



**Flemish High Council of Environmental Enforcement (VHRM)**

## **Priority note prosecution policy environmental law in the Flemish Region 2012**

The Flemish High Council of Environmental Enforcement definitively adopted the text on 19 June 2012.

The Board of Procurators General definitively adopted the text, which was communicated by letter on 2 October 2012.

The Flemish Minister for Environment, Nature and Culture, Joke Schauvliege, and the Federal Minister of Justice, Annemie Turtelboom, signed the environmental enforcement protocol 'Priority Note Prosecution Policy Environmental Law in the Flemish Region 2012' on 18 March 2013.

## I. INTRODUCTION

Following consultation between all parties concerned within the framework of the Flemish High Council of Environmental Enforcement and following the Environmental Enforcement Decree (inserted as title XVI of the Decree of 5 April 1995 laying down general provisions relating to environmental policy), the priorities with regard to the prosecution of environmental crimes in the field of environmental health and environmental management law are determined below and guidelines with regard to its realisation are established. It is an update of the Priority Note Prosecution Policy Environmental Law in the Flemish Region, which was adopted by the Prosecution Policy Commission on 30 May 2000. An update was required as a result of the changed environmental enforcement landscape in the Flemish Region in the framework of the Environmental Enforcement Decree.

The fact that priorities with regard to the criminal prosecution of certain (types of) environmental crimes are determined, certainly doesn't mean that all other environmental crimes will no longer be given any attention or be reported or that it would be advisable to dismiss cases systematically or even that only administrative enforcement (e.g. if applicable the alternative administrative fine imposed by the Division for Environmental Enforcement, Environmental Damage and Crisis Management of the Environment, Nature and Energy Department) would be advisable.

When a specified category of environmental crimes is defined as a 'priority', the file will consequently be treated in the most effective way, both with regard to the criminal measures (e.g. criminal proceedings, amicable arrangement, praetorian probation<sup>1</sup>) and with regard to the administrative measures and fines.

In addition to the general agreements on the handling of reports of environmental crimes<sup>2</sup>, the following agreements apply:

- When an officer draws up a report of an environmental crime that is defined as a priority in this note, he may explicitly inform the public prosecutor's office of its priority nature. The reporting officer indicates as well as possible why the public prosecutor's office in question should handle the file as a priority. The reporting officer refers to the criteria and environmental crimes that are mentioned in this note. Of course, the public prosecutor's offices remain fully competent and responsible for the prosecution policy with regard to the environment.
- The inspection bodies give priority to supervising compliance with the regulations whose violation may constitute a priority environmental crime stipulated hereinafter. The detection also focuses mainly on the priority environmental crimes that are determined below. In the framework of the environmental enforcement programme of the Flemish High Council of Environmental Enforcement, these priorities can be concretised in an enforcement programme.
- If the officer sends the "feedback form reporting authority", as developed in the VHRM, together with the report, he is always informed of the way the public prosecutor's office handled the report.
- If the environmental crime is dismissed, the grounds for this decision are communicated.

---

<sup>1</sup> Praetorian probation is defined as the measures that are imposed by the Public Prosecutor as part of a criminal investigation and that will influence the final decision of the public prosecutor's office (dismissal, amicable arrangement, summons), depending on how the person concerned acts upon these measures.

<sup>2</sup> With regard to all the reports that are drawn up by the regional officials, the magistrates at the public prosecutor's office handling the reports are expected to send a receipt with a record number back to the administration.

These grounds should allow the officer who drew up the report to optimise his method of working further and/or to provide the public prosecutor's office with a well-founded request for reconsideration.

- The reporting authority commits itself to answer the claims and requests from the Public Prosecutor within a reasonable time. If there are reasons why no action is taken within a reasonable term, the reporting authority will inform the Public Prosecutor immediately.
- With regard to the environmental crimes, the reporting authorities can be called in following a well-founded request to take part in an investigation as a technical expert led by a magistrate or a judicial police officer (assigned by the magistrate), insofar as this doesn't burden a methodical approach of the administrative enforcement too heavily.
- The public prosecutor and the reporting authorities of the Flemish Region can bring an action for an injunction<sup>3</sup> with regard to the prosecutable matters mentioned in this note, which are a clear violation or which seriously threaten to violate one or several provisions of laws, decrees, ordinances or regulations concerning environmental protection. Each intention is communicated to the other authority involved. In urgent cases, the notification can also be given afterwards. The Flemish Region can bring an action for an injunction whenever an administrative measure that can be considered final is ignored.
- Upon request, the Division for Environmental Enforcement, Environmental Damage and Crisis Management (AMMC) gives periodical feedback to the Public Prosecutor about its decisions concerning fines. In accordance with the legal conditions applicable in this respect, the Public Prosecutor can give information to AMMC concerning relevant judgments in criminal cases regarding environmental crimes.
- The public prosecutor's office addresses the reporting authority to demand an appropriate measure before criminal court if necessary.
- Arrangements will be made between the public prosecutor's offices and the reporting authorities to have more clearness and uniformity with regard to the indictment codes that have to be used.

