

HARMONIZED ENVIRONMENTAL INSPECTION AND INVESTIGATION MANUAL FOR EAST AFRICA



East African Network for Environmental Compliance and Enforcement



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East African Network for Environmental Compliance and Enforcement

(EANECE)

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FOREWORD

The East African Network for Environmental Compliance and Enforcement (EANECE) is a network of government entities which have in their mandate environmental management, compliance and enforcement responsibilities in the East African nations of Burundi, Kenya, Rwanda, Tanzania and Uganda. EANECE was established in May, 2010 and currently has a membership of over fifty government agencies in the five East African nations. The EANECE Executive Committee has recently, in May 2012, recommended the entry of Ethiopia and Zanzibar into EANECE. Whereas the network membership is currently restricted government regulatory agencies, to EANECE encourages cooperation and

collaboration with other entities including the academia, private sector, NGOs and civil society in order to achieve its mission. The Mission of EANECE is to promote the rule of law, good environmental governance and sustainable development in East Africa through efficient and effective implementation and enforcement of environmental requirements. In order to achieve this mission, EANECE has set out the following goals:

- i. Build Capacity of environmental regulators in East Africa on environmental compliance and enforcement;
- ii. Promote EANECE as a strong and vibrant regional network and strengthen its affiliate national



chapters for effective compliance and enforcement cooperation; and

iii. Create awareness on the importance of environmental compliance and enforcement.

The specific objectives of EANECE are:

- To strengthen relationships within each of the East African countries between government entities that have in their mandate environmental management, compliance and enforcement responsibilities, in order to improve compliance with environmental requirements;
- To improve cooperation between East African countries on mutually beneficial environmental regulatory compliance issues through sharing of best practices and information on strategies for

strengthening compliance and enforcement;

- To promote the development and implementation of improved environmental policies, laws, regulations and institutional arrangements;
- To enhance the capacity of the environmental management agencies and institutions in East Africa to enforce environmental requirements.

In order to achieve the above mission, goals and objectives, EANECE came up with a three years Action plan 2010- 2013. One of the key pillars of the Action Plan is capacity building for environmental compliance and enforcement. Within this pillar, it was determined by the participating countries that it would be very important to develop not only harmonized policies and laws but also operational procedures and guidelines. Thus, in February, 2011, the process of



developing a harmonized Environmental Inspection and Investigation manual for East Africa began. This has been a highly consultative process that has seen the input of key stakeholders, particularly the environmental regulatory agencies across East Africa.

This Manual marks the beginning of the process of realizing a harmonized policy, legal and operational framework for environmental compliance and enforcement across East Africa. The efforts by EANECE are meant to harness the synergies within the various regulatory agencies in the region so as to create an impact from the various regulatory actions being undertaken in the respective member countries.

Benjamin M. Langwen Chair, EANECE Executive Committee



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Gerphas Keyah Opondo Regional Coordinator EANECE Secretariat



ACRONYMS

EANECE	East African	Network for	Environmental	Compliance	& Enforcement
EANECE	East Atrican	Network for	Environmental	Compliance	& Enforcemen

- **DANIDA** Danish International Development Agency
- **IGSD** Institute for Governance & Sustainable Development
- **INECE** International Network for Environmental Compliance & Enforcement
- **NEMA** National Environment Management Authority
- **NEMC** National Environment Management Council
- **PPE** Personal Protective Equipment
- **SOP** Standard Operating Procedure
- **US EPA** United States Environmental Protection Agency



EXECUTIVE SUMMARY

Harmonized Environmental This Inspection and Investigation Manual has been developed through a consultative process with the participation of key stakeholders across East Africa. The Manual is intended to provide technical and procedural guidance for environmental inspections and investigations within East Africa. The Manual will guide Environmental Inspectors when undertaking inspections and investigations.

Chapter One sets the context for environmental inspections and investigations. In this chapter the purpose, scope and objectives of the Manual are clearly defined. This chapter also sets out the operational policies and principles under which Environmental Inspectors will operate in the conduct of inspections and investigations.

Chapter Two is dedicated to the subject of Environmental Inspectors. This outlines the criteria chapter for appointment of Inspectors and the powers that environmental inspectors may exercise. Finally, this chapter outlines in detail a general code of ethics professional conduct and for Environmental Inspectors.

Chapter Three delves into the subject of Environmental Inspections. Here, the Manual introduces the subject of environmental inspections and explains the various types and levels of inspections. The inspection process is also described in detail in this chapter right from the planning phase through to

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the actual on-site inspection and finally to the post-inspection phase. The Manual provides clear guidance notes for Inspectors in the various stages of the inspection process.

Chapter Four deals with environmental investigations. This chapter provides the interface between inspections and investigations. The various types of investigations are described including the procedure for carrying out transboundary investigations. The chapter also considers the various enforcement options available to the regulatory agencies and under what circumstances each of the options may be applied.

Chapter Five outlines the processes and procedures for collection of various types of evidence including surveillance and general sampling guidelines. The subjects of crime scene management, exhibit handling and storage and chain of

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custody of evidence have also been addressed in sufficient detail. Finally, the manual sets out the role of negotiations in environmental inspections including the criteria for such negotiations and out of court settlement.

It is intended that Environmental Inspectors in East Africa will use this manual in their day to day work, the focus being to enhance compliance within the regulated community.

The guidance procedures covered in this Manual are general, and are intended to apply to diverse environmental situations. CHAPTER 1

1.0 CONTEXT FOR ENVIRONMENTAL INSPECTIONS AND INVESTIGATION

1.1 INTRODUCTION

ost environmental management strategies involve laid down legal requirements against individuals and facilities that cause or may cause significant adverse effects to the environment and public health. Both regulators and the regulated community need to fully abide and implement these legal requirements Environmental compliance and enforcement are key elements in the implementation of the legal requirements to achieve the desired results. Environmental inspections and investigations are important tools in achieving compliance with environmental requirements.

1.2 Purpose of the Manual

This Manual is intended to provide technical and procedural guidance for inspections and investigations of the regulated community within East Africa. The Manual will guide Environmental Inspectors when undertaking inspections and investigations.

Purpose

1.3 Scope of the Manual

The Manual will be used bv Environmental Inspectors within the Eastern Africa region, particularly in the states that are members of the East African Network for Environmental Compliance and Enforcement (EANECE). The Environmental Inspectors will use this manual to inspect activities that degrade or are likely to degrade the environment. The focus will be to enhance compliance within the regulated community. The procedures covered in this Manual are general, and are intended to apply to diverse environmental situations.

1.4 Objectives of the Manual The Objectives of this Manual are:

i) To provide general guidelines for Environmental Inspectors in order to ensure consistency and transparency in the conduct of inspections and investigations.

ii) To build synergy within and among the EANECE member states for effective environmental management.

1.5 Operational Policy and Principles

In undertaking inspections and investigations, Environmental Inspectors will be guided by the following principles:-

1.5.1 Proportionality

Environmental Inspectors will ensure that any enforcement action taken is proportional to the risk posed to the environment and/or human health and to the seriousness of any breach of the law. The Inspectors will take into account the circumstances of the case

Objective

Scope

Operational Policy and Principles



and the attitude of the operator when considering action.

1.5.2 Consistency

Environmental Inspectors will take similar approaches in similar circumstances to achieve similar results. The Inspectors aim to achieve consistency in advice tendered, the response to incidents, the use of powers and decisions on appropriate enforcement actions.

1.5.3 Transparency

Environmental Inspectors will undertake inspections and investigations in a transparent manner to win the confidence of the regulated community as well as the general public. The Inspectors will provide the relevant information and advice on general issues and specific compliance aspects.

1.5.4 Targeting

3

Environmental Inspectors will focus on those activities which cause the greatest environmental damage, pose the greatest threats to the environment or public health, or undermine the regulatory regimes.

1.5.5 Sufficiency of evidence

Legal action will not be commenced or continued by the regulatory agency unless it is satisfied that there is sufficient, admissible and reliable evidence that an offence has been committed.



INSPECTORS

hvironmental Inspectors are regulatory agency staff who collect information that may be used to determine compliance status. Inspectors have a great influence on the success of any compliance and monitoring program. They are responsible for identifying facilities that are out of compliance and gathering evidence for enforcement actions. They are often the only regulatory agency officials that a facility manager will see in person, and may serve as the key witness in enforcement actions. Environmental Inspectors ensure that the regulated community complies with the set standards and regulations.

2.1 Enforcement by Environmental Inspectors

Environmental Inspectors may undertake enforcement action through any of the following tools;

i) **Inspections** to determine the compliance status of the regulated facility and to detect violations;



- ii) **Negotiations** with individuals or facility managers who are out of compliance to develop mutually agreeable schedules and approaches for achieving compliance;
- iii) Legal action (Criminal or Civil) where necessary, to compel compliance and to impose some consequence for violating the law or posing a threat to public health or environmental quality.

2.2 Appointment of Environmental Inspectors

Environmental Inspectors are appointed in accordance with provisions of the national environmental management statutes in the respective EANECE member states.

