

*ADVANCED MONITORING IN FRANCE,
FROM MONITORING'S DECENTRALIZATION TO
NGOs' LEGAL ACTIONS*

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Introduction

1. *A classic command & control system :*
 - *Imperial decree adopted by Napoléon in 1810*
 - *Legislation on « Classified Facilities for Environmental Protection »*
 - *An inspection body supervised by the « préfet » (local representative of the government)*
 - *Administrative penalties decided by the « préfet » or criminal suits.*



2. Three kinds of facilities, according to their damaging effect on the environment :

- Permits (A)*
- Registration (E)*
- Declaration (D)*

3. Low Monitoring thus Low Enforcement

4. How far do legal actors use new technologies to improve environmental law enforcement?



1. THE LIMITED ROLE OF ADVANCED MONITORING IN THE PUBLIC ENFORCEMENT

1.1. The limited use of technology in the French monitoring system

- *No remote sensing*
- *Not planed in the “strategic program” of
the inspection body*
- *But : Annual Declaration System
and PRTR online*



1.2. *The decentralized monitoring*

1.2.1. *Self-Monitoring*

- *Water and air samples sent to the inspection body*
- *Transmission through a website*

1.2.2. *Periodic checking by a third party*

- *Not carried out by the inspection body, but by a third party*



- *The third party is private company licensed by the government and paid by the facility.*
 - *Onsite visits and report*
 - *Only major noncompliance is reported to the inspection body*
- ⇒ *Self monitoring and periodic checking are based on trust. Not as objective as remote sensing would be.*
- ⇒ *Onsite visits by the inspection body remain crucial, but are too few.*
- ⇒ *Private enforcement*



2. THE USE OF INFORMATION IN THE PRIVATE ENFORCEMENT

2.1. The reasons for the private enforcement

⇒ Public enforcement procedure

- Noncompliance detected*
- Formal notice of noncompliance*
- Delay to comply*
- Administrative penalty*



⇒ *Failure of public enforcement*

- *In 2012, 2662 formal notices of noncompliance*
- *In 2012, 295 measures of administrative penalties*
- *7 % of the onsite visits finally result in a criminal or an administrative sanction*

⇒ *It explains why NGOs use information dissemination to bring lawsuits.*



2.2. Information dissemination

*Right to information in environmental matters
: French Constitution (2005) ; Aarhus
Convention (1998)*

Helpful information for NGO :

- PRTR : online*
- Results of self-monitoring : need to ask to
the inspection body*



Onsite visits documents:

- *Visits reports : not accessible to the public*
- *Formal notice of noncompliance : accessible through online database*



2.3. The use of information by NGOs

⇒ Classic tort liability system

- Formal notice available online*
- Used as evidence that the facility did a fault*
- NGO has to prove that this fault caused an injury*



- *Classic material and moral damage will be compensate*
- *BUT, also the « pure ecological damage » will be compensate*

Pure ecological damage : the damage directly caused to the environment as such, which is different from the damages caused to the persons and the properties.

*⇒ Successful strategy :
the goal is to punish the polluter.*



Conclusion

- *We are just at the beginning of the use of technologies in the monitoring and enforcement.*
- *This is, for the time being, limited to online information dissemination.*
- *However, this can already be used to improve enforcement, notably by NGOs.*



Thank you !

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