The indicated order of priorities under a section (whether in a numbered sequence or not) doesn't say anything about the mutual value of these priorities. The same goes for the order of the sections.

Within the Flemish High Council of Environmental Enforcement, the following model letters, used by the environmental enforcement authorities, were drawn up:

- Sending and decision form from the public prosecutor's office – original  
This template must be used to accompany a report to the public prosecutor's office. The public prosecutor's office will be able to inform the Division for Environmental Enforcement (AMMC) of the action taken – particularly criminal-law treatment, administrative sanctions or postponement of the decision.
- Sending and decision form from the public prosecutor's office – reminder  
This template must be used to remind the public prosecutor's office that the 180-day decision period has expired.
- Feedback form reporting authority/public prosecutor's office

---

<sup>3</sup> Action referred to in the law of 12 January 1993 concerning a right of action with regard to environmental protection (*Belgian Official Gazette* 19.2.1993).

If the inspection body chooses to join this document to the report when sending it to the public prosecutor's office, the public prosecutor's office can subsequently inform the reporting authority about the action taken by the public prosecutor's office.

Arrangements are made in the VHRM that are rather practical, that can apply additionally and support and streamline the course of the environmental enforcement procedures in a practical way. These recommendations can be found on the website of the Flemish High Council of Environmental Enforcement<sup>4</sup>.

The priorities in this note apply for a period of 5 years in principle. The priority note will be reviewed on the initiative of and within the Flemish High Council of Environmental Enforcement.

---

<sup>4</sup> <http://www.vhrm.be/documenten/milieuhandhavingsprotocollen>.

## II. GENERAL CRITERIA FOR ESTABLISHING PRIORITIES

### A. The seriousness of the environmental crime

The question whether the specific environmental crimes listed in parts III and IV of this note are priorities or not, should be answered on the basis of the criteria mentioned here. The environmental crimes listed in parts III and IV are thus priorities when a general criterion applies as well. The fact that one or more of the general criteria listed below are met can also be sufficient to justify why they are considered priorities.

The following criteria are general criteria:

- The serious consequences of the environmental crime are the most important criterion. These consequences can be: serious environmental damage and/or pollution and/or damage to nature and/or considerable risk for man, nature or the environment. Specific indications for the seriousness are among other things:
  - There is significant (clear) damage to public health
  - There is significant potential damage to public health
  - The damage is irreparable or very hard to repair (e.g. soil and groundwater pollution).
  - The extent of the damage is significant (e.g. fish mortality or a sewage works coming to a halt).
  - The environmental crime causes a significant non-compliance with applicable limits.
  - There is damage to the protected areas referred to in IV.A.1 or to protection zones for water collection.
- The organised nature<sup>5</sup> of environmental crimes, involving several establishments and/or persons. The interregional and/or international scale on which the environmental crimes take place.
- The systematic and long-lasting<sup>6</sup> nature of the environmental crime.
- The fact that the environmental crimes involve a substantial pecuniary gain for the offender/operator.
- Exploiting an establishment or carrying out an activity, when there is a general ban to do this.
- The absence of a required prior government authorisation (licence, admission) for exploiting an establishment or carrying out an activity, without (the start of) a regularisation.
- The fact that the establishment of the environmental crime gives rise to administrative measures.

---

<sup>5</sup> This doesn't apply to criminal organisations as meant by article 322 to 326 of the Penal Code

<sup>6</sup> Criteria that may lead to the long-lasting nature:

- if it is found that the offence is actually constituted of repeated offences;
- if the offender doesn't accept simple requests or advice for finding solutions;
- if the deadline to make reparations practically has been passed.