2.3 Criteria for Appointing Environmental Inspectors

Persons appointed as Environmental Inspectors require qualifications and training in a broad range of skills including: legal, technical, and administrative and communication skills. Such persons need to be technically competent in the subject(s) of the inspections and skilled in obtaining crucial facts, and in collecting and preserving evidence of non-compliance. Also, they need to be skilled in managing projects, working in teams, and effective communication ranging from entry conversations to complex crossexamination in cases of serious violations. The qualifications, training and integrity of an Inspector are



therefore critical to enforcement programs.

As a general guideline, and subject to the provisions of the national laws in the respective EANECE member countries, persons shall not be appointed as Environmental Inspectors unless they meet the following general criteria:

- iii) They are duly qualified, based on laid down criteria, to perform the functions of their office in the respective environmental sectors;
- iv) They have undertaken and successfully completed an Inspector Training Course administered and examined by the national environmental regulatory agency.

v) The Inspector Training Course shall as far as is practicable follow the guiding elements in Figure 1: elements of environmental inspector training below.

ELEMENTS OF ENVIRONMENTAL INSPECTOR TRAINING

- 1. Overview of Environmental Legislation (Policy, legal and institutional framework for environmental management in the country)
- Designing Compliance and Enforcement Programs (Principles of Environmental Compliance & Enforcement; Performance Indicators for Compliance & Enforcement Programs)
- 3. Conducting Environmental Inspections
 - o Types of Inspections
 - Conduct of Inspections
 - Planning and Coordination of Inspections
 - o Tools for Inspections, use of notebooks
 - o Compliance Management
 - Application of GIS in Environmental Inspections
- 4. Powers of Inspectors and Code of Conduct
- 5. Enforcement Options
- 6. Proving Offences



- o Laws of Evidence
- o Evidence gathering and management
- o Crime Scene Management
- o Role of Investigating Officer
- o Interview Skills
- o Writing Witness Statements
- o Case File Preparation
- Court Structure and Procedures
- 7. Practical Inspection and Investigation Exercises
- 8. Mock Trial(s)

Pass mark: 60%

FIGURE 1: ELEMENTS OF ENVIRONMENTAL INSPECTOR TRAINING

2.4 Powers of Environmental Inspectors

Powers of Environmental Inspectors are drawn from the provisions of the national environmental management statutes in the respective EANECE member countries. As such, Inspectors must always ensure that they do not exercise any powers beyond those outlined in the applicable statutes. Figure 2 below outlines some of the general powers that inspectors may exercise.

POWERS OF ENVIRONMENTAL INSPECTORS IN EAST AFRICA

Subject to the specific provisions of the applicable law in the respective EANECE member countries an Environmental Inspector may:

- Enter any land, premises, vessel, aircraft, motor vehicle or ox-drawn trailer and make examination and enquiries to determine whether the provisions of the applicable law are complied with;
- Stop any vehicle or vessel that he reasonably believes as being operated in contravention of the law or is discharging or has discharged a contaminant in contravention of the law;
- Require production of, inspect, examine and copy licenses, registers, records and other documents prescribed under the national environmental law;
- Take samples of any articles and substances to which this Act relates and, as may be prescribed, submit such samples for tests and analysis;
- Carry out periodic inspections of all establishments and undertakings within their respective jurisdictional limits which manufacture, produce as by products, import, export, store, sell, distribute or use any substances that are likely to have significant impact on the environment to ensure that environmental requirements are complied with;



- Seize any article, vessel, aircraft, motor vehicle, plant, equipment, substance or any other thing which he reasonably believes has been used in the commission of an offence;
- Order an immediate closure of any manufacturing plant or other establishment or undertaking which pollutes the environment contrary to the provisions of the law and to require the owner/ operator of such establishment or undertaking to implement any remedial measures that the Environmental Inspector may direct in the notice closing down the establishment or undertaking;
- Issue an improvement notice requiring the owner or operator of any manufacturing plant, vessel, aircraft, motor vehicle or other establishment or undertaking to cease any activities deleterious to the environment and to take appropriate remedial measures, including the installation of new plant and machinery if necessary, within such reasonable time as the regulatory agency may determine;
- Arrest any person whom he reasonably believes has committed an environmental offence under the law;
- Institute and undertake criminal proceedings against any person before a court of competent jurisdiction in respect of any offence alleged to have been committed by

that person under the applicable law;

FIGURE 2: POWERS OF ENVIRONMENTAL INSPECTORS

2.5 Professional Ethics and Code of Practice for Inspectors

2.5.1 Professionalism

The Inspector is often the personification of the entire regulatory agency he/she represents. In dealing with facility representatives and employees, Inspectors must be professional, tactful, courteous, polite and diplomatic. Diplomacy, fairness and equity should be the cornerstone of the Inspector's position. A firm but responsive attitude will encourage cooperation and initiate good

Professional Ethics & Code of Practice

working relations. Aggressiveness should show itself in thorough work rather than the Inspector's overbearing demeanor.

2.5.2 Public Relations

It is important that cooperation be obtained from, and good working relations established with the public and the regulated community. This can best be accomplished by using diplomacy, tact and persuasion. Hostile persons should be treated with courtesy and respect. Inspectors should not offer personal opinions concerning any person, the regulatory agency, manufacturer or industrial product.

2.5.3 Conflict of Interest

Conflict of interest may exist whenever an Inspector has a personal or private interest in a matter, which is related to his or her official duties and responsibilities. In cases where an Environmental Inspector feels that there is a conflict of interest that would undermine his integrity and the integrity of the regulatory agency with respect to the outcome of the inspection, he must withdraw from the team.

2.5.4 Dress Code and Personal Protective Equipment.

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While on duty, Inspectors will dress appropriately to safeguard their own image as well as the image of the regulatory agency. Appropriate dressing will also enhance the Inspector's safety.

Inspectors should have appropriate Personal Protective Equipment which will be determined at the preinspection phase for the activity in which they are engaged. Environmental regulatory agencies will provide similar identification cards for all their Inspectors.

2.5.5 Gifts, Gratuities, Attempted Bribery, Favours, Luncheons etc. Inspectors should not accept favours, benefits, loan or job offers under circumstances that might be construed as influencing the performance of governmental duties. Bribes may be blatant attempts to whitewash a serious violation or condition or to cause the withholding of damaging information or observation. If offered a bribe, the Inspector must not accept money or goods and should report the incident in detail as soon as possible to their superiors. It is also prudent for Inspectors to decline business luncheons while on duty. The Inspector must pay his/her fees for meals. When in doubt about a possible issue, the Inspector should contact his/her superior to clarify what can and cannot be accepted and report any possible breach of the ethics laws.



2.5.6 Release of Information to the Public

Information released to the public on inspections should be as per the communication policy of the relevant regulatory agency. However, as a general rule, information about a suspected violation, evidence of possible misconduct, or confidential business information should not be released unless with written express permission from the authorizing officer. All information acquired in the course of duty is for official use only.

2.5.7 Quality Assurance

The Inspector must assume the responsibility for ensuring the quality and accuracy of the compliance inspection and the integrity of samples collected. While other organizational elements play an important role in quality assurance, it is the Inspector who must ensure that all data introduced into an inspection file are complete, accurate, and representative of existing conditions. Quality assurance will guarantee that inspection and analytical data meet the requirements of all users.

CHAPTER 3

3.0 ENVIRONMENTAL INSPECTIONS

3.1 Introduction

nvironmental inspections are key to establishment of enforcement programs and undertaken are by an Environmental Inspector. The roles of Inspectors include:

- Planning inspections; i)
- ii) Gathering data in and/or around a particular facility;
- iii) Recording and reporting their observations; and

vi) Sometimes, making independent **Types Of** judgments about whether the **Inspections** facility is in compliance.

3.2 Types of Inspections

3.2.1 Routine Inspections

"Routine" inspections are usually planned and may be announced or unannounced. For the announced inspection the operator is informed of the planned inspection and objective of inspection communicated in advance. On the other hand, in the case of unannounced the inspection operator has no prior information. Routine inspection implies that there is no reason to suspect that



the facility is non- compliant to the environmental requirements.

3.2.2 Targeted Inspections

In this case the facility is targeted because it is non-compliant. Usually, targeted inspections are carried out in response to an incident or suspected/reported violations. Targeted inspections may also be conducted in high risk facilities as categorized under the risk based approach set by the regulatory agency.

3.2.3 Integrated/Multi-Skill Inspections

In complex inspections, diversity in skills and expertise is required. Integrated inspections employ a multi-disciplinary approach whereby experts in various environmental media such as air, water and land/soil form the inspection team. This not only promotes a more professional presence at the facility but also presents an image of cost saving by sending the multidisciplinary inspection team in one instance. This approach also deters the temptation or the tendency for bribery.

3.2.4 Trans- boundary Inspections

These are inspections that transcend national borders normally carried out with respect to shared resources and /or cross-border environmental issues. While undertaking transboundary inspection, Environmental Inspectors will be guided by the mode of operation agreed upon by concerned member states. Such agreed modes of operation will be facilitated by the respective regulatory agencies, ministries responsible for the environment and other relevant diplomatic channels.

3.3 Levels of Inspections

3.3.1 Level 1: Walk-

through/Reconnaissance Inspections

This involves a quick assessment of the facility. The inspection team will "walk through" the facility to verify the existence of certain features such as pollution control equipment or records repository, or to observe work practices and housekeeping. It provides an initial screening process and subsequently thorough inspections when the need arises. It also makes the presence of the regulatory agency felt thus encouraging compliance.

