



ERA Training Event

Protection of Water Resources & Water Quality: Prosecution of relevant offences

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Water - Our most precious resource.

Water: Surface Water, Groundwater, Coastal waters and the Sea

- **Surface Waters:** Rivers, streams, lakes, ponds, canals, ditches, reservoirs, channels, watercourses;
- **Groundwater:** Aquifers, wells and other underground sources;
- **Coastal waters and the Sea:** Territorial Waters and International waters, inlets, harbours, marinas, fjords, bathing waters and estuaries.




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Water and water sources are classified into different legal categories depending on their nature and use. Some of the common legal categories of water and water sources include:

1. **Surface water:** This refers to water that is found on the surface of the Earth, such as rivers, lakes, and streams. Surface water is often regulated by governments to ensure that it is used sustainably and to protect it from pollution and contamination.
2. **Groundwater:** This refers to water that is found beneath the Earth's surface in aquifers and other underground formations. Groundwater is often regulated by governments to ensure that it is used sustainably and to prevent depletion and contamination.
3. **Coastal waters and the Sea** including territorial waters and international waters.

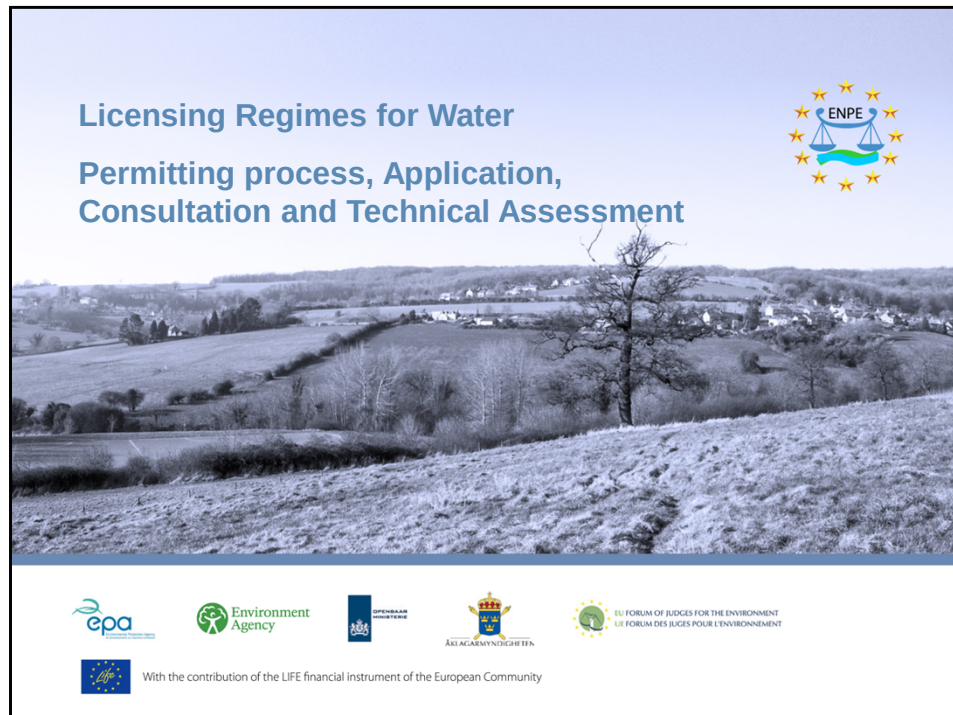


Relevant EU law

- Water Framework Directive 2000/60/EC (WFD)
- Enviro Impact Assessment Directive 2011/92/EU
- Strategic Enviro Assessment Directive 2001/42/EC
- Environmental Information Directive 2003/4/EC
- Habitats Directive 1992/43 EEC
- Birds Directive 2009/147/EC (replaces 79/409 EEC)



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The permitting process :

Application,

Consultation

Technical assessment.

Leads to a permit or a licence.

We must not issue licences that:

- Damage the water environment or adversely impact other users. It may be necessary to balance competing interests and uses;
- Result in deterioration of water body status, including deterioration of individual quality elements;
- Compromise the implementation of improvement measures to ensure we aim to achieve the target status in water bodies;
- • Compromise the achievement of protected area objectives (SAC, SPA and Ramsar sites).

