

**MAHARASHTRA POLLUTION CONTROL BOARD**  
**LEGAL WING**

Shri C.S. Market Bldg., 4<sup>th</sup> Floor,  
Palton Road, Bombay-400 001.

**No.WP/LW/99**

**Dated : 13/1/1989**

To  
The Regional Officer-  
Bombay/HQ/Thane/Pune/Aurangabad/Nagpur/Nashik.

The Sub-Regional Officer-  
Bombay-I, II, III/Thane/Roha/Kalyan/Pune/  
Sangli/Aurangabad/Nashik/Akola/Nagpur/  
Nanded/Jalgaon/Tarapur.

The Field Officer-Ahmednagar.

**C I R C U L A R**

Sub : Up to date report about the compliance of orders issued  
By the Chairman, under Section 32(i) of the Water (Prevention  
& Control of Pollution) Act, 1974 and orders issued by the  
Courts in the various cases filed under Section 33 of the Water  
Act, 1974, as well as an undertaking has been given by the  
defaulting industries before the Court of Law.....

.....

The Bombay Environment Action Group has filed Writ Petition No.4564/88 against the Union of India and Others, in which Maharashtra Pollution Control Board, Bombay has been made one of the Respondents. The writ is filed mainly on the grounds that a writ of mandamus directing the Respondents to issue directions under Section 5 of the Environment (Protection) Act, 1986 or Section-133 of Cr.P.C. or any other appropriate action against the Respondent Nos.5, 6 and 7 respectively i.e. H.O.C. Ltd., HIL Ltd. and MIDC Rasayani be issued.

While finalizing the draft Affidavit the issue of steps taken by the Board after issue of prohibitory orders in terms of interim relief under Section 33 against the Respondent Nos.5 & 6 i.e. M/s.H.O.C. Ltd., and HIL Ltd., Rasayani was considered and a detailed discussion was held with Miss. S.I.Shah, Advocate for the Board and Shri Gokhale, Asstt.Public Government Pleader for the State of Maharashtra. The following issues come up for discussion.

- 1) What action the Board has taken after issue of interim orders against the Respondent Nos.5 & 6 respectively ?
- 2) What action the Board has taken after filing applications under Section 33 of the Water Act, 1974 against M/s.M.A.I.D.C. ?

: 2 :

- 3) Whether the officers of the Board has kept strict vigilance on the compliance of interim order issued by the Court ?
- 4) Whether sample under Section 21 of the Water Act, 1974 has been collected from time to time to check up the quality of waste water discharge from the factories of Respondent Nos.5, 6 and 7 respectively.
- 5) Whether the officers have visited the factories of Respondents from time to time and accordingly visit report have been prepared ? What suggestions are made by the officers concerned to the factories of the Respondents ?
- 6) Whether non-compliance if any, was reported to the court from time to time ?

The above issues are to be considered carefully in the cases, where action under Section 33 of the Water Act, 1974 have been taken or likely to be taken to restrain the apprehended pollution. Hence all the Regional Officers and Sub-Regional Officers and Field Officers are requested to prepare separate list of defaulting industries against whom applications under Section 33 of the Water Act, 1974 have been filed and the same are pending, disposed off either on the basis of an undertaking given by the defaulting industries before the court or wherein the court has been issued interim orders or permanent orders restraining the defaulting industries from discharging polluted waste water not conforming to the standards prescribed by the Board, but the defaulting industries have contravened the said orders or undertaking given before the Court. On still discharging waste water not conforming to the standards prescribed by the Board even after action taken under Section 33 of the Water Act, 1974.

The Water (P&CP) Act, 1974 itself penalize failure to comply with any direction issued by a court under Sub-Section 2 of Section 33, under Sub-Section 2 of Section 41 of the Water Act, 1974. It becomes necessary to identify the cases filed under Section 33 of the Water Act, 1974, wherein directions have issued by the courts under sub-section 2 of section 33 or an undertaking have been given by the defaulting industries before the courts, which have failed to comply with any direction issued by the courts or an undertaking given before the court.

It is felt that the defaulting industries, who have failed to comply with any direction issued by the courts under Section 33 shall be reported to the Board office for further necessary action. In some of the cases, wherein interim relief were granted by the courts and cases have come up for final hearing, the courts itself have specifically inquired about the compliance of order issued by the court and insisted upon visit report as well as sample report etc.