3.3.2. Level 2: Compliance Evaluation Levels Of Inspections

This involves a detailed inspection of the facility including pre-planned collection and analysis of samples. It may include visual observations, review and evaluation of records; interviews with facility personnel; review and critique of self-monitoring methods, instruments and data; examination of processes and control devices; and collection of evidence of non-compliance.

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3.4 The Inspection Process.

3.4.1 The Pre-Inspection Phase

This is a planning stage with the key objective of developing an inspection plan and making necessary arrangements. Inspection planning can be done in several steps;

1. Establishing the site specific inspection

Some of the objectives of inspection are, but not limited to:-

- Verification of compliance to relevant legislation and regulations.
- Assessment of internal policy and procedural conformance.
- Establishment of current practice(s).
- Identification of compliance opportunities.

2. Defining the scope of the inspection.

Set geographical boundaries and identify thematic areas of interest to be inspected such as:

- Waste generation, management and disposal.
- Air emissions and indoor air quality.
- Waste water management.
- Noise reduction, evaluation and control.
- Environmental awareness.

 Formation of the inspection team and identification of the team leader

The officer in charge of inspectorate unit in the regulatory agency will constitute a team to carry out the inspection and identify its leader. In constituting the team, the officer will consider the expertise, experience and duties of the officers relevant to the facility to be inspected. In case the necessary expertise is not within the authority, members of relevant lead agencies may be included in the team.

The Inspection Process

4. Outlining the inspection approach and methodology

The inspection team members will agree on the methods to be used for collecting the information before undertaking the inspection. These may include observations, questionnaires, documents review, and interviews with staff and neighbours of the facility.

5. Reviewing and Customizing Checklists

Review and upgrade the existing sector specific checklists and questionnaires relevant to the facility being inspected. If checklists and questionnaires are not already in place, new ones should be prepared.

6. Reviewing the relevant documents

Review the relevant documents including existing audit reports, licenses, and permits and, identify requirements of any relevant legislation.

 Liaise with the designated laboratories if samples are to be collected. Develop a schedule of activities and outline steps to be undertaken once on site.

9. Inform the owner of the facility

Inform the owner of the facility of the intended visit within reasonable time for announced inspections. The communication to the facility owner should be in written form and should include the following issues:

- date and time of visit
- scope of the inspection
- purpose of the inspection
- velevant personnel to be met
- documentation that need to be availed for review on the date of the inspection
- Schedule of activities to be undertaken within the facility.

10. Inform the appropriate regulatory agency field office



Ensure that the appropriate regulatory agency field office is informed of the intended visit where applicable.

11. Risk Assessment

Risk assessment is an important component of the inspection plan. The following are some of the essential steps in conducting a risk assessment:

- Identify the potential hazards (security, health and safety)
- Decide who might be harmed and how
- Evaluate the risk and decide on precautions
- Record your findings from above and implement them
- Review your assessment and update if necessary
- Identify needed inspection equipment
- Identify and obtain necessary equipment based on the objective, scope, location and type of the facility

- Determine and acquire appropriate health and safety equipment
- Complete the pre-inspection work sheet as applicable.

Note:

There will be a pre-inspection preparatory meeting where inspection team members will discuss and agree on checklists to be used, logistics including PPEs, equipment/tools, transport, questionnaires, sharing of responsibilities, the types of documentation to be reviewed as well as desk review of the facilities before going out. The team leader will assign duties and responsibilities to the team members.

3.5 Field Safety

Environmental compliance inspections are potentially dangerous and can expose Inspectors to great risk if proper safety precautions are not undertaken. A thorough risk assessment in the pre-inspection phase can minimize these dangers.



3.5.1 The Five Hazard Categories

- Chemical
- Fire and Explosion
- Radiological
- Biological
- Physical

Chemical Hazards

Chemicals may be solids, liquids or gaseous. The health effects of chemical exposures may be either chronic or acute. Exposure may be direct or indirect. Reactions may be immediate or require long periods of time to manifest themselves such as with carcinogens. Health effects may be cumulative from many exposures over time. Inspectors must not depend upon their senses alone to be warned of exposure, as their reactions may not be quick enough to prevent injury or even death. Therefore Inspectors need to gather the necessary information, plan ahead and provide themselves with the correct personal protective equipment (PPE) and caution against all hazards before entering a potentially dangerous area.

Fire and Explosion

Fire or explosions may result from chemical reactions such as nitric acid and wood, sodium and water, aluminum powder and iron oxide. Combustion needs three things to take place. These three things are known as the fire triangle; and consist of fuel, heat, and an ignition source. The typical ambient breathing atmosphere has sufficient oxygen for combustion. In this case, all that is
needed is an ignition source and fuel. There are many substances that can produce a fire or explosion that are found in industrial settings. Sometimes, generally safe chemicals can produce dangerous by-products. These may include peroxides, uncontrolled off-gassing, or combinations of incompatible materials that produce flammable or explosive mixtures. Changes in temperature may cause chemicals to boil causing a Boiling Liquid Expanding Vapor Explosion (BLEVE). Other ignition source may include camera, flashlights, and cellular phones. Cigarettes are one of the most common accidental ignition sources in an industrial setting. Only designated for smoke in areas smoking or, better yet, don't smoke at all. Health data indicates that all respiratory exposures to hazardous materials are many times more likely to cause damage if you smoke.

Radiological Hazards

Radiation sources may present external or internal danger. Some medical common sources are equipment, radioactive wastes from medical facilities, X-ray equipment, some electronic equipment, and even smoke detectors. Generally the greater the radiological hazard the more likely it is to be controlled. Highly radioactive sources will often have an obvious means of identification through hazard markers, through labels or detection equipment.

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Biological Hazards

Biological hazards cause more manhours loss for Inspectors than all the other hazards combined. They consist of micro and macro-biological sources. Microbiological sources include viruses, bacteria and parasites. Every facility is a separate environment where plant personnel bring bacteria and disease into a central location. You should be particularly cautious around food and water sources, rest rooms and washing facilities. Macrobiological sources may cause harm from bites or stings and include things like guard dogs, insects, snakes and other animals. Biohazards also include botanical sources such as poisonous plants and allergic reactions caused by dust or pollen.

Physical Hazards

These include things that can cut or crush, things that one might trip over or fall into or slip on. They also include extremely high or low temperatures, dry humid or atmospheres, poor lighting and excessive noise. The potential of injury from physical hazards may be increased by circumstances where one's senses are impaired, such as poor hearing because of hearing protection or an inability to communicate by voice because of excessive noise. Visibility may be impaired from a full-face respirator. Bulky protective clothing may make it difficult to move around in tight spaces. Protective clothing may be a hazard because it is too hot, heavy or bulky. Thorough and comprehensive

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understanding of real and potential hazards is best achieved by having a safety conscious attitude.

The following are some of the more insidious hazards that are often overlooked:

Oxygen Deficient Areas

These may exist in confined spaces and depressions. Oxygen can be displaced by other gasses or be consumed by chemical reaction. Excessive concentrations of oxygen can be dangerous because of increased risk of combustion or explosion. gasses. Alleyways between buildings are often over looked but may contain stagnant gasses and trapped fumes. Ditches and depressions may contain denser gasses such as methane, carbon monoxide or hydrogen sulfide. Trucks, railroad cars, and ship cargo holds may also trap dangerous gases.

Electrical Hazards

These may be obvious such as transformers, exposed wires or electrical panels. They may also include lightening or static discharges generated by high voltage electrical equipment. Underground electrical cables may be encountered during excavation.

Confined Spaces

These can contain pockets of trapped



Fatigue and Stress

Fatigue and stress reduces sound judgment. Avoid excessive stress of all kinds. Stay warm and dry. Avoid extremes of heat or cold and provide adequate insulation. Monitor fatigue and allow adequate rest periods. Fatigue may also alter behavior and create tensions among the people you are working with. Sometimes wearing Personal Protective Equipment (PPE) causes physical or psychological stress. Provide adequate, safe drinking water or liquid refreshment (not diuretics like coffee or tea). Keep high intensity work time to a minimum.

Loss of Peripheral Perception

Focusing one's concentration too closely to a given hazard is a common error. This may distract the Inspector from other dangers around him. In areas where hazards are high, use the "buddy system" to work in teams and watch out for each other. Use all of the available clues to help you recognize hazards and prepare for them. The following clues will help you to recognize many hazards:

- Begin by asking people at the facility about hazards.
- Container shape or construction may indicate the nature of its contents. Location and/or how it is being used may also indicate contents.
- Markings or color may indicate a hazard. Placards or labels may be required but may be absent. Look for signs of old markers.

- Always consider all containers hazardous until proven safe.
- Documentation like shipping papers or manifests may help identify hazards
- Pay attention to your senses. One of the greatest hazards is to focus so closely that you fail to notice an obvious smell, sound or visual clue that you are in danger.
- Drive safely.

3.4.2. On- Site Inspection Phase

At this stage, the actual inspection of the facility takes place whereby verification of compliance, establishment of current practices and identification of compliance opportunities are assessed.

3.4.2.1 Entry into the facility

- i) Establish and use the legal entry into the facility.
- ii) Identify self and present official identification.
- iii) Sign the passbook or the visitor's book where they are used by the facility to keep a record of visitors to the facility and are useful in the event of a fire or any other emergency.

3.4.2.1 Opening meeting

- i) Introduce inspection team members.
- ii) Take the list of attendance.
- iii) Present inspection scope, purpose and objectives.
- iv) Highlight the relevant provisions of various statutes.



v) Address any concerns that may be raised by the facility owner.vi) Agree on the inspection schedule.

3.4.2.2 Document review

The documents to be reviewed at this stage could include:

- i) Operational procedures such as the process flow chart.
- ii) Relevant records within inspection scope and objectives.
- iii) Previous environmental audit reports where applicable.
- iv) Where relevant, ascertain whether the owner is going to claim any information as confidential (e.g. summary of the medical reports for the employees in the facility). If any information is confidential, ensure that this is recorded appropriately.

3.4.2.3 Detailed site inspection

- i) Look for evidence on the information gathered.
- ii) Collect qualitative and quantitative information on key processes such as production and waste generation.
- iii) Take photographs for non-critical installations after informing the facility owner.
- iv) Take samples where necessary.
- v) Conduct oral interview as guided by the team leader.

3.4.2.4 Consult and reconcile the findings by inspection team

- i) Summarize inspection findings.
- ii) Identify issues requiring immediate attention.
- iii) Prepare notes for the closing meeting.



3.4.2.5 Closing meeting

- i) Wrap up meeting between the management personnel and the inspection team.
- ii) Discuss the inspection findings and recommendations.
- iii) Highlight findings requiring immediate attention.
- iv) Mention strengths and weaknesses noted within the facility.

3.4.3. Post Inspection Phase

The inspection team documents the findings and produces an inspection report with recommended action(s) including follow up of outstanding issues. It is important at this stage to:

- i) Review information.
- ii) Gather all information acquired during the inspection.

- iii) Assemble checklists, field notebooks, photos, maps, photocopies and drawings, and review the material for relevance and completeness.
- iv) Obtain further necessary data by making follow-ups with the facility contact person in case gaps in information are discovered.
- v) Develop an inspection report.



3.4.3.1 Denial of access

Inspectors may be denied access for several reasons, some of which may be valid, for example access denied because the inspectors do not have the safety equipment required by a facility. In such a case, it will generally be possible to obtain access by satisfying the owner/operator's objection; arranging for the safety equipment to be brought or returning on another day with the required safety equipment.

In other cases where access is unreasonably denied, the Inspector should try again, clearly and firmly explaining his position and powers, including the consequences of denying him access. If denial is clear and non-negotiable under the

circumstances, the Inspector should immediately adjust the plan of action. The Inspector may call the office and discuss the next course of action including possible reinforcement. In the meantime, he may where possible, make observations from any public areas, such as the street, looking onto the facility's property. If there is a threat to the Inspector's safety he should retreat immediately. In some cases the regulatory agency may seek legal authority such as court warrants to gain entry into the facility.

Note: Denial of entry to an Inspector constitutes an offence under most environmental statutes and this may be pursued in addition to any other noted violations. Nonetheless, Inspectors must avoid forceful entry into a facility.

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3.4.3.2 Follow-up Briefings

The inspection team leader will brief their supervisors, legal officers or compliance/enforcement committee as applicable on inspection findings (particularly observed violations). These briefings may be given to:

- vi) Assist in determining the need for possible enforcement action.
- vii)Answer questions about performance of the inspection team.
- viii) Clarify inspection results to develop additional evidence in support of enforcement case development.
- ix) Liaise with licensing/permitting section for appropriate action.

3.4.3.3 Preparing an Inspection File

Upon completion of an inspection report, Inspectors should organize the report, supporting notes, and other documentary information into an inspection file. If the inspection documentation includes confidential business information, Inspectors should separate the information into two files, i.e. non-confidential and confidential

Note: For facilities that have an existing environmental audit file the inspection report will be filed in the audit file.



3.4.4 The Inspection Report

The objective of generating an inspection report is to organize and coordinate all relevant information and evidence gathered during an inspection in a comprehensive, understandable and usable manner. To meet this objective, the information presented in an inspection report must be:

> • Accurate-All information must be factual and based on sound inspection practices; observations should be the verifiable results of first-hand knowledge and must be objective and factual.

- Relevant-information in an inspection report should be pertinent to the subject of the report.
- Comprehensive-The subject of a report (e.g. suspected violations) should be substantiated by as much factual, relevant information as possible. The more comprehensive the evidence is, the better and easier the case development process becomes.
- Coordinated-All information pertinent to the subject should be organized into a complete, well-organized, lucid package. Documentary support (photographs, photocopies, statements, sample analyses, etc.) accompanying the report



should be clearly referenced so that any interested party reading the report gets a complete and clear overview of the subject. Additionally, the report should be neat and legible.

3.4.5 Elements of the Inspection Report

- The following are the key elements of an Inspection Report:
- Heading: include the type of inspection, site name or activity and date of inspection.
- Facility Address: include physical and postal address, including address of head office where official orders may be served in case the

facility is away from the head office.

- Site Contacts: name, position and telephone numbers of the person responsible for the site.
- Inspection Team: names title/position/ telephone/email.
- Site History: include previous compliance history, ownership of the facility, present site operations etc.
- Inspection date and time: the exact date and time must be accurately recorded.
- Opening conference: include the details of the person to whom the Inspector showed



his credentials, who was present, what was discussed, whether entry was granted or denied, other problems encountered, if any.

- Inspection Process: describe in narrative form and in detail all steps taken during the inspection and all observations made.
- Documents Reviewed: outline and describe all documents reviewed during the inspection,
 noting to record details of any documents requested for but

not availed.

 Closing conference: include the details of the persons present, what was discussed, any further information sought, from whom and by when, any orders issued, etc.

Compliance concerns: give a detailed opinion on any compliance concerns based on observations made and data collected. If possible, quote the relevant laws,



regulations or standards that you believe to have been violated.

- Attachments: attach any documents relevant to the inspection and to the facility in question.
- Date and Signature: the report must be dated and signed by the maker.

3.4.6 Elements of the Inspection Report

Figure 3 below outlines the procedure for preparing an Inspection Report.



INSPECTION REPORT PREPARATION PROCEDURE

Inspectors should follow the following three basic steps when preparing inspection reports. Each of these steps is briefly described here:

Step 1: Review Information - when preparing a report, inspectors should gather all information developed during the inspection. More specifically, inspectors should assemble checklists, field notebooks, photos, maps, photocopies, and drawings and review the material for relevance and completeness. When gaps in information are discovered, inspectors should obtain necessary data by calling the facility representative or, in unusual circumstances, conducting a follow-up visit.

Step 2: Organize Materials - inspectors should organize their information logically and in accordance with the requirements of the regulatory agency.

Step 3: Reference Accompanying Materials - inspectors should clearly reference all documentary support that accompany an inspection report so that any reader can easily locate relevant documents. Inspectors should check all documentary support for clarity prior to writing an inspection report.

Inspectors should reference any confidential business information included in the inspection report in a nonconfidential manner (i.e., by document control number)

FIGURE 3: REPORT PREPARATION PROCEDURE



4.0 ENVIRONMENTAL INVESTIGATIONS

4.1 Environmental Inspection and Investigation – the interface.

nvironmental investigations are actions taken to establish facts and relevant evidence about certain occurrence/incidence in relation to environmental crime. In this context, investigation covers environmental inspection, monitoring and that require enforcement. Matters investigation can be brought to the attention of regulatory agency in many

ways: they can be detected by an officer of such agency during inspection, or reported to the authority as an incident by a member of the public or an official of another government entity. Environmental

4.2 Scope of Investigations

Inspection and Investigation

Investigations

Environmental investigations will focus

on environmental crimes and will generally cover the following elements:

- i) What is the act or omission subject of the investigation?
- ii) Who is responsible for the act or omission?
- iii) Where has the act or omission Scope Of taken place?
- iv) When did the act or omission occur?
- v) Why did the act or omission occur? i.e. what was the motive?
- vi) How did the act or omission take place?



4.3 Types of Investigations

4.3.1 Proactive/ Intelligence ledinvestigation

This is based on information gathered about the establishment under investigation over a period of time, and analyzed before taking appropriate action.

4.3.2 Reactive investigation

This is investigation based on reaction to an incident reported to or detected by the regulatory agency.

4.3.3 Trans-boundary investigation This type of investigation traverses national borders and may be either

proactive or reactive. The following general guidelines will govern trans-boundary environmental investigations in East Africa:

TYPES OF

INVESTIGATIONS

- i) Trans-boundary investigations will be carried out jointly by the relevant regulatory agencies in the concerned member states.
- ii) Prior informed consent of the counterpart regulatory agencies must be obtained in all cases.
- iii) Relevant government agencies such as the police and customs department as well as national central bureaus of Interpol will be involved where necessary.
- iv) Where applicable, diplomatic channels and protocols under multilateral and bilateral agreements will be employed.



v) Parties will agree on the modus operandi, resource mobilization and utilization.

4.4 Commencing an Investigation

Where a possible offence is detected by or reported to the regulatory agency, an investigation will be conducted. During the investigation, the Inspector must ensure that evidence is collected (e.g. photographs, samples, documents etc). Some evidence is time bound and might cease to be available at a later date. It is upon the Inspector to gather evidence as much as possible to provide adequate data for deciding appropriate means of enforcement.

4.5 Enforcement Options

After the conclusion of investigations, the Environmental Inspector should take a decision, based on the available evidence and the agency's Enforcement Policy, on the enforcement action to be taken.

Regulatory agencies may respond to violations of environmental requirements by either administrative or judicial mechanisms.

4.5.1 Administrative Responses

• **Caution:** A caution can be administered by calling the violator(s), or their representative if a limited company, to come to offices of the regulatory authority for a verbal warning.

OPTIONS



- **Site warning:** A site warning is a verbal warning given by an Environmental Inspector, usually at the site where the alleged violation(s) has been committed.
- Warning letter: Warning letters let facility operators to know that they are violating the law and must correct the situation or face adverse legal action and other consequences. A warning letter may describe the potential sanction for continued non-compliance, require a response from the violator detailing the corrective action taken, and suggest that the violator meet with regulatory agency

officials to discuss a plan for compliance.

- **Cancellation**, revocation, withdrawal and denial of permits, authorization, and licenses.
- Environmental Restoration Order/Improvement Order:

These are more formal notices than warning letters and are issued pursuant the to provisions of respective national environmental laws. Subject to specific provisions of the respective national laws, Environmental Restoration Orders/ Orders Improvement will

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specify clearly and in a manner which may be easily understood:

- a) The activity to which it relates;
- b) The person or persons to whom it is addressed;
- c) The time at which it comes into effect;
- d) The action which must be taken to remedy the harm to the environment;
- e) The powers of the regulatory agency to enter any land and undertake the action specified in paragraph (d);
- f) The penalties which may be imposed if the action specified in paragraph (d) is not undertaken;
- g) The right of the person served with an environmental restoration

/improvement order to appeal to the relevant legal authority against that order.

4.5.2 Judicial sanctions

Judicial sanctions include enforcement of the law through civil litigation and criminal prosecutions. Civil litigation, though not popular as a tool for environmental enforcement in East Africa, is available under the law and should be pursued in addition to criminal prosecution, where appropriate.

4.5.3 Criminal

Enforcement/Prosecution:

Criminal judicial response is generally considered appropriate when a person or a facility has knowingly

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violated the law, or has otherwise committed a violation for which society has chosen to impose the most serious legal sanctions available. A prosecution would normally be commenced in the relevant court of law either by way of a summons or by the alleged offender(s) being arrested and charged with the offence(s).

A prosecution will not be commenced by the regulatory agency unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and, there is a realistic prospect of conviction. Where there is sufficient evidence, the regulatory agency will prosecute in any of the following circumstances, but not limited to:

- i) Incidents or breaches which have significant consequences to the environment or public health.
- ii) Excessive or persistent breaches of regulatory requirements in relation to environmental legislation.
- iii) Failure to comply or to comply adequately with formal remedial requirements.
- iv) Reckless disregard for best environmental management practices or environmental standards.
- v) Failure to supply information without reasonable cause or knowingly or recklessly supplying false or misleading information.
- vi) Obstruction of the regulatory agency' staff in carrying out their duties and powers.

Where there is more than one regulatory agency that has power to prosecute, the concerned agencies will liaise with each other to ensure effective coordination, to avoid inconsistencies and to ensure that proceedings instituted are for the most appropriate offence and penalty.

4.6 Witness Statements

Witness statements are very important elements in the process of investigation and prosecution. A witness statement is a written record of a person's knowledge of events relevant to the alleged offence. Its purpose is:

a) To provide sufficient information so that a decision can be made concerning the enforcement action to the alleged offender.

- b) To enable the prosecution to discharge their duty to ensure that:
 - i) There is sufficient evidence to give a realistic prospect of conviction;
 - ii) That the prosecution is in the public interest; and
 - iii) To be used as a source of evidence in any subsequent proceedings.

There are basically three types of statements that an Inspector will deal with:

- a) His own statement;
- b) A witness's statement; and
- c) A voluntary statement made by the accused/statement under inquiry.



Witness Statements

4.6.1 General requirements Witness statements should be:

- In the first person;
- Accurate (both factually and legally);
- Relevant to the offence;
- Concise (i.e. containing only the necessary detail);
- Comprehensive: the impact of the offence on the environment and/or public health should be clearly brought out.
- Structured (to ensure that they do not stray from the main points);
- Ordered (that is, the story set out chronologically) in time and date order.

4.6.2 Checklist for Witness Statements Before writing the statement the investigator should interview the witness to obtain a full and accurate account of the incident that has occurred. While writing the statement, the following checklist should apply:

- i) All statements should be written in ink.
- ii) Endorse the heading of the statement with the witness name.
- iii) Avoid official jargon. As far as practicable the person's own words should be used. However, if these are not clear in meaning, the investigator may, with the consent of the witness, suggest alternatives.
- iv) All errors should be crossed through with a single stroke and



initialed by the witness. There should be no erasures.

- v) Where relevant, direct speech should be included.
- vi) The statement must be dated and each page signed by the person making it.
- vii) If the person making the statement cannot read then the statement will be read out to him and this fact noted on the statement by the person taking it.
- viii) The person taking the statement must endorse it with his name and role.
- ix) If a minor witness is making a statement, an appropriate adult must be present throughout the taking of the statement and the adult must also sign each page.

- x) Statements should not include hearsay, opinions or conjecture.
- xi) Always remember to:
- Find a suitable location for statement taking;
- Be aware of points you need to establish to prove the offence;
- Avoid inadmissible evidence (e.g., hearsay). If in doubt it is better to include something than leave it out;
- Record the events in chronological order;
- Keep it relevant;
- Thank the witness and inform them of the next stage.

Note: <u>Witness</u> <u>expenses</u>: Non-regulatory agency witnesses who attend court on behalf of the regulatory agency are entitled to claim their expenses and provision must be made for this

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4.6.3 General requirements when interviewing a suspect

The following general requirements apply when interviewing a suspect:

- When conducting an interview with a suspect the relevant legislation e.g. rights of suspect must be complied with.
- (2) When considering an interview of a person as a representative of a Company and/or other person, the Environmental Inspector should ensure that the person has authority to speak on behalf.
- (3) Before conducting an interview with a suspect the Inspector will, unless the situation determines otherwise, prepare the interview. When preparing an interview the Inspector will identify:

- i) what offence(s) the person is suspected of and the points that need to be proved to secure conviction;
- ii) probable areas of defence;
- iii) what facts have been established in relation to the offence(s);
- iv) what facts she/he wishes to examine throughout the interview.
- (4) An interview conducted in regulatory authority offices will be conducted in a room set aside for the interview. The room does not have to be specifically designed as an interview room but the Inspector should ensure that it is suitable for an interview.

- (5) If any person attending a regulatory agency office asks about their entitlement to legal representation, they should be allowed to do so.
- (6) After an interview has been completed, the Inspector will evaluate the information obtained during the interview. This evaluation should be aimed at determining what possible offences have been committed, by which parties, and what further evidence is needed to prove those offences.

4.7 Case Files

In any prosecution a court prosecutor will need the relevant information, facts and evidence available to him in order to be able to prosecute in any particular case. It is in this respect that an investigating officer collects and compiles all of the relevant information surrounding a case into what is known as a "Case File". This file provides the prosecutor with the information he needs to present to court at the time of hearing the case. The work of the prosecutor starts when the work of the investigator ends.

4.7.1 Contents of the Case File

- Witness statements
- Covering report/executive summary
- Charge sheet
- Expert reports
- List of exhibits



- List of witnesses
- Documentary evidence e.g. Photos, sketch maps, plans etc
- Correspondences
- Recommendations and comments of the investigator
- Accused persons criminal record

4.7.2 Example of a Case File Compilation Format

In Kenya, the case file is prepared according to the Kenya Police Service format. The file is divided into portions called sub-files. Each sub-file deals with a particular aspect of the case. Alphabetical letters are used, each representing a sub-file, starting from "A" at the bottom of the file to "J" on the left hand side of the file cover. See Figure 4: Example of a case file compilation below.

COMPILING A CASE FILE: KENYA POLICE SERVICE FORMAT

Indicated below are what each sub-file should contain and the manner of compilation based on the Kenya Police Service format. Each country will use the system applicable to their jurisdiction based on the applicable national laws and standing orders.

<u>Sub-file "A" (Initial Report / O.B Extract)</u>

All documents relating to the report of the offence and all subsequent reports or amended reports. These should be clearly marked A (1), A (2) etc.

(ii) <u>Sub-file "B" (Sketches, Plans)</u>

(i)

Photographs, sketches, plans etc. referring to the scene of crime with any other copies of documentary exhibits should then follow clearly marked B(1), B(2), B(3) etc. Photographs not mounted and copies of other documents should be placed in an envelope and the contents clearly listed on the outside.

(iii) <u>Sub-file "C"</u> (Experts Reports)

Copies of experts' reports e.g. post-mortem reports, reports from the Laboratory, Government Chemist, Medical Officers and other experts should be placed in this sub-file and clearly marked C(1), C(2), C(3) etc. Again use suitable envelopes. Copies of these reports should be supported by a witness statement from the officer signing such reports, setting out details in simple language of the contents of such reports.

(iv) <u>Sub-file "D" (Witness Statements)</u>

Copies of statements from all prosecution witnesses should then follow. It should include evidence of identification parades which will be immediately after the statement of each identifying witness. Statement of the Police Officer conducting the identification parade will be cross referenced with the statements of each identifying witness for ease of reference. They should be clearly marked D (1), D (2), D (3) etc.

(v) <u>Sub-file "E" (Accused's Records)</u>

Copies of all statements made by the accused person including statements under caution. They should be clearly marked E(1), E(2), E(3) etc.

(vi) <u>Sub-file "F" (Investigation Manual)</u>

Investigation Diary of all those involved in the investigation of the case. The diary reports must be accurate setting clearly times, dates and places etc. They must be clearly marked F (1), F (2), and F (3) etc.



Compiling

case file

a

(vii) <u>Sub-file "G" (Copies of Charge Sheets)</u>
Copies of charge sheets and related documents marked clearly G (1), G (2), and G (3) etc.
(viii) Sub-file "H"

This contains -

- List of witnesses
- List of Exhibits
- Prisoner's Property
- Accused person's criminal records
- Statistics Forms etc.

The documents should be marked H (1), H (2), and H (3) etc.

(ix) <u>Sub-file "I" (Covering Report/Executive Summary)</u>

This contains a covering report drawn up by the investigating officer setting forth in details the prosecution case as it stands. Reference when made to a witness or exhibit will be references to as D (3), H (2) and so on for quick reference. A summary of evidence should also be drawn up and placed below the covering report. This is comprised of the major facts that each witness will tell the court during the trial.

(x) <u>Sub-file "J" (Correspondences)</u>

On the left hand side of the file cover, a correspondence sub-file will be kept. This will deal with requests for advice from the Investigating Officer to his Officer-in-Charge, the Director of Criminal Investigation or state counsel as the case may be. It will also contain instructions from Gazetted Officers/State Counsel to the Investigating Officer and so on. This sub-file will also be used for recording commendatory remarks and other matters of interest arising out of the case.

Note: Presenting a well investigated case file to the Court Prosecutor makes his work easier and enables him to plan how he will present the evidence at the time of the hearing.

FIGURE 4: EXAMPLE OF A CASE FILE COMPILATION



CHAPTER 5

5.0EVIDENCE

Evidence is any information or object that a court accepts to help decide a case. In order to take appropriate means of enforcement, proof of facts is required. This will only be achieved by presenting admissible evidence to prove those facts.

5.1 Gathering evidence

The Inspector is responsible for gathering information to determine whether a facility is in compliance, collecting and documenting evidence that non-compliance may have occurred. This evidence is used to support the application of

appropriate means of enforcement as well as to help the Environmental Inspector prepare for and give testimony when required. Therefore, Environmental Inspectors are required follow to standard procedures in accordance with the laws of evidence to ensure that whatever evidence they collect will be admissible in a court of law. If standard procedures are not followed, there is a risk that the evidence may be rejected in a court of law and that the time and expense invested in building a case will have been wasted. Standard checklists are often developed for different types of environmental inspections to ensure that the inspections properly cover all the necessary aspects and

Evidence

that the environmental inspections are fair and objective.

5.2 Types of Evidence

The following are types of evidence that may be required to be gathered and presented:

(a) Oral evidence

Oral evidence refers to verbal testimony and may be given by a witness on oath or affirmation in a court of law.

(b) Documentary evidence

This is the evidence contained in a written document. Documents could include reports, licenses, notices, correspondence, plans, photographs, etc.

(c) Real Evidence

"Real" evidence refers to any physical object that can be used as exhibit in a court of law. It includes any objects recovered at the crime scene or in connection with the crime such as motor vehicles, sound amplifying equipment, illegal consignment, etc.

(d) Circumstantial evidence

These are facts which make the facts in issue more likely to be true and will include elements such as motives, opportunity, acts of preparation and subsequent conduct.



5.3 Crime Scene Management and handling of exhibits

Crime scene investigation is the foundation of all criminal investigations and majority of the evidence is found at the crime scene.

5.3.1 Importance of visiting a crime scene

Visiting the crime scene promptly is very important and will aid the investigator in the following ways:

- Collection of physical evidence and sampling.
- Effecting arrest or making recoveries.
- Confirming existence of an alleged offence and deciding next course of action.
- Protecting the scene from further interferences.

- Collection of intelligence/ information.
- Corroboration of the witness statements.

5.3.2 Issues to consider at the scene

- Determine extent of cordon by finding out how far items and materials are scattered upon arrival.
- Consider personal safety and safeguard further environmental degradation and/or threat to public health.
- Keep unauthorized persons away.
- Take charge of the scene
- Be alert for all forms of physical evidence.
- Make notes concerning your observations.



Note:

Environmental crime scenes can be sources of contamination and all physical clues such as chemicals and other dangerous items should be treated with caution.

5.3.3 Crime scene check list

Before leaving a crime scene the Inspector must take a final survey to ensure that he has sufficiently covered the following:

- Narrative description of the scene.
- Sketch map of crime scene.
- Photographs of the scene and films accounted for.
- Physical evidence must be collected, well packaged and

properly labeled for analysis, and chain of custody maintained.

• Equipment used should be gathered.



5.4 Exhibits Handling and Storage

Exhibit is anything in either of three of matter, recovered in state connection with a crime, which can be referred to by a witness(s). It must be identified and be produced in court as evidence. For physical evidence to be admissible as evidence both legal and scientific requirements have to be adhered to. Such requirement entails documentation, sampling, packaging, preservation and chain of custody. Where photographs are required, the Environmental Inspectors should liaise with Scenes of Crime personnel from the Police Service or other relevant agencies in order to ensure that any photographs taken meet the admissibility threshold. At the investigation stage, it is within the mandate of the investigating

officer/Inspector to decide what type of evidence will be collected and how much physical evidence will be **Storage** submitted for analysis. At the adjudicative stage, the prosecutor usually determines what physical evidence will be introduced in court and the scope of forensic evidence that is to be presented at trial through expert testimony.

5.4.1 Sources of Exhibits

- Crime scene i)
- ii) Handed in by a witness
- iii) Recovered from the suspect.

5.4.2 Preservation of exhibits

Preservation of the exhibits depend on the following factors;

- Nature of the exhibit.
- Type of the exhibit.

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Exhibits **Handlin**α and

SOURCES **DF** EXHIBITS

will **PRESERVATION NF EXHIBITS**

CHAIN OF CUSTODY OF EXHIBITS

- Size of the exhibit.
- Examination required in respect of the exhibit.

5.4.3 Chain of custody of exhibits

The law requires that any exhibit which a witness wishes to produce in court must be accounted for from the time it was recovered to the time it is produced in court. The accounted movement of an exhibit from the time of recovery to the time when it is produced in court is referred to as chain of custody. The officer handling the exhibit should prevent its loss or damage.

Accordingly, to produce an object (i.e. an exhibit) in court, the Inspector must be able to show:

- a) The initial contact with the object.
- b) If it was given to someone else who it was given to and the time, date and place it was given to the other person.
- c) If retained by the Inspector how and where.
- d) That the object has not been tampered with.

Note: It is desired that the number of persons handling an exhibit be reduced to minimal.

5.4.4 Identification of exhibits

Exhibits can be identified by any of the following means:

- Markings
- Labeling
- Photographs
- Signatures and handwriting in case of documents.

When exhibits are being submitted for examination they must be accompanied by a clearly filled exhibit memo form or any other prescribed form as the case may be, stating precisely the examination required on each exhibit.

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5.4.5 Sampling Procedures *5.4.5.1 General:*

Environmental Inspectors will collect samples using their statutory powers. If possible, all samples should be taken in the presence of the alleged offender(s), or in the case of a company, in the presence of a person who holds a position of responsibility in the company and who is authorized to act on its behalf e.g., Director / Company Secretary, senior manager etc. However, the absence of the offender or his representative should be dispensed with if this would unduly delay collection of the sample. In such cases, police officers or other regulatory agency staff can witness sample taking if owners of facilities are non-cooperative.

IDENTIFICATION OF EXHIBITS

SAMPLING PROCEDURES

- All samples, whatever their origin, should be collected in accordance with the laid down functional guidelines and procedures.
- Inspectors should bear in mind that as a minimum they will be required to show in court that they secured the sample in such a manner that they can show that the sample has not been tampered with.
- Any seal that is used to secure a sample should have a unique reference number, which should be recorded in the Inspector's notebook.
- The sample should also be properly labeled with the location, time, date, persons present and sample details.

The label should then be signed by the Inspector. All these details will also be recorded in the Inspector's note book. If possible a photograph of the sample should also be taken.

5.4.5.2 Specific:

What happens next will depend on the type of sample collected, the time of day and the Inspector's schedule:

(1) If the sample does not need to be analyzed:

(a) The sample should be taken to the regulatory agency site where it can be placed in a secure store. This should be recorded in the Inspector's
notebook. This is because the Inspector may be required to state that the sample was kept in a secure place where noone could have tampered with it.

(b) If the sample is kept in a centrally secure place then the Inspector should record in the logbook for the store that the sample was placed in that store and the date and time it was placed there.

(2) If the sample has to be analyzed:

(a) The Inspector may deliver the sample to the designated laboratory or deliver it to a sample store for collection. The Inspector should make a note in his notebook as to where the sample has been taken (to the store or to the designated laboratory) and the date and time it was delivered and to whom. If it was left in a sample store the Inspector should also state that the sample was secure. It may also be necessary to fill in the stores log book. The Inspector will also need to complete the exhibit memo form or other approved form as the case may be for the designated laboratory.

5.5 Surveillance

Surveillance is defined as including any monitoring, observing and listening to persons, their movements, conversations or other activities or communications. It also includes any recording of such activity - by or with assistance of a

SURVEILLANCE

device. Surveillance is covert where it is carried out in such a way to ensure that those targeted are unaware that it is taking place.

5.6.1 Modes of Surveillance

- Static surveillance
- Mobile surveillance

a) Static Surveillance

Static surveillance must only be carried out from an observation point that is secure and from which all anticipated risks (previously identified via the risk assessment) have been removed or dealt with. Particular attention must be given to identifying all escape routes from the observation point for the officers involved should their presence be detected, or be thought to be detected by the target(s) of the surveillance operation or others who might be considered sympathetic with the target(s).

b) Mobile Surveillance

Mobile surveillance can be carried out from a moving vehicle or by moving on foot. Mobile surveillance is a dangerous activity and requires skilled highly operators to successfully carry it out. Should the need arise for this type of surveillance, then assistance of the Police will be sought for purposes of providing security to those involved in the operation.



5.6.2 Surveillance Equipment

Surveillance equipment such as binoculars, telescopes and still and video cameras, voice recorders, and any other equipment will only be used during surveillance operations if their use has been approved as part of risk assessment. Inspectors will use their skill and judgment when attempting to use any surveillance equipment.

5.6.3 General Surveillance Guidelines Surveillance is an operation that can put regulatory agency staff at considerable risk and should not be undertaken until all other methods of obtaining the desired evidence have been exhausted and unless the following have been considered:

- Risk: A risk-assessment of the surveillance operation must be undertaken in order to identify risks it poses to those officers involved and how such risks might be mitigated.
- Briefing: officers involved in the surveillance operation must be fully briefed on the risks identified and means of mitigation.
- **Operating conditions:** the surveillance operation may be carried out during the day or night, in good weather conditions.
- Authorization: the surveillance operation must be authorized in writing or otherwise by a senior regulatory agency officer in charge of such operations.



• **Duration:** the surveillance operation is to continue only for as long as it is necessary, i.e. when sufficient evidence has been obtained or when the team considers it necessary to leave the site.

5.7 Out of Court Settlement /Role of Negotiations in Environmental Inspections

Negotiations are used in very rare cases where a number of criteria have to be met. Negotiations can be commenced at any given time during the process of enforcement and compliance. It can also run or operate in dual track when prosecution or closure of a facility has commenced.

5.7.1 Importance of negotiations:

- Negotiated compliance saves time, costs and effort both for the regulatory agency and the targeted facility;
- Negotiations are a means of binding the regulated establishment and the regulatory agency to ensure performance of requirements under the law. The binding agreement must have punitive sanctions or disincentives for non-compliance and must be achievable, within a relatively short-period, and must be known to all;
- Negotiations enable the affected establishment to put in place the required inputs thus achieving compliance.



5.7.2 General Guidelines for Negotiations and Settlement out of Court

- 1. Negotiations must always be carried out in accordance with the provisions of the relevant national laws and the internal Enforcement Policy of the regulatory agency.
- 2. As a general rule, the following guidelines should be followed:
 - i) Negotiations should only be used after inspections and determining that the establishment is in violation.
 Where negotiation is considered, the operators of the facility should be given the option to discuss and possibly negotiate on matters related to

compliance with the set requirements. The intention is to create partnership in the care of environment and protection of public health;

- ii) The violator must show willingness in writing to settle the matter out of court at no cost to the agency;
- iii) The decision on whether or not to negotiate out of court should be made by the Chief Executive Officer or the Director of Compliance & Enforcement/Monitoring of the regulatory agency, depending on the internal organizational policy, on the advice of the Compliance and Enforcement Committee. Such committee may comprise

of the heads of Compliance and Enforcement/Monitoring Department, Legal Department, Incident Management Unit, Inspectorate, Police Unit etc. as the case may be. Each regulatory agency will set up this Committee to advise generally on compliance and enforcement matters.

iv) Any matter agreed upon between the regulatory agency and the violator will be reduced into written а Compliance Agreement detailing the of terms settlement. Such terms will include conditions such as immediate compliance, refund of the cost incurred by the

agency in the process of enforcement, payment for the cost of restoration, etc. Each regulatory agency will develop a standard form of agreement which may be customized on a case by case basis;

- v) There will be no negotiation or out-of-court settlement if:
- The violator is a habitual or chronic offender.
- The violator has been issued with an administrative order but has not commenced compliance as at the time of his proposal to negotiate.
- The violator or his representatives have obstructed or assaulted Environmental Inspectors in the conduct of their duties.



The offence has significant adverse impact to the environment/public health.
 There is no evidence of effort by the violator to mitigate damage to the environment and /or adverse impact on public health.



REFERENCES

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NEMA- Kenya, <u>Environmental Regulatory Control Manual, Vol.3: Environmental</u> <u>Inspections</u>, 2010

NEMA- Kenya, <u>Environmental Regulatory Control Manual, Vol.4: Environmental</u> <u>Investigations</u>, 2010

NEMA-Uganda, Operations Guidelines for Environmental Inspectors, 1999.

NEMC-Tanzania, <u>Draft National Environment Investigation Manual</u>, 2008.

US EPA, Inspectors Field Manual, International Edition, 2002



APPENDICES

APPENDIX 1

GLOSSARY OF TERMS

Analysis: is the testing or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any segment of the environment or public health

Compliance: is the full implementation of environmental requirements. Compliance occurs when requirements are met and desired changes are achieved, e.g. processes or raw materials are changed, work processes are changed so that, for example, hazardous waste is disposed of at approved sites.

Enforcement: is the set of actions that governments or others take to achieve compliance within the regulated community and to correct



or halt situations that endanger the environment or public health.

Environmental Inspector: is any officer of a regulatory agency or lead agency duly qualified and appointed as such. Environmental Inspectors collect information that may be used to determine compliance status.

Environmental requirement: includes legal obligations under environmental statutes, rules, regulations, and standards.

Evidence: is any information or object that a court of law accepts to help decide a case.

Exhibit: is any physical article presented before a court of law as evidence during trial.

Facility: is any permanent, semipermanent, or temporary commercial or industrial, residential or other property such as a building, plant, or structure, built, established, or installed for the performance of one or more specific activities or functions.

Inspection: is, generally, an organized examination or formal evaluation exercise that involves measurements, tests, and gauges applied to certain characteristics in regard to an object or activity. The results are usually compared to specified requirements and standards for determining whether the item or activity is in line with these targets.

Investigation: is an official effort to uncover information about an alleged crime.

Lead agency: is any government ministry, department, parastatal, state

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corporation or local authority, in which any law vests functions of control or management of any element of the environment or natural resources;

Regulatory agency: 15 а governmental organization that is charged with the overall mandate of overseeing the processes and procedures that are employed in the function of environmental management within a given country. In many cases, the regulatory agency is focused on setting and enforcing the requirements dictated by law in regard to environmental management.

Sampling: is the act or process of selecting and collecting a sample for testing, analyzing etc.

Surveillance: is a watch kept over a person, group, etc., for purposes of

gathering evidence of an alleged crime.

Violation: is a breach, infringement, or transgression of a law, rule, regulation or standard.

Witness Statement: is a formal written document containing an account of the facts relating to the issues in dispute.

APPENDIX 2: SAMPLE INSPECTION FORM – NEMA UGANDA
National Environment Management Authority (NEMA)
Department of Environmental Monitoring and Compliance (EMC)
A) GENERAL
Facility Inspected: EIA Approval
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	•				
	(Residential, Busines	rs, Farmi	ing, etc)		
	Village/Cell/Zone	Parish	Sub- county/Division	County/Municipality	District
Inspector(s)	Name	Title	Institution	Tel:	Signature
Facility					
Representative(s)					

Reason Inspection:	for	Surveillance □ Post- audit □ Complaint □ Other (specify)
Inspection date:		

Guidance Notes

- Score of 2 is against parameters that are a MUST for every facility
- Score of 1 is obtained if compliance with that parameter is evident, otherwise the facility scores 0
- In the event of the aspect being non-applicable (N/A) to the facility, its performance shall be evaluated as a percentage of the applicable parameters

• Evaluation Score = $\begin{bmatrix} Total(Scored) \\ / Total(all _ applicable) \end{bmatrix} \times 5$

ITEM	DESCRIP LO TION	DCATION	OBSERVATION(Score)	REMARK (S)
1.0	LEGAL REQU	IREMEN	T'S	
1.1	EIA		□EIA Approval in place (2)	
			$\Box N/A$ (Refer to 1.2)	
1.2	Audits		□Initial Audit (2) □Annual Environmental Audits (1) □Self-monitoring Audits (1)	
1.3	Other		□Have relevant Licenses & Permits (1	1)
	Environmental		□Have Environmental Policy (1)	
	Requirements		□Environmental Management structures	
	1		(1)	
			□International certification that caters for	
			environmental needs (1)	
Evaluatio	n Score:			

2.0	AIR POLLUTION				
2.1	Generators & other fuel burning activities	 □ Noise within legal limits (1) □ No black smoke (1) □ No Leaking oil (1) □ N/A 			
2.2	Dust and Emissions	□Contained and minimized (1) □ Control equipment functioning (1) □ N/A			
Evalua	Evaluation Score:				
3.0	WATER POLLUTION				
3.1	General housekeeping	 □ No Oil stains on ground (1) □ No Garbage scattered on site(1) □ No odors (1) 			
3.2	Maintenance of settlement tanks & oil-interceptor	□Chemical Analysis regularly done (1) □ No visible oil sheen in last chamber			



3.3	Drainage system	 (1) □ No turbidity, silt, foam or odors (1) □ N/A □ Neat & not clogged/ silted (1) 	
Evalu	ation Score:		
4.0	HARZARDOUS M	ATERIAL HANDLING AND STORAGE	
4.1	Chemical storage & handling	 Visible warning signs (1) No spills &Open Containers (1) MSDS¹ available (1) First aid & emergency equipment (1) Inventory available (1) Appropriate chemical storage facilities (1) Not stored close to other material Sufficient ventilation 	
		• Stored on concrete slab with	

¹ MSDS = material Safety Data Sheet



		overhead covering		
		$\Box N/A$		
4.2	Above ground fuel	\Box No extensive fuel spillage (1)		
	tanks	\Box No leakages (1)		
		□Emergency equipment (1)		
		\Box Tank integrity acceptable (1)		
		\Box N/A		
4.3	Oil change	\Box Effective drip containment (1)		
	&	□Designated storage drums (1)		
	Maintenance	\Box Emergency equipment (1)		
	workshop	□N/A		
5.0	NOISE (Indicate meas	urements in dB)		

	Noise due to facility activities and from generators	□Controlled & Monitored (1) □ Within Acceptable limits (1) □N/A				
Evalu	Evaluation Score:					
6.0	OCCUPATIONAL	SAFETY				
6.1	[Nose masks, Ear- muffs, Helmets, Boots, Gloves, Goggles, Overalls, etc]	 □ Relevant PPE availed (2) □ PPE effectively used (2) □ First Aid kit / clinic (1) □ Safety signs displayed (1) 				
6.2	Staff awareness / Information (based on a sample of 3 workers randomly chosen and questioned)	 Regular Staff training (1) Emergency procedures displayed and known(1) Known Environmental Policy (1) 				



Evaluation Score:

7.0	WASTE MANAGE	MENT		
			□Chemical	
			□Flammable	
7.1	Waste type(s)		□Corrosive	
	<i>J</i> 1 (<i>J</i>		□Construction	
			□Other (specify)	
7.2	Waste Storage		□Waste is categorised & seperated	
	containers		(2)	
			□Containers satisfactory labelled (1)	
			□Containers effectively closed &Regularly	
			emptied (1)	
7.3	Waste Storage area		□ Secured & designated storage area (1)	
			\Box Not connected to drains (1)	
			$\Box Proper floor surface \tag{1}$	
			$\Box Not Close to other material (1)$	
			□Warning signs (1)	
7.4	Waste handling &		□Use Licensed waste handlers (1)	
	treatment		□ Effective In-house program [Check with]	
			1.3 above] (1)	



		□Groundwater contamination monitored				
		(1)				
		\square Monthly effluent analysis (2)				
Evalu	uation Score:					
8.0						
8.0	I KANSPURI & A	CCESS PATHS / ROADS				
81	Access roads &	□ Maintained in good condition(1)				
0.1		\square Maintained in good condition(1) \square A gross paths free of obstacles (1)				
	paths	The of obstacles (1)				
	COCIAL CONCIDE					
9.0	SOCIAL CONSIDE	RAHONS				
		75				

-		
	Community	□ Evidence of cooperate social
	relationships and	responsibility projects (1)
	gender balance	□ Has mechanism to attend to
	0	community complaints (1)
		□Local residents employed (1)
		Gender-sensitive facilities (1)
		□ Gender-sensitive considerations
		[duties, leave, training, etc] (1)
Evalu	ation Score:	
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SUMMARY NOTES / REMARKS

Site Environmental Inspection Analysis and Collation²

Performance Aspect ³		Score
1	Legal Requirements	
2	Air Pollution	
3	Water Pollution	
4	Hazardous Material Handling	
5	Noise	
6	Safety Gear	
7	Waste Management	
8	Transport & Access Paths /	
9	Social Considerations	
TOTAL		
PERCENTAGE SCORE ⁴		

²*Consider only parameters that do apply to the facility being inspected and then evaluate grade as a percentage of the total.*

³ Performance aspects score in the range 0 - 5 INSTITUTIONAL GRADING

	⁴ Percentage score =	Percentage score = Total Score Obtained				
1	Relow 15%	Max. Pos	sibleScore from ap $40 - 59\%$	plicable parameters $60 - 79\%$		Above 80%
		D 1	10 3770 D1			
1	Black	Red	Blue	Green		Golden

Report	Copied	to:
--------	--------	-----

Signed by:

Date:

Date:

(a) Inspector:

(b) Management Rep:



Criteria for all Insp	ection Performance Elements
1	

Level	Score	System Requirements	Performance Requirements
Significant	1	System element is ignore by the	Environmental performance
improvement		developer	requires significant improvement.
required			
Improvement	2	An attempt has been made to	Environmental performance
Required (to		cater for them but not fully	requires some improvement to meet
meet minimum		implemented or effective.	required standard.
standard)			
Good	3	System element is implemented,	Issue is understood, risks known
Performance		effective, complies with the	and effective control strategies exist
		relevant standard and adds value	resulting in the issue being well
		to the operation.	managed.
Very Good	4	Demonstrated evidence of	Positive performance trends
Performance		effective implementation, review	demonstrate continuous
		and continuous improvement.	improvement and reduced risk to
		System element meets relevant	the operation.
		ISO14001 requirement.	_
Excellent	5	Highly effective system element	Highly effective environmental
Performance		has been implemented and	performance is demonstrated.
		maintained. Evidence of	Evidence of industry best practice or
		industry best practice or	leadership.
		leadership.	_



APPENDIX 3 - Tools of Inspection

GENERAL EQUIPMENT

	✓ (Camera,(accessories e.g. Film, flash equipment)		✓ Plain envelopes
	✓ I	Pocket calculator		✓ Flashlight and batteries
	√ (GPS		✓ Pocket knife
	✓]	Гаре measure		✓ Pocket tape recorder
	✓ (Clipboard		✓ Level
	✓ V	Waterproof pens, pencils and markers		✓ Compass
	✓ I	Locking briefcase and "Confidential Business		✓ Range finder/optical tape measure
	Ι	Information" stamp if needed		✓ Stopwatch
	✓ I	Envelopes pre-addressed to Head of Legal		✓ Ruler (for use as scale in photos)
	s	services		
SAI	FETY	YEQUIPMENT		
			./	Delan solution and the descent solution of the
	• 3 / 1	Safety glasses or goggles	v	Rubber-soled, metal-toed, non-skid and acid
	• I	Face shield		proof foot wear/shoes
	✓ I	Ear muffs	ľ.	Liquid-proot gloves (disposable if possible)
	✓ (Overalls, long-sleeved	~	Long rubber apron
	✓ I	Helmet, sun glasses	\checkmark	Respirators
	🗸 I	Plastic shoe covers (disposable)	\checkmark	Properly stocked First Aid Box
	✓ I	High visibility jackets	\checkmark	Cell phone + Air time
	✓ ŝ	Sun screen		
PA	PER	WORK		
✓	Prope	er identification-Environmental Inspector card	(Chain-of-custody record
\checkmark	Copy	of facility's inspection file, permit, and	´]	Relevant checklist
	moni	toring schedule, maps, photographs and	´]	Relevant Regulations and standards
		80)	~~~~~

History of enforcement actions	✓ Copy of the Inspection Manual		
✓ Notebook	✓ Declaration of Confidential Business		
✓ Checklists	Information form		
✓ Notice of inspection (if applicable)	✓ Denial-of-access form		
✓ Seizure receipt	✓ Aerial photographs		
SAMPLING EQUPMENT			
✓ Bucket/soil auger	✓ Steel tape measure		
✓ Sealable evidence bag and evidence labels	✓ Sampling safety equipment (in addition to		
✓ Containers (jars, plastic and organic sample containers)	equipment on the safety equipment list above), booties, gloves, tyvek suit and chemical		
✓ Conductivity meter	resistant suit.		
✓ Litmus paper	✓ Decontamination equipment such as buckets,		
✓ Thermometer	brushes, deionized water, solvents for		
✓ Dissolved oxygen meter	equipment cleaning		
✓ Rope, tape,	✓ Portable refrigerator		
✓ Ice, glass tubes	✓ Trowels, scoops		
✓ Air quality sampling/ monitoring equipment	✓ Tracer dye		
✓ checklist	✓ Long tongs/litter picker		
	Sound level meter		
	✓ ODS identifier.		

NOTE: Inspectors should never proceed with inspections involving site conditions for which they are not prepared and do not have the proper safety equipment necessary and not limited to those indicated in APPENDIX 3 above.

East African Network for Environmental Compliance and Enforcement



The Secretariat

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