Water Resources Offences: “Water Theft”

**Illegal Abstraction
Unlawful impoundment
Breach of licence or permit**



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Water resources offenses refer to any activity or behavior that violates the laws and regulations governing the use, distribution, and management of water resources. One such offense is water theft, which involves the unauthorized use or diversion of water resources.

Water theft can occur in various ways, such as illegally tapping into pipelines or water mains, tampering with water meters, or diverting water from its intended use without permission. It can also involve taking more water than allowed under a permit or allocation, or using water without obtaining the necessary permits or licenses.

Water theft is a serious offense because it deprives others of their rightful access to water resources and can have negative impacts on the environment and public health. It can also lead to increased water scarcity and conflicts over water resources.

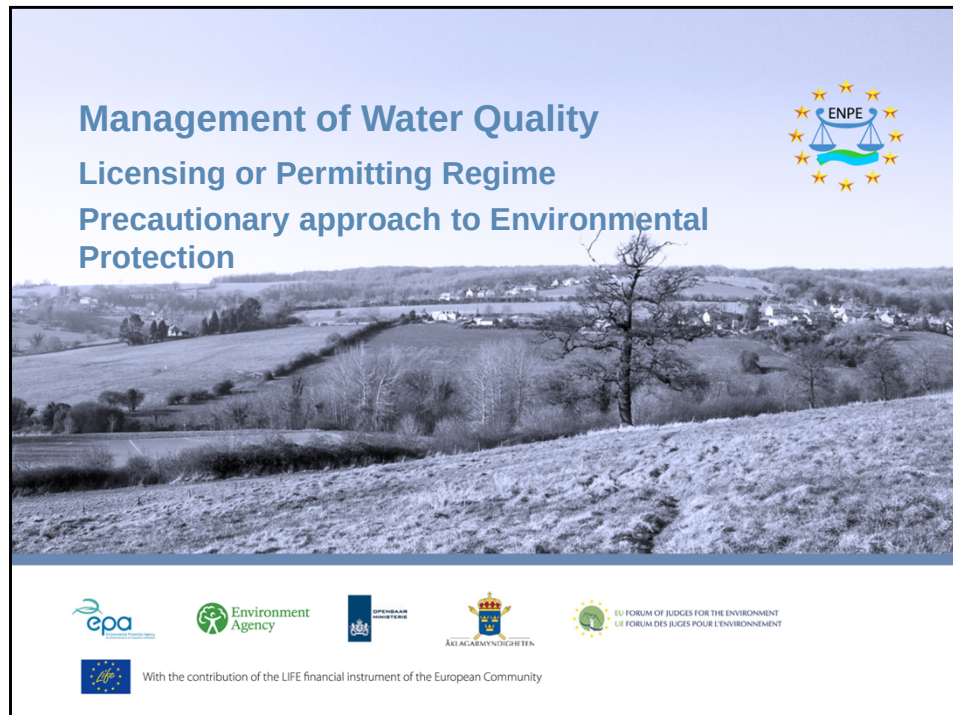


Evidence in Water Resources cases

- Details of licence or permit
- Observation of circumstances of offence
- Witness evidence
- Duration of over abstraction (Meter?)
- Quantity of over abstraction (Annual returns?)
- Photos, videos, drone footage
- Interviews & Admissions
- Impact/risks/harm to the Environment
- Impact/risks/harm to other water users
- Culpability
- Financial gain to offender



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Applicants for water abstraction licences or similar are effectively in competition

There is only so much water to go around

Some uses are more demanding than others.

Some uses are arguably more important than others eg public water supply.

Operator uses must be balanced with the needs of the environment.

Is there enough water for the particular use?

How damaging to the environment might this particular use be?



Protection of water against contamination and pollution is critical to safeguarding human health, ecosystems, and the overall sustainability of water resources. Here is a brief summary of how water can be protected against contamination and pollution:

1. Contamination: Water can become contaminated by a variety of substances, including chemicals, pathogens, and other pollutants. To protect against contamination, measures such as source water protection, proper disposal of hazardous materials, and wastewater treatment can be implemented. Additionally, regular monitoring of water quality can help identify potential sources of contamination and prevent it from entering water sources.

2. Pollution: Water pollution can occur when contaminants are introduced into water sources, either intentionally or unintentionally. To protect against pollution, measures such as regulations on industrial discharges, wastewater treatment requirements, and pollution prevention plans can be implemented. Additionally, promoting sustainable practices such as reducing the use of harmful chemicals and adopting low-impact development practices can help reduce pollution.

