

Environmental Conservation Department
Monitoring and Enforcement Strategy 2001-2003
Final Draft

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1 Introduction

Protecting the public and environment from risks posed by violations of environmental requirements is part of ECD's mandate. To fulfil this role, ECD is in the process of developing its Enforcement Division while at the same time performing the Monitoring and Enforcement duties assigned to the Department. The present paper describes the overall monitoring and enforcement strategy consisting of two components; a reactive component and a proactive component.

The nature and surroundings of ECD's work are dynamic and complex. New opportunities and tasks arise on a frequent and unpredictable basis. For this reason it is believed that it is not appropriate for the department to operate according to rigid and specified long-term action plans. Thus, this strategy is intended to serve as a guiding framework for ECD's monitoring and enforcement activities and the implementation of the strategy will be specified and carried out on an ongoing basis.

Every time a new piece of legislation comes into force, hundreds of activities and development projects are subject to it. It is impossible for the EDC to continuously check for compliance with every requirement at every development project. Therefore, it is a challenging aspect of compliance and enforcement programmes to develop strategies to make the most effective use of (often limited) resources available to officerates. ECD only holds limited resources for monitoring and enforcement administration and operations. The strategy presented in this paper, attempts to provide a realistic and operational monitoring and enforcement framework for ECD. Though, for successful implementation of this strategy, the Enforcement Division will need to be expanded in the years to come.

2 Monitoring and Enforcement Strategy

2.1 Reactive and Proactive Monitoring and Enforcement

The Environmental Conservation Department has identified two main monitoring and enforcement components that together constitute ECD's monitoring and enforcement strategy.

The two monitoring and enforcement approaches include:

- Reactive monitoring and enforcement where ECD take action upon request
- Proactive monitoring and enforcement where ECD initiate monitoring and enforcement activities and programmes

Reactive monitoring and enforcement tasks are characterised by being activities where ECD respond to requests. The reactive monitoring and enforcement tasks include complaints handling.

Proactive monitoring and enforcement tasks are characterised by being initiated by ECD. Proactive monitoring and enforcement are deliberate and systematic. The proactive approach presented in this paper is further targeted towards monitoring and enforcement programmes aiming at specific sectors, issues or geographical areas. The proactive monitoring and enforcement tasks include proactive and targeted inspections and environmental monitoring programmes.

So far ECD has used most time and resources on reactive monitoring and enforcement. Though, it is the goal to gradually shift the emphasis and priority from reactive monitoring and enforcement to proactive monitoring and enforcement. It is expected that a successful implementation of the newly published ECD monitoring and enforcement manual will make complaints handling more effective and less time consuming. This will in turn ease the shift of priority. Thus, inspections in response to complaints or incidents should take a minor portion of the time of ECD. Priority setting in inspection will forwards, in principle, not be driven by complaints but rather by a systematic approach.

The ECD-target is to change the ratio between inspections assigned to complaints and proactive inspections from 80/20 to 20/80 before 2003.

2.2 ECD's Seven Monitoring and Enforcement Principles

Crucial to the ECD's monitoring and enforcement strategy is seven key principles that the Departments will adhere to in its monitoring and enforcement work. The seven principles are:

The proportionality principle. The use of stronger measures than necessary will not be applied by ECD, and measures will not be employed that are disproportionate to the purpose. For example, if compounding is sufficient to stop an unlawful activity, a stop work Order will not be issued.

The principle of legality. It is a fundamental principle that administrative legislation shall protect the individual against possible injustice by the authorities. ECD will always secure that it has the legal right to undertake any action it commences and will only make demands on citizens if it has the right to do so on the basis of an Act or a Statutory Order.

The principle of dialogue. A dialogue between the alleged offender and ECD is crucial for the creation of administrative justice, and ECD will secure that an alleged offender has the opportunity to express an opinion and defend himself. ECD will normally regard it as success for both parties if they can negotiate an agreement that effectively prevents the environmental offence and at the same time is convincing to the outside world.

The principles of openness and transparency. If the public understands and agrees with environmental decisions, any environmental legislation will be more effectively enforced. ECD will therefore implement a transparent and open monitoring and enforcement system in Sabah. All relevant information, including this manual, are available upon request and/or through the ECD homepage: www.sabah.gov.my/jkas.

Observation of non-compliance. If obvious non-compliance is observed, it is the duty of ECD to announce the observation immediately to the offender and to make the character of non-compliance clear. The offender will also be informed that the observed non-compliance will be reported and that ECD will take action as appropriate.

