



Sustainable Water  
Integrated Management (SWIM) -  
Support Mechanism



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Water is too precious to waste

**RESPONDING TO NONCOMPLIANCE WITH WATER  
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*Presented by: Dr. Hosny Khordagui, Team Leader, SWIM-SM*

# OBJECTIVE OF 6<sup>TH</sup> PRESENTATION

- The objective of this presentation is to identify and discuss criteria to respond to cases of noncompliance with water legislation, levels of enforcement actions and measures for responding to violations.

- Whenever a violation of water and/or environmental requirements is discovered, enforcement officials should apply the following criteria when deciding on the **kind of enforcement action**:

1. **Nature of the violation**: This includes:

- consideration of the seriousness of the harm or potential harm,
- the intent of the alleged violator,
- whether this is a repeated occurrence and
- whether there are attempts to conceal information.

## **2. Effectiveness in achieving the desired result with the violator:**

- The desired result is “conformity with the water and/or environmental requirements”, within the shortest possible time and with no further reoccurrence of violation. Factors to be considered include:
  - The violator’s history of compliance with the act,
  - Willingness to cooperate with enforcement officials,
  - Evidence of corrective action already taken.

### **3.Consistency in enforcement:**

- Enforcement officials have to insure consistency in their responses to violations. Accordingly, enforcement officials should consider how similar previous situations were handled in the country when deciding what enforcement action to take.

# levels of enforcement actions to respond to violations

- Inspection or monitoring activities may uncover permit or regulations violations.
- In such a case, the regulating authorities might consider the following three gradually increasing levels of legal actions.

# I- Administrative Actions

- Administrative actions may either be informal or formal.
1. **Informal administrative actions** are basically notices of noncompliance or **warning letters** issued from the regulating authorities. They are usually advisory in nature. In these actions, the regulated party is (1) advised that a violation have been found, (2) the corrective action needed, and (3) the time within which an action to correct the problem must be instituted. Generally, informal actions carry **neither penalty nor power to compel action**. However, the records of an informal action can be used to support more severe legal actions when situation is not satisfactorily corrected.

**2. Formal administrative actions** are legal actions that result in an order requiring the violating party to (1) correct the violations and, in most cases & (2) to pay a civil penalty that commensurate with the seriousness & circumstances of the violation.

- If a person violates the terms of an administrative order, a court action may be obtained based on the regulating authority recommendation, to force compliance with the order.
- Generally, administrative actions are the most economic and expedient means of requiring correction, and they are used in lieu of civil or criminal actions whenever appropriate.

- In order to implement administrative actions, It is recommended that the regulating authorities take these actions under their internal administrative litigation system.
- This system would be very comparable to any court system, except that it is presided over by regulating authorities' administrative law judges, whose salaries in this case can be paid by the regulating authorities.
- Violators should always have the right to appeal the initial rulings of the administrative judge to the regulating authority chief administrator & may appeal the chief administrator's final decision to the proper courts of law.

## II- Civil Judicial Actions

- Civil actions are taken in a court system by the Ministry of Justice at the request of the regulating authorities.
- Typically they are used against more serious or recalcitrant violators of water legislation. Generally, they are intended to seek prompt correction of imminent hazard posing immediate threat to water resources and/or aquatic environment.
- It requires efficient and prompt court systems with judges familiar with water and environment issues & requirements.
- The number of judges, who are familiar with water & environment laws and requirements in the region, is very insufficient.

# III- Criminal Judicial Actions

- Criminal actions are taken when a regulated party has knowingly and willfully committed a violation of the law.
- Criminal actions should be taken only when flagrant, intentional disregard for water laws, deliberate falsification, or alteration of possibly incriminating documents or records, occur.
- In a criminal case, the regulating authority through the Ministry of Justice should prosecute the alleged violator in a court system, seeking criminal sanctions, usually including fines and incarceration.

- Criminal cases are the most difficult to pursue. In these cases, the regulating authorities require sophisticated special investigation & case development procedures & they should involve the highest standard of proof, including proof (evidence) of intent of the violator to commit the violation.
- Criminal cases, which can include incarceration as one of the penalties, should be the least used of the potential legal actions. However, their mere existence is fundamental to provide more deterring power.

# Measures for responding to violations

- The response of the regulated authorities to violations should include in a progressing order one of the following regulating measures:

# 1- Warnings

- Inspectors might consider warnings in the following cases:
  1. When they believe that a violation of the act is continuing or has occurred;
  2. When the degree of harm or potential harm to water resources, environment, human life or health appears to be minimal.
- When deciding on whether to use warnings or more severe enforcement action, inspectors might also consider the following:
  1. Whether the regulated party has good history of compliance.
  2. Whether the regulated party has made reasonable efforts to mitigate the consequences of the offence.