Overall, protecting water against contamination and pollution requires a comprehensive approach that involves monitoring, prevention, and treatment. By implementing effective protection measures, water resources can be safeguarded for

the benefit of present and future generations.



Licence Conditions

- Discharge - Environmental Quality Standards
- Conditions on content, temperature, frequency
- Settlement and retention arrangements
- Requirements for Monitoring/Self Monitoring
- Provision of Effluent sampling points, telemetry, stand by pumps
- Event Duration monitoring
- Sampling analysis returns
- Notification of failures/unauthorised discharges



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Illegal discharge is another type of water resources offence that refers to the unauthorized release or disposal of pollutants, chemicals, or waste materials into water bodies, such as rivers, lakes, or oceans. These discharges can cause significant harm to the environment, public health, and aquatic life.

Illegal discharge can occur through various sources, such as industrial or municipal wastewater, agricultural runoff, or oil spills from shipping vessels. These discharges can contain a range of harmful substances, such as heavy metals, pesticides, and pathogens, which can contaminate water resources and have long-lasting effects on the environment.

To prevent illegal discharge, many countries have laws and regulations in place to regulate the release of pollutants and waste materials into water bodies. These laws may require businesses and industries to obtain permits for their discharge activities and to comply with specific standards for the quality and quantity of their discharges.



Evidence in Water Quality cases

- Details of licence or permit
- Observation of circumstances of offence
- Witness evidence
- Nature and composition of discharge
- Quantity of material discharged.
- Photos, videos, drone footage
- Interviews & Admissions
- Impact/risks/harm to the Environment
- Impact/risks/harm to other water users
- Culpability
- Financial gain to offender



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Working with officers and investigators

- Finding specialists
- Working with enforcement officers and police
- Seeking out experts
- Second opinions
- Assistance through Networks
- Build your own network



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Assessing the Evidence

- Prompt first assessment - Organise and index
- Talk to the officers
- Issue litigation holds/preservation letters
- Investigate the regulatory history
- Arrange to discuss samples/analysis with experts
- Look for the bad news? Where is the problem(s)?



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Assessing the evidence regarding water resources offences can be challenging due to several reasons, including:

1. Limited monitoring and data collection: Many water resources offenses occur in remote or hard-to-reach locations, making it difficult to collect reliable and comprehensive data on the extent and nature of the offenses. Additionally, monitoring and surveillance systems may be limited or outdated, making it challenging to detect and prevent water resources offenses in a timely manner.

2. Complex legal frameworks: Water resources offenses are governed by complex legal frameworks that may vary by jurisdiction and be subject to different interpretations. This complexity can make it challenging to determine whether an offense has occurred, what laws and regulations apply, and what penalties are appropriate.

3. Lack of resources for enforcement: Enforcing laws and regulations related to water resources offenses can be resource-intensive, requiring specialized personnel and equipment for monitoring, investigation, and prosecution. In some cases, government agencies may not have the necessary resources to enforce the laws effectively.

4. Limited public awareness: Many water resources offenses may go unnoticed or unreported due to a lack of public awareness and engagement. This can make it challenging for authorities to identify and address offenses before they cause significant harm.
5. Political and economic factors: Water resources offenses are often linked to broader political and economic factors, such as corruption, conflict, and poverty. These factors can complicate efforts to address the root causes of water resources offenses and may influence the enforcement of laws and regulations.





Retaining the Evidence

- Keep your evidence safe
- Preserve your samples
- Ensure digital materials are properly downloaded and explained/exhibited by an IT specialist



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Review the Evidence that you collect

- Review ALL of the evidence
- Do you have all notes, emails, texts
- What has been destroyed amended altered?
- Be critical or expect others to be
- Take steps to deal with privileged information



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Witness interviews

- Be prepared
- Have the relevant documents
- Have a colleague witness with you
- Go in person
- One witness at a time
- Get contact information and availability
- Make no promises
- Properly and timely document the interview



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Victim rights

- Victim Impact Statements
- Notice of hearing dates and plea agreements may challenge decisions not to prosecute



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Recorded interviews

- Have the rules been followed?
- Have all notices been given?
- Audio and/or Video?
- Have Defendants Rights been complied with?
- Effect of silence or “no comment” responses



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When to involve the environmental experts

- Get prior approval for cost
- The earlier, the better
- Cover environmental issues:
 - Species citation
 - Conservation status
 - Endangered Species List
 - Impact of the loss
 - Financial impact on local communities
 - Impact of pollutant on habitat.