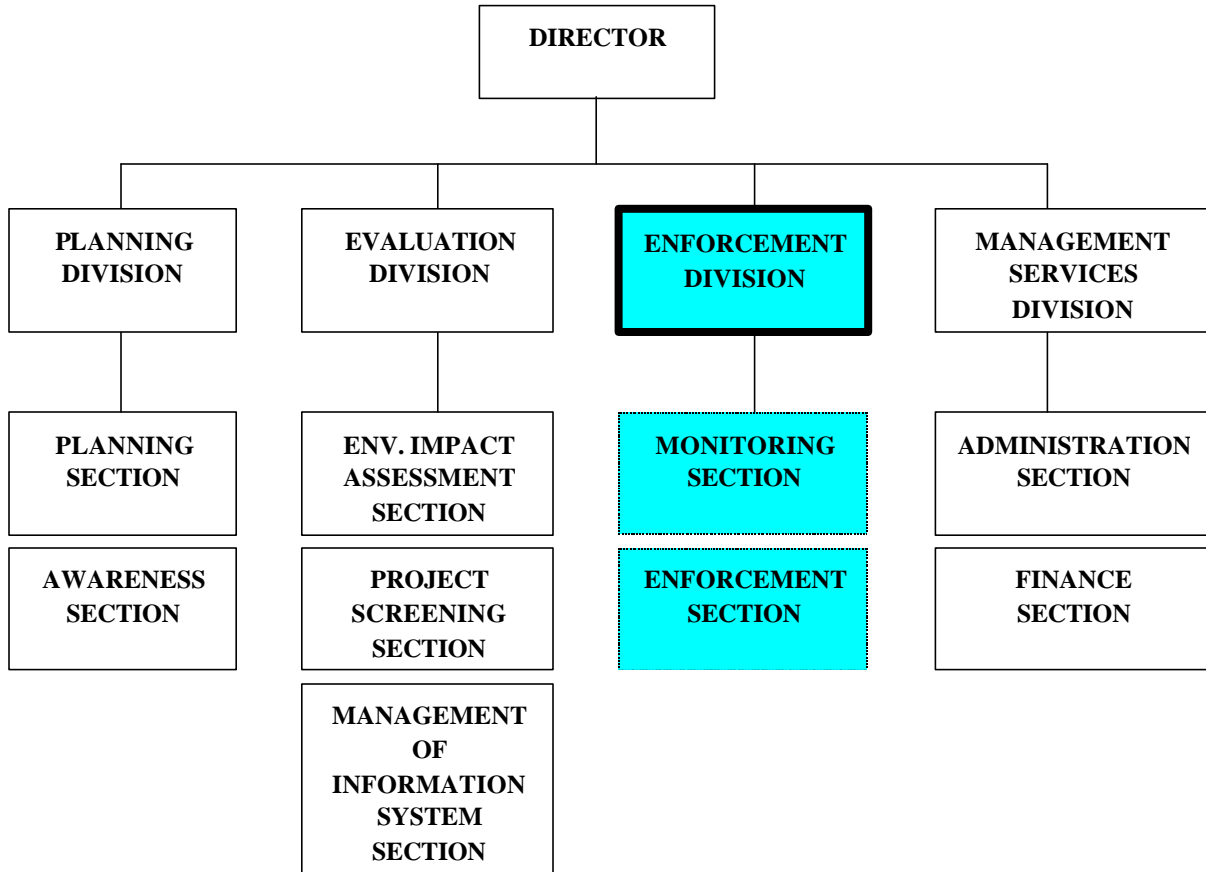
Code of ethics. Observations of non-compliances or serious environmental problems may lead to conflicts. ECD will use experience, common sense, skill of negotiation and know-how to handle conflicts, to try to avoid offending anybody or behave as a juror, executioner or judge. In case of any attempt of bribery, a report will be made to Anti Corruption Agency.

The polluter-pays principle. The one who pollutes should also pay for the pollution, either in order to mitigate or, if this is not possible, pay a fee or 'green tax' for polluting. Environmental enforcement will seek to impose environmental costs upon environmental polluters by means of Orders, compounding and prosecution.

2.3 Organisational Structure

The ECD’s Monitoring and Enforcement sections are located within the Departments Enforcement Division. In the daily work the two sections are integrated.

Organogram



3 Reactive Monitoring and Enforcement

The reactive monitoring and enforcement concern case-by-case complaints handling. This includes investigation of environmental problems brought forward to the ECD. The environmental problems to be investigated can be either a complaint filed by the public, a government agency or a directive from the Minister. Additionally, the ECD will also investigate cases brought up in the media.

