



IUCN – The World Conservation Union

Water Law Series – Issue 5

Effective Water Pollution Legislation

What are the common issues to be addressed to deal with water pollution?

Some of the common issues include having to:

- Decide who will be engaged in the process of developing the legislation, for example the community, professional groups, industry.
- Determine how 'pollution' is to be legally defined.
- Determine the water quality standards that are being managed for, which will vary according to particular water uses, for example for drinking, swimming, fishing or irrigation, or perhaps all of them.
- Deal with both existing sources of pollution and potential new sources of pollution, and when dealing with existing sources to achieve improvement without losing jobs.
- Address both point source and diffuse source pollution, the former being a far easier problem to deal with.
- Decide upon the scale at which water pollution issues are to be addressed: at the national, basin, state/provincial, catchment or local level or all, or a mix, of them.
- Decide how power is to be shared in controlling water pollution, including the benefits of establishing of an independent pollution authority, and what matters should be the subject of delegation, co-decision making, consultation with the community and so on.
- Address both private business and public authorities, such that public authorities enjoy no net benefit over private business by virtue of public ownership.
- Determine who will be given the power to seek effective compliance with, and enforcement of, the legislation and what compliance and enforcement options are to be included.
- Decide whether the time is right to develop a system to allow for the trade of pollution rights and if so, how such a system should be developed and administered.
- Ascertain how the effective administration of the legislation is to be financed, ie through general revenue, revenue generated through the application of the polluter pays principle, levies imposed on water users, or a mix of all of them.

All of these issues need to be addressed in the context of an existing legislative framework, one that establishes an independent and effective judiciary, the opportunity for judicial review of administrative decisions, an independent public prosecutors office and a system for environmental impact assessment.



What are the types of laws involved in establishing an effective legislative framework?

It does not take long to realise that a framework for the effective control of water pollution is no easy matter and that such a framework touches upon many areas of the law. For example, the legislative framework will need to address:

- Environment protection: to tackle existing (and future) point sources of pollution and to establish (or recommend) water quality standards/guidelines.
- Land use planning: to avoid the establishment of new (diffuse and point source) sources of pollution and to protect water catchments.
- Land/farm management/irrigation practices: to tackle diffuse sources of pollution and to protect water catchments.
- Vegetation management: to address diffuse sources of pollution and to protect water catchments, including the protection (or rehabilitation) of riparian zones.
- Catchment management: to ensure that the needs of the entire catchment are being addressed in a co-ordinated and effective manner.
- Water *quantity*: to ensure that water quality is not adversely impacted by inadequate flows to meet environmental and water quality needs.

Within this context, legislation must adequately address the need for improvement without closing down businesses and public utilities (other than in the most extreme cases), and hence it will need to address issues such as:

- Environmental improvement orders: to allow business and public authorities time to adjust to a new regime over a fair and reasonable time, including the possibility of cleaner production grants and 'soft' loans to facilitate this process.
- Polluter pays principle: to be implemented in a staged and progressive manner to allow business (and public authorities) time to adjust to a new regime over a fair and reasonable time.
- Performance bonds supported by guarantees: to guarantee performance of obligations.
- Environmental duties: to impose general duties of environmental care of all land users, especially those responsible for diffuse sources of pollution.

Where do I go for further assistance?

The IUCN Environmental Law Programme: see below for contact details.

IUCN Environmental Law Centre for the IUCN Environmental Law Programme

Contact the IUCN Environmental Law Centre at: waterlaw@elc.iucn.org

Visit the IUCN Environmental Law Programme Website at: www.iucn.org/themes/law

www.waterandnature.org - waterandnature@iucn.org