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Samples and analyses

- Has the laboratory followed established protocols
- Do you have sufficient sample evidence
 - To establish the offence
 - To make available to the defence
- Obtain the results
- Explain the results
- Evidence of Sampling and Continuity needed
- Expert Witnesses



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Meeting the elements of crime

- Know the elements of the crime you think was committed
- Focus on knowledge, not just actions
- Establish Culpability and Harm
- Explore contrary evidence and defences



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Culpability	Harm
Deliberate Intentional breach of or flagrant disregard for the law by person(s) whose position of responsibility in the organisation is s be attributed to OR deliberate failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence.	Category 1 Polluting material of a dangerous nature, for example, hazardous chemicals or sharp objects
Reckless Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken by person(s) whose position of responsibility in the organisation is such that their acts/ omissions can properly be attributed to the organisation; OR reckless failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence.	- Polluting material was noxious, widespread or pervasive with long-lasting effects on human health or quality of life, animal health or flora - Major costs incurred through clean-up, site restoration or animal rehabilitation - Major interference with, prevention or undermining of other lawful activities or regulatory regime due to offence
Negligent Failure by the organisation as a whole to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence.	Category 2 - Significant adverse effect or damage to air or water quality, amenity value, or property - Significant adverse effect on human health or quality of life, animal health or flora - Significant costs incurred through clean-up, site restoration or animal rehabilitation - Significant interference with or undermining of other lawful activities or regulatory regime due to offence - Risk of category 1 harm
Low or no culpability Offence committed with little or no fault on the part of the organisation as a whole, for example by accident or the act of a rogue employee and despite the presence and due enforcement of all reasonably required preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events.	Category 3 - Minor, localised adverse effect or damage to air or water quality, amenity value, or property - Minor adverse effect on human health or quality of life, animal health or flora - Low costs incurred through clean-up, site restoration or animal rehabilitation - Limited interference with or undermining of other lawful activities or regulatory regime due to offence - Risk of category 2 harm
	Category 4 Risk of category 3 harm



Disclosure to the Defence

- Discuss all of the evidence you have obtained and whether it must be disclosed to the Defence
- Schedule your Unused material
- Disclose anything that can be used against you
- Beware social networking
- Disclosing digital information : mobile phones.



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Strategies for serious and organized crime

- Work with your investigating officers
- Start with the small participants and use them
- Focus on working up to senior officers
- Follow the money
- Communications are a weak link
- Surveillance
- Use every possible offence provision
- Properly resource the investigation and prosecution



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Overall, tackling serious and organized environmental crimes requires a multi-pronged approach that involves the cooperation and coordination of multiple stakeholders, including government agencies, civil society organizations, and the private sector. By implementing these strategies, countries can effectively combat serious and organized environmental crime and protect their natural resources and ecosystems.



**Don't forget
the
environment**

**Recovery &
Remediation**

- Get compensation for and to victims
- Get remediation plans underway
- Make the Polluter Pay
- Publicise Action plans
- Involve local communities where you can



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Publish your success

- Press alerts on forthcoming cases
- Publish your successes
- Get your case onto television and into social media
- Involve your citizens
- Publicise ancillary orders eg Directors disqualification



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Offence Provisions within Member States

Enforceable through domestic legislation.
Are penalties and sanctions sufficient?












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An example of how sensitive sites are protected is afforded by the Wildlife and Countryside Act 1981 within the UK.

Piece of domestic legislation which prohibits hunting and killing of wild animals and birds. Offences are created for doing so. The state will prosecute offenders in the criminal courts.

Analogous provisions and prosecution powers in other Member States of the EU.

IPENS project – Improvement programme for England's Natura 2000 sites sets out blue print for the long term management of 338 of England's most important sites. These cover more than 2 million hectares. Designated either as an SPA due to the rare vulnerable or migratory birds present or SAC which protect a variety of wild animals plant and habitats. On land these attract an SSSI designation.

The Project

- *Produces a site improvement plan for each N2K site
- *Develops strategic plans to address issues that affect multiple sites
- *Outlines priority actions needed to achieve favourable conditions
- * Identifies gaps in N2K evidence