## **B. (Actively) opposing enforcement**

- Deliberate violation of the rights of monitoring
  - Denying or obstructing access
  - Denying or obstructing consultation or copy of business information
  - Denying or obstructing investigation of matters
  - Denying or obstructing investigation of means of transport
  - Denying or obstructing findings by audiovisual means
  
- Non-implementation, non-payment or ignorance of the imposed administrative measures, administrative fines, deprivation of gains, security measures or measures imposed by the judge.
  
- Antecedents
  - Several findings and/or convictions for environmental crimes.

### III. ENVIRONMENTAL HEALTH

#### A. General

- Environmental crimes that are the result of a structural lack of attention for the environment in a business context (a.o. insufficient environmental care system within the company). This is to prevent long-lasting or repeated pollution and/or damage or to control waste flows. This also includes seemingly accidental events that are partly caused by a structural lack of attention for the environment in a business context and that have serious consequences for the environment (see point II.A.1).
- Environmental crimes that occur in the context of activities that involve a high risk for the environment (a.o. establishments that work with substantial amounts of dangerous substances).
- Exploitation of uncomfortable establishments contrary to the establishment rules in accordance with Vlarem II<sup>7</sup>.
- Environmental crimes that can have a direct impact on the population and public health or cause excessive nuisance.

#### B. Waste<sup>8</sup>

- Dumping dangerous waste or large amounts of illegal waste, without a (start of) sanitation.
- Illegal collection, shipments and processing of company waste.
- Waste trafficking<sup>9</sup>, including:
  - Liquid waste,
  - Waste entering the human or animal food chain,
  - Waste subject to the acceptance duty,
  - Mix of soil and waste,
  - Waste containing asbestos.
- Violations as defined in the European Regulation on Shipments of Waste.

#### C. Soil

- Significant and irreversible pollution of the soil and the groundwater.

#### D. Manure

---

<sup>7</sup> Establishment rules include prohibitory provisions and distance provisions. Prohibitory provisions concern the incompatibility between, on the one hand, certain establishments or parts of establishments, and, on the other hand, certain activities, zones or areas. Distance provisions concern the minimum distances of establishments or parts of establishments that have to be observed in relation to certain activities, zones or areas.

<sup>8</sup> Decree of 23 December 2011 on sustainable management of materials cycles and waste.

<sup>9</sup> A type of environmental crime that meets one or more criteria of "serious crime", like the repetitive, organised, fraudulent nature, aimed at gaining high profits (e.g. through evasion, levies ...) or that is damaging to the environment and/or public health.

- Dumping of manure or other fertilisers; Illegal sale of manure;
- Illegal transport of manure in an organised commercial or professional context;
- Violations of the provisions for spreading manure on farmland and working manure into the soil;
- Not or insufficiently selling the produced manure.

#### **E. Surface water<sup>10</sup>**

Pollution of surface water or public sewers with objects and substances that disrupt the proper functioning of sewage works.

---

<sup>10</sup> Law of 26 March 1971, repeatedly amended as far as the Flemish Region is concerned.

## **IV. ENVIRONMENTAL MANAGEMENT**

### **A. Area protection**

Crimes committed in the following areas that have to be protected as a priority:

- The vulnerable spatial areas referred to in the Flemish Codex on Spatial Planning (VCRO);
- Areas for which Flanders bears an international responsibility (Bird Directive, Habitat Directive or Ramsar area);
- Nature reserves;
- The areas that are protected in accordance with the dunes decree (the protection of these areas implies a.o. the maintenance of an absolute building ban in the designated parcels of the coastal dunes).

### **B. Species protection (flora and fauna)**

Crimes committed against the following species that have to be protected as a priority:

- The species mentioned in the appendices II, III and IV of the decree of 21 October 1997 concerning nature conservation and the natural environment;
- Illegal trafficking and large-scale capture of protected species of birds;
- Killing protected birds of prey and other protected animals of prey, among other things by using poison, traps or by digging up burrows.

### **C. Nature conservation**

- Violations of the rules that cause nature to evanesce effectively or to be affected, like illegal vegetation alteration, relief and water balance alteration, which causes nature and small landscape elements to evanesce or to be affected.

### **D. Forest crimes**

- Illegal deforestation;
- Misappropriation of public woods;
- Other violations that cause real damage to the woodlands in the Flemish Region, taking into account the seriousness and importance of the matter, which will be explained in every report.

### **E. Hunting**

- Organised poaching

*(Translated by the Translation Service of the Belgian Federal Police – summer 2013)*