or on the premises.

"Art. L. 171-5.-For the requirements of the inspections they conduct, public officers and agents in charge of inspections **may communicate freely, and professional secrecy may not be invoked against them, relating to** information and documents held or collected in the exercise of their administrative policy missions. "

⇒ Broad discretion, subject to the officer's code of ethics, guaranteeing the confidentiality of the proceedings.

Administrative Police: breach

"Art. L. 171-6.-When an inspection agent submits to the competent administrative authority a **report establishing the events contradicting the applicable provisions**, under the present code, for an installation, structure, work, facility, operation, object, device or activity, they shall also provide **a copy to the party concerned so that they can file remarks with the administrative authority.** "

⇒ After the inspection and in accordance with the circular **an inspection report** must be prepared by the agent who conducted the inspection.

⇒ This report must trace all performed checks and include a record of established non-conformities.

⇒ The report concludes upon follow-up actions suggested to the Prefect (who is the competent administrative authority in most cases).

⇒ **The report will be sent, care of the departmental contact, to the Prefect and the operator simultaneously.**

⇒ Failure to send to the operator automatically invalidates the procedure and the action arising can therefore only be canceled before the administrative judge.

⇒ In cases where the facility inspection is completed with no physical visit (e.g., in the absence of self-monitoring transmissions, study, etc.), the report and its transmission are also necessary formalities again in order to avoid invalidation of the procedure.

Administrative Police: Formal notice, administrative measures and sanctions (1/4)

⇒ **In case of breach**, a formal notice is made

⇒ **two main types of formal notice**, which are not mutually exclusive:

- the formal notice to **regularize the administrative status** of the operation
- the formal notice to **comply with the requirements imposed** on the operator

⇒ If the operator does not comply or complies only partially, the prefectural authority may implement one or more measures or sanctions provided for in section II of Article L. 171-8 of the Environmental Code

Administrative Police: Formal notice, administrative measures and sanctions (2/4)

⇒ Remember: **No administrative penalty may be implemented without prior notice**

⇒ The measures and penalties provided for in the Environmental Code must comply with the following principles:

- principle of **proportionality** of the sanction,
- principle of **personalization** of penalties = a person may not be convicted for an action they have not committed themselves).
- principle of **non-retroactive effect of stricter repressive laws** and retroactive effect of softer repressive laws

Administrative Police: Formal notice, administrative measures and sanctions (3/4)

Art. L. 171-7.- "Independently of criminal proceedings which may be exercised when facilities or structures are operated, objects and devices are used or work, operations, activities or developments are carried out **without having been authorized, registered, approved, licensed, certified declared as required** under the provisions of the present code, or without considering the objection to the declaration, **the competent administrative authority gives notice to the party concerned to regularize the situation within a specified time period.**

"It may impose **protective measures** and suspend the operation of facilities and structures or further work, operations or activities until a ruling has been made in relation to the declaration or the application for authorization, registration, approval, validation or certification. "

"If, upon expiry of the granted time period, the terms of the formal notice **have not been met**, or if the application for authorization, registration, approval validation or certification has been rejected, or an objection has been raised against the declaration, **the competent administrative authority may:**

"1 Apply the provisions of Section II of Article L. 171-8; [*sanctions*]

"2 **Order the closure or removal** of facilities or structures, final cessation of work, operations or activities **as well as restoration of the site to its former state.** "



Administrative Police: Formal notice, administrative measures and sanctions (4/4)

The five administrative sanctions:

- Consignment of **funds** = withdraw funds needed for implementation by the Treasurer General and allocate as work progresses
- **suspension of activity** = prohibit the activity temporarily. This may also be final.
- **performance of the work** = carry out the work instead of the operator with the amounts recorded
- the maximum **administrative fine** of 15,000 euros
- the maximum **penalty** of 1,500 euros per day



Complementarity of administrative and judicial follow-up

Non-compliant inspection

Administrative follow-ups

Criminal follow-ups

Administrative policing measures

Formal notice

Administrative policy sanctions

Deposit of funds

Execution of service

Suspension of activity temporary or final

Administrative fine

Penalty payment

Plea agreement
Criminal

Report

Fixed penalty

Classification with no follow up

Extrajudicial procedures
(invocation of law, regularization,
reparation damages,
mediation)

Judicial procedures
(penal arrangements, penal
order, judicial follow-up)

Scope of administrative authority (Prefect)

Scope of judicial authority (Public Prosecutor)

The plea agreement

Principle:

Following a report, the administrative authority proposes a plea agreement to the offender comprising of a reduced fine and restoration of site to prior state.

After approval of terms by the Public Prosecutor, completion thereof becomes public action

Objective: speed of implementation, avoid congestion in the courts



Now let us consider the creation of an environmental permit