- Warning should be given in writing including the following information:
  1. The section of the enacted regulation that was violated.
  2. A description of the alleged offence.
  3. The time limit within which the regulated party must comply with the warning.
  4. The statement that if the warning is not heeded, enforcement officials will take further action.

## 2- Directions by Inspectors

- Where there is violation, inspector may give directions to the regulated party to take all reasonable measures to:
  1. Remedy any dangerous situations; or
  2. To reduce any danger to the water resources and/or aquatic environment that results from such a violation.
- The directions should be given in writing. Failure to comply with the directions, should lead to prosecution of the regulated party for this failure.
- In case of inability to comply with the directions, the inspector should be empowered to hire qualified experts to take the emergency measures at the regulated facility expense.

# 3- Ticketing

- The regulating authorities should designate offences where there is minimal or no threat to water resources and/or aquatic environment or human health, as **ticketable offences**.
- Once the inspector issues the ticket, the accused party may within a certain time limit stated on the ticket respond in three different ways:
  1. Either he pleads guilty and pays the fine to the appropriate court as indicated on the ticket without making a formal court appearance.
  2. Or plead guilty with an explanation and appears in court to request lower penalty or additional time to pay the fine.
  3. Or submit a plea of not guilty, resulting in formal court proceedings.
- If the accused fails to choose an option and does not respond within the time limit, a conviction is then entered against him & the regulating authority should begin proceedings to collect the penalty.

# 4- Injunctions (Court Order)

- The director of the regulating authority should be given the authority to seek an injunction, in order to stop or prevent a violation of a legislation.
- If the regulated party does not comply with the injunction, the director of the regulating authority should return to the court to seek:
  1. A contempt “disregard” of court ruling.
  2. Instruction by the court for the violator to comply within the stated time limit in the injunction.
  3. Any additional penalty, such as fine or imprisonment that the court may see fit to impose in its contempt of court ruling.

# 5- Prosecution

- Inspectors should lay a charge for every violation of the enacted regulation unless they determine that:
  1. A warning is the most appropriate enforcement action.
  2. Issuing a ticket is the most appropriate response.

- Prosecution should always be pursued in the following cases:
  1. There is a **death of or bodily harm** to a person due to the violation.
  2. There is a **serious harm** or risk to the water resources, aquatic environment, human life or health.
  3. The alleged violator **knowingly** provided false or misleading information, or made a false or misleading test of substance in pretended compliance with the enacted regulations.
  4. The alleged violator **obstructed** the inspector in carrying out of his or her duties and responsibilities.

5. The alleged violator **interfered with evidences** seized by an inspector under the enacted regulations.
6. The alleged violator **concealed or attempted to conceal evidences** after the offence occurred.
7. The alleged violator **did not take all reasonable measures** to comply with a direction by an inspector.

# 6- Penalties and Court Orders upon Conviction

- Upon the conviction of an offender it is expected that the inspectors recommend to the prosecutor the proper penalty to be imposed.
- The recommended penalty should commensurate with the nature & gravity of the offence. Penalties to be included in the enacted regulations might include fines or imprisonment or both.
- When making such a recommendation with respect to sentencing, the inspector should apply the following criteria:
  1. The nature of the violation.
  2. Effectiveness of the recommended penalty in achieving the desired result with the violator (compliance with the regulations & no further reoccurrence of the violation).
  3. Effectiveness of the recommended penalty in deterring others from committing violations.

- Upon conviction of the violator, regulating authorities' officials may request in their recommended sentence, that the court include one or more of the following orders:
  1. Prohibit the offender from doing any activity that may result in continuation or repetition of the offence.
  2. Direct the offender to correct resulting harm or to take measures to avoid potential harm.
  3. Direct the offender to notify, at the violator's own expenses, any person, company, or government agency adversely affected by the offender's infraction.
  4. Direct the offender to compensate the regulating authorities for the costs of the preventive or corrective measures (including cleanup) undertaken by the authorities as a result of the violation.

مع خالص شكري  
وامتناني

Thank you  
for your attention

Merci pour  
votre attention



*For additional information please contact:  
Sustainable Water Integrated Management – Support Mechanism: [info@swim-sm.eu](mailto:info@swim-sm.eu)*