: 3 :

It becomes necessary to collect sample under sec. 21 of the Water Act, 1974 from defaulting industries, which are likely to endanger the environment after issuing of directions or an undertakings given by them within reasonable time and to prepare detail visit report based on the observations of Regional Officer/Sub-Regional Officer/Field Officer on the basis of vigilance sample report and investigation on the spot.

All the Regional Officers/Sub-Regional Officers/Field Officers are therefore, requested to identify such cases of defaulting industries, who have failed to comply with directions issued by the courts or an undertaking given before the court. They are also requested to keep close watch on the activities of sensitive defaulting industries and to prepare a detailed visit report of such industries based on vigilance sample report, Law Evidence Sample report and personal observations. They should send their comments regarding such defaulting industries to the Board Office under intimation to this office. It is also advisable that in case of other defaulting industries also the practice of preparing visit reports based on sample reports and personal observations shall be observed and results of samples taken under section 21 as well as vigilance samples should be sent to the defaulting industries alongwith the comments regarding the quality of waste water discharged by the factories and where ultimately it reaches and what type of pollution it creates. ?

The Regional Officers / Sub-Regional Officers / Field Officers are also requested to prepare a separate register of cases filed in their region giving details of case No., name of the court, date of filing, name of parties, name of Advocate, next date and stage of the cases etc. so that they will be in a position to know the exact position of the cases filed, Pending and disposed off from their region. They should report the next date and stages of the case in the first week of the month regarding the last month about the cases.

The above guidelines are issued on the basis of discussions held during finalization of affidavit reply to the petition and the insistence of the various courts on the report of non-compliance, Law Evidence Sample etc. The same may kindly be perused in the cases, wherein applications under sec. 33 of the Water Act, 1974 have been filed, wherein interim/permanent directions are issued by the court or undertakings have been given before the courts and the industries have failed to comply with such directions/undertakings.

Sd/-  
(D. T. Devale)  
Law Officer

: 4 :

- 1) Copy submitted to the Hon'ble Chairman, M.P.C. Board, Bombay-400 023 – for information and necessary orders if any.
- 2) Copy submitted to the Member Secretary, M.P.C. Board, Bombay -400 023 for information and necessary record.
- 3) Copy f.w.cs. to the Law Officer(HQ) for information and necessary suggestion, if any.

## **INTRODUCTION**

The Paper is a single volume discussion covering all the aspects of law evidencing sample i.e. sample collected under Section 21 of the Water (Prevention & Control of Pollution) Act, 1974. Much effort has been taken to provide all the possible information and the subject is discussed in multiple angles to cater the diverse interests of the reader.

This paper is divided in to six heads. First head describes the meaning & evidential value of the sample collected under Section 21 of the Water (Prevention & Control of Pollution) Act, 1974. Second head deals with the purposes of Examinations of industrial wastes. Third head describes in detail procedure to be followed at the time of collection of sample under Section 21 of the Act and on receipt of the report under sub-section (1) of section 22 of the said Act. Whereas Fourth head enumerates illustrates methods of sampling in short, Fifth head provides details of collection & preservations of sample and last head gives necessary information, on proof of documentary evidence. The paper has wide applications and it can be used in many ways. Needless to say that the paper would be highly useful to the officers of the Pollution Control Board collecting samples.

Sd/-  
( D.T. Devale)  
Law Officer

## **LAW EVIDENCE SAMPLE**

**MEANING** :- The Water (Prevention & Control of Pollution) Act, 1974 has not defined the word "Law Evidence Sample", however, since the analysis of the sample of any sewage or trade effluents taken under sub-Section (1) of Section 21 of the Water (P&CP) Act, 1974 (hereinafter referred to as "the said Act") shall be admissible in any legal proceedings after compliance with the provisions of sub-sections (3), (4) & (5) of the section 21, it is termed as "Law Evidence Sample" It's evidential value- In a Criminal trial, an accused is presumed to be innocent and the un-shifting burden of proving beyond reasonable the crime complained of in all its ingredients and that the accused is author thereof is on the prosecution. It is necessary for the prosecution to place necessary material on record from which, the court is placed in a position to conclude that the prosecution case must be "true" as distinguished from "may be true". It is certainly not for the accused to prove his innocence, on the contrary law presumes it in his favour. The evidential value of sample taken under section 21 of the Water Act, 1974 assumes much more importance in view of the fact that a prosecution under the said Act is mainly based on sample collected under Section 21 of the said Act.

## **PURPOSE OF EXAMINATION**

Taking into consideration evidential value of collection of sample under section 21 of the said Act, it becomes necessary to know exact purpose of examination before collecting sample.

## **PURPOSE OF EXAMINATION OF INDUSTRIAL WASTES**

Pollution is a serious problem ever since sewage and industrial effluents are disposed into water courses and on land. These effluents contain a wider variety of materials of both organic & including toxic substances and are usually discharged with or without treatment into surface waters such as rivers, streams, lakes or into oceans or on land or into sewers. The solid wastes produced in these industries are not given so much importance as they are either recycled, dumped or disposed of to remote places. Liquid industrial wastes are of a great concern because of the harmful effects.

Industrial wastes are examined for the following reasons viz : (i) to find out the pollution load that would be exerted on receiving waters or on land or on sewers. (ii) to

: 2 :

find out the presence of toxic constituents such as cyanide, cadmium, mercury etc. and to evaluate the degree of toxicity . (iii) to find out the substances that cause difficulties in treatment. (iv) to find out the treatability & to design an effective treatment. (v) After commissioning of treatment plant to check up the effectiveness of the treatment and to monitor it (vi) Receiving waters should also be examined to assess their quality to find out the pollution in the upstream and to decide its ability to accept the pollution load and to determine the degree of self-purification within a given stretch.

It will be seen that the samples are collected not only for the purpose of initiating legal action but also for the aforesaid purposes. The sampling and the analysis of industrial effluents require greater care and attention and it is necessary to study during sample collection, the waste load, major sources of wastes within a plant, character of wastes, potential recovery of valuable materials at profit and the effect of discharge of wastes on receiving body of water.

#### **PROCEDURE TO BE FOLLOWED AT THE TIME OF COLLECTION OF SAMPLE**

It becomes necessary to study the provisions contained in Section 21 of the said Act, to know the intention of the legislature behind them. Sub-Section (1) of Section 21 of the Act deals with the power of State Board or any officer empowered by State Board in that behalf to take sample. Therefore, it becomes necessary to authorize number of officers to collect sample under Section 21 of the Act from any sewage or trade effluents, which is passing from any point or vessel or from over any place into any such stream or well. The Maharashtra Pollution Control Board has authorized the Regional Officers and Sub-Regional Officers of the Board to collect sample under Section 21 of the Act in its meeting held on 17-08-1982 vide Resolution No.16 to the Minutes of the said meeting. The authority granted by the Board vide Resolution No.16 to the minutes of 58<sup>th</sup> meeting is a requisite document to be kept by the Officer empowered in that behalf at the time of collection of sample. The details of sampling should specify the authority under which, the Officer is empowered to collect the sample. As stated above, the industrial wastes are to be examined for various purposes and hence it becomes necessary to authorize Field Officers also to collect sample for aforesaid various purposes, so that important sampling can be done by the Regional Officers and Sub-Regional Officers and other sampling can be done by the Field Officers.

: 3 :

The samples are to be collected from any stream or well or samples of any sewage or trade effluent which are passing from any plant or vessel or from or over any place into any such stream or well.

The result of any analysis of a sample of any sewage or trade effluent taken shall not be admissible in evidence in any legal proceedings unless the provisions of subsections (3), (4) & (5) of Section 21 of the Act are complied with.

The first point, which attracts attention is that in every case the giving of Notice has been made compulsory. Notification of the intention to have article analyzed by the person taking the sample is essential for prosecution. The principle underlying the said requirement of the statute is to give an opportunity to the person in-charge of, or having control over the plant or vessel or in occupation of the place or any agent of such occupier to see that the sample is fairly taken, to give an opportunity of having it analyzed at his instance. The law requires notice to be given only to the person from whom the sample is taken and to none else. This is with a view to prevent plea from being raised that the sample sent to the Analyst was of water different from the one from which Officer empowered has taken.

Service of notice on corporate bodies and societies-service of notice on a corporation may be effected by serving it on the person in-charge of, or having control over the plant or vessel or in occupation of the place or any agent of such occupier. A service of a notice is sufficient when a clear proof of its dispatch is in the possession of the sender or dispatcher. Section 21 envisages service of notice then and thereby tendering personally to the recipient or his agent. If service cannot be effected by the exercise of due diligence, the serving Officer shall affix one of the duplicates of the notice to some conspicuous part of the premises in which, factory is situated and make necessary reference to that effect in details of sampling, such as refusal of recipient or his agent or willfully absence etc. Because a notice is said to be actual notice when a person acquires actual knowledge of fact and secondly a notice is constructive or implied when the law presumes a person have the knowledge of a fact but for negligence and willful abstention from the enquiries and searches he did not have the knowledge of the fact.

Sub-Section 3 of Section 21 of the Act Ordains under Clause(d) that the person taking the sample shall send one container forthwith (i) in a case, where such sample is taken from any area situated in a Union territory to the Laboratory established or recognized by the Central Board under Section 16 and (ii) in any other case, to the laboratory established or recognized by the State Board under Section 17 Clause(2) states that on the request of the occupier or his agent, to send the second container (i) in a case where such sample is taken from any area situated in a Union Territory to the Laboratory established or specified under sub-section (i) of Section 51 & (ii) in any other case to the Laboratory established or specified under Sub-Section (1) of section 52. It will be observed that while the Water Act, 1974 has used the word “Forthwith”, the Air Act, 1981 has used words “without delay” The word “further” and the word “immediately” has not been defined anywhere and must be interpreted in their ordinary dictionary meaning.

Sub-Section (4) of Section 21 of the Act prescribes procedure to be followed where sample is taken under sub-section (i) & the person taking the sample serves notice on the occupier or his agent willfully absents himself. But Sub-Section (5) of Section 21 of the Act further prescribes procedure to be followed where a sample of any sewage or trade effluent is taken for analysis Sub-Section (i) & the person taking sample serves Notice on the occupier or his agent & the occupier or his agent, who is present at the time of taking sample does not make a request for dividing the sample in two parts as provided Clause (b) of Sub-Section (3).

In short Section 21 contemplates three different situations wherein three different procedures are to be followed after collection of sample u/s 21 of the Act.

4) **Method of taking sample for analysis :-**

A general and sweeping statement in details of sampling to the effect that all formalities were duly complied with would not be deemed to be sufficient. It is of utmost importance that in a case where penalties severe, the requirements in matter of taking sample should be very carefully observed.

- (a) Information to be obtained during collection of water sample by person taking samples –

: 5 :

(i) Exact location and name of place (ii) Depth below surface, (iii) Rate of flow, (iv) Whether the water level is above or below average, (v) Recent rain fall or flood conditions, (vi) possible sources of pollution (Trade effluent / sewer drains), (vii) Temperature of water, (viii) Results of Field tests.

The duty of sampling personnel does not end just with the collection of samples. He has to obtain various information from the industry, which would be highly useful in the analysis of the samples to decide the constituents to be determined, the appropriate quantity of them in the effluent sample and to have a check on the analysis and to evolve an effective & economical treatment design. Before collecting the samples, the sample collector should go around the factory and has to observe the processes carried out and streams of effluents/outlets. He should at least know the basic details of processes and points of generation of effluents. Details of existing treatment & analytical data would be highly useful. A general information is given below. Suitable additions or alternations may be made in this information as per the industry or water course while obtaining the information.

(b) Information to be obtained during collection of sample from industry :-

- i) Name of the industry, Occupier or his agent & persons incharge of & responsible to the company for the conduct of business of the company as well as company alongwith designations and official as well as residential addresses, phone etc. – This facilitate to investigate persons responsible for offence at the time of collection of sample itself.
- ii) Person in occupation of the place or any agent of such occupier upon whom notice under Section 21 is served & in whose presence sample is taken for analysis alongwith their names, designation & addresses.
- iii) Materials manufactured and raw materials – Process involved in short alongwith flow chart.
- iv) List of effluent streams/outlets

: 6 :

- v) Possible contaminations and specific mention on toxic substances such as cyanide, phenol, free ammonia etc. alongwith approximated quantities of them in the effluent.
- vi) Is there any treatment given at present and mode of disposal (whether into surface water or into land or into sea) Include details of recovery or recycling if practiced.
- vii) Proposed future treatment and ultimate point of disposal (including design, availability of space etc.)
- viii) Is a water course, a source of potable water for municipal supply ? Is it possible to discharge the waste into the Municipal sewage system? Or any other disposal suggested ?
- ix) Describe the nature of soil stream & possibility of seepage etc., proximity of wells & surface streams nearby land where effluents disposed off to lessen limits, prescribed by the authority for discharge of effluents. As per consents of I.S.I. etc.
- x) Is there any treatment method proposed by the authority ? If so give full details ? Does the industry have adequate water for diluting the effluents.
- xi) Is the industry given any deadline for completion of treatment plant etc. ?

The above information may be enumerated in details of sampling in order to make perfect sampling and it will be a sort of investigation to be used at the time of preparing draft complaint, suggesting any additional treatment and disposal arrangements etc. It is felt that Field Officers should collect the above information at the time of their visits & prepare visit report to that effect. The said information can be confirmed at the time of taking sample and then utilized by the person taking sample under Section 21 of the Act. Thereafter , method of sampling can be determined. A book on Methods of sampling & testing vegetable oils and fats under Ag mark issued by the Agricultural Marketing Advisor to the Government of India, New Delhi is of help in showing that the samples

should be taken by some Scientific method. It is always said that “ No amount of correct analysis can make up for incorrect sampling”

In M/s.Ulta Danga Oil Mill v/s Corporation of Calcutta<sup>1</sup> besides saying that he took sample, the Food Inspector did not describe how or in what manner he took the sample of oil from the tank or the drum. It was held that it cannot be said with certainty that the sample was taken in dry & clean phials & since there is no evidence as to in what manner sample was drawn, it cannot be said with certainty that the analysis has been correct and can be depended upon. It is quite possible that the analysis that was done by the public analyst was incorrect sampling.

The Water Act, 1974 lays down that the sample shall be divided into two parts in the presence of the occupier or his agent & each part be placed in a container, which shall be marked & sealed & shall also be signed both by the person taking the sample & the occupier or his agent. All that it says that the Officer taking the sample shall cause the sample to be placed in a container or containers, which shall be marked & sealed & shall also be signed by the person taking the sample & the Occupier or his agent.

This is also a mandatory provision & where it has not been complied with, the prosecution must fail. The sample should be collected from one whole bulk, the purpose being each part of the sample should represent the whole. In a case under the Prevention and Food Adulteration Act, 1954, it was held that where the evidence showed that the oil taken in the jug was filled in two bottles & some more oil was also taken & there was no evidence that the jug in which oil for sampling was taken was clear & dry, it could not be held that the sample sent to the Analyst was necessarily a representative sample<sup>1</sup>. In Anil Kumar V Food Inspector<sup>2</sup> the Food Inspector has taken 9 bottles of carbonated water. The evidence showed that the 9 bottles were neither opened nor its contents mixed. The samples were not divided in 3 separate parts. 3 samples of 3 bottles each were stated to have been taken and only 1

---

1(1953) 2 Cr.L.J. 448

1 Bansilal v/s State of M.P. 1981 F A J – 6

2 1982 (1) F A J 47

sample was sent to the Public Analyst. There was not a evidence to show that the contents of 3 bottles were common. It was held that manner of obtaining sample was improper & illegal. Thus person taking sample should take utmost precaution at the time of collection of sample and should carefully write down details of sampling giving true picture of collection of sample.

5) **Collection & Preservation of Samples :**

Effluents samples are collected for various examinations. Mostly, the sample is subjected to physico-chemical examination effluent from tannery, cannery, gelatin & glue manufacture, slaughter house, poultry should also be examined for their micro-biological quality. If the effluent is discharged into surface water, then two samples, one from the water course on from the upstream & other from down steam should also be collected & examined whatever may be method of sampling, it must represent the conditions existing at the point.

- a. **Quantity of sample** :- The sample must be of sufficient quantity to carry out all determinations
- b. **Sampling Points** :- In sampling water, the sampling point should be chosen carefully so that a representative sample of water to be tested is obtained. The quantity & sampling point must be given in details of sampling.
- c. **Samplers** :- For trade wastes & sewage, special type of samplers are not necessary. But for samples of water, sampling devices to meet the specific requirements are needed, especially for collecting samples for Dissolved Oxygen. When composite samples are to be collected, it is better to use wide mouthed bottles of capacity 200-300 ml. for sub-samples. Liquid samples are broadly classified into two major groups viz. the one called instantaneous, spot or grab sample and the other continuous or composite sample – A grab sample is manually collected single portion of sample of water or waste water. When the grab samples of a particular water or waste water is collected at regular intervals for a specific period say for 12 hours or 24 hours and mixed, then integrated sample is known as ‘ composite sample’.

- d. **Labeling of samples** :- The sample containers have to be labeled with the following information
- (i) Sampling number (ii) Date & time of sampling (iii) Industry from where sample is collected (iv) Effluent stream/outlet in details (v) Name & signature of sample collector, One O.C. of label may be attached with the details of sampling alongwith code no. given to it.

- e. **Preservation of Sample** :-

Samples are preserved as soon as they are collected to resist changes that occur during transportation to the Laboratory and in the time lapse between collection & analysis. It is always desirable to analyze the sample as soon as possible after collection. What preservation methods are adopted during the transit may be enumerated in details of sampling. In order to overcome difficulties in preservation, it is felt that sufficient number of Laboratories may be established or specified to analyze the sample as soon as possible after collection.

6. **Information on proof of necessary documentary & oral evidence** :

The documentation is one of important function. The general rule is that document may be proved either by primary or by secondary evidence. As per Evidence Act, the document must be proved by primary evidence i.e. producing document itself except in certain circumstances such as (i) when the original is in the power of or possession of the opposite party or of any person out of reach of or after requisite notice such person in custody does not produce it (ii) When existence or contents of the original are proved to have been admitted in writing by the person against whom it is to be proved. (iii) When the original has been lost or destroyed, not to be easily movable (iv) when the original is a public document in that case, only a certified copy of document is admissible etc.

**Procedure to be followed after receipt of results of sample taken under Section 21 of the Act.**

1) As per sub-Section 3 of Section 22, the Government Analyst is required to submit a report in the prescribed form of the results of the analysis in triplicate to the State Board. On receipt of such report, one copy of report shall be sent by the State Board to the occupier or his agent referred to in Section 21 another copy shall be preserved for production before the court in case any legal, proceedings are taken against him and the other copies shall be kept by the concerned Board for record.

The question arised as to whether the Govt. Analyst is submitting a report in triplicate to the Board ? It is further necessary to send one copy of the report to the occupier or his agent. You are, requested to go carefully through the provisions of Section 21 of the Water Act, 1974 and rules made thereunder. The sample should be collected strictly following due procedure laid down under the Act. The details of sampling should contain the point of discharge from where samples are collected, the position of treatment and disposal arrangement, where the effluent s are discharged after treatment and disposal arrangement ? Whether these arrangements are adequate and satisfactory ? In whose presence samples are collected ? What procedure was followed during collection of samples ? (Sealing, Marketing etc.) Who has signed notice of sample collection? with whom samples are sent to Govt.Analyst ? and on what date and time ?

2) As per Rule 33 of the Maharashtra Water (P & CP) Rules, 1983, the report of the results of the analysis is to be submitted by the Govt. Analyst under Sub-Section 22 shall be in Form 'E'. The Form 'E' prescribes form of report of Govt. Analyst. It is necessary to write down the method of analysis as per prescribed form 'E'. It appears from the various reports that the method of analysis is not given in the report. The above lacuna is brought on the record of Judgment and Order dated 31.03.1986 in M/s.Panchsheel Paper Mills Ltd., to discard the report of Govt. Analyst. The documentation is to be properly done because one single principle runs through all the propositions relating to documentary evidence is that the very object for which writing is used is to perpetuate the memory of what is written down and so to furnish permanent proof of it. In order that full effect may be given to this, two things are necessary, namely that the document itself should whenever, it is possible, be put before the Judge for his inspection, and that if it purports to be a final settlement of a previous negotiation as in a case of written contract, it shall be treated as final & shall not be varied by word of mouth. There is no use in writing a thing down unless the writing is read. The contents of documents must be proved either by the production of the document, which is called primary evidence or after satisfactory accounting for failure to produce the original by copies or oral account of the contents, which are called secondary evidence. It becomes necessary to examine as to what type of primary documents are to be prepared and kept ready at the time of collection of sample under Section 21 of the Act.

(1) **Notice of taking sample.**

The first document set out in clause(a) of Sub-Section 3 of Section 21 is the giving of a notice in writing to the person from whom the sample is taken giving details, place from where it is collected ? and where it is flowing & ultimately reaches ?, intimating his intention to have the sample analysed.

The above document is necessary document under Section 21 of the Act as stated earlier, failure to give notice, leads to failure of prosecution. The Water (Prevention and Control of Pollution) Act, 1974 state about notice of intention to have the sample analysed, to be given under Section 21 of the Act, however, Maharashtra Water (P & CP) Rules, 1983, in Form-A under Rule 26 speaks about notice of intention for collection and analysis of sample. This Maharashtra Rules intends to give notice for collecting as well as analysis of sample. The Rules intended to given