If the alleged environmental problems are in fact the result of illegal activity, the Enforcement Division will continue the case with performing administrative enforcement. If this does not end the illegal activities ECD will prosecute the offender.

The main issue of reactive monitoring and enforcement is to establish clear and transparent procedures for how the monitoring and enforcement are conducted.

The establishment of ECD's reactive monitoring and enforcement approach has been developed through two phases:

Phase 1. Prepare and publish a monitoring and enforcement manual. This included the preparation and publishing of a manual for ECD's monitoring and enforcement officers. The manual includes very specific guidelines and procedures as how to monitor and enforce the compliance to environmental laws, rules and regulations. The manual entitled 'Environmental Investigation, Administrative Enforcement and Prosecution Manual' was completed and published in August 2001. The manual has been prepared as a guideline for the monitoring and enforcement officers. Though, the manual is available to the public in order to make ECD procedures clear and transparent.

Work procedures will constantly change and improve in response to experience gained. However, it is believed that the procedures outlined and described in the monitoring and enforcement manual will remain the core procedures for the Department in the years to come.

Phase 2. Conduct complaints handling according to the monitoring and enforcement manual. In Phase 2 the objective for the Enforcement Division is to conduct complaints handling in the most professional manner. Implementing the use of the monitoring and enforcement manual does this.

4 Proactive Monitoring and Enforcement

The ECD's proactive monitoring and enforcement consist of two main sets of activities

- Proactive inspections and enforcement programmes
- Ongoing and long term environmental monitoring programmes.

4.1 Proactive Inspections and Enforcement Programmes

The ECD objective is to increase the use of scheduled proactive inspections and enforcement programmes.

The proactive inspections and enforcement programmes will target a sector, a theme or a geographical area. ECD will in the next years select 1-2 programmes a year – 'Issues of the Year'

Choosing the 'Issues of the Year'

The first important step regarding proactive inspections and enforcement is how to choose the 'Issues of the Year' for proactive inspections and enforcement. The most important priority criteria to ECD are:

- 'Issues of the Year' have a relevance to policy and management needs (including the possibility of influence/change) and are in line with specific ECD objectives
- 'Issues of the Year' are selected according to the polluting capability or risk and reflect a valued element of the environment or an important environmental issue (relevance according to scope and nature of the environmental problem)
- 'Issues of the Year' are selected according to cost efficiency measures, which could include accessibility to the area(s), cost of sampling etc.

Designing the Implementation of the 'Issues of the Year'

The second important step is the design and implementation of the programme. Performing proactive inspections and enforcement the ECD will to a large extent rely on the procedure outlined in the monitoring and enforcement manual.

The main issues designing the implementation of the programmes will include discussion and decisions made on following:

- 1) Objectives/intentions of the programme. Will the programme aim at developing new legislation, enforcement of existing laws or is the programme aiming at creating awareness on certain issues.
- 2) How many inspections shall be conducted?
- 3) When will the inspections take place and for how long a period?
- 4) Who will conduct the inspections?
- 5) What exactly will be investigated and what methods will be used? From answering what will be investigated and how, a detailed standard checklist will be developed that will be used for all inspections
- 6) Having implemented the programme how will the results be reported. How will the information be disseminated and used for possible awareness raising?

Examples of possible 'Issues of the Year'

Examples of possible future proactive inspections and monitoring programmes are:

- Pig Farming in Sabah
- Likas River Bay Area
- Hill Slope Development in Kota Kinabalu and surroundings
- Landfills in Sabah

4.2 Environmental Monitoring Programmes

Environmental monitoring programmes include long term programmes set up to monitor environmental conditions and changes.

Conducting environmental monitoring programmes ECD aim to monitor the environmental resources to record any new problematic trends. As such, envi-

Environmental monitoring programmes are primarily data collection and analysis. The Planning Department will use the data and the findings from the monitoring in order to plan new specific ECD objectives and target areas. Findings may also lead to new areas of regulation and law making or can be used for awareness raising.

Examples of this kind of environmental monitoring are:

- The Mamut Mines Programme
- The Environmental Indicator Report
- The Air Quality Monitoring Programme.

The environmental monitoring programmes are selected according to following criteria:

- Environmental monitoring programmes have a relevance to policy and management needs (including the possibility of influence/change) and are in line with specific ECD objectives
- Environmental monitoring programmes are selected according to the polluting capability or risk and reflect a valued element of the environment or an important environmental issue (relevance according to scope and nature of the environmental problem)
- Programme targets are selected according to cost efficiency measures, which could include accessibility to the area(s), cost of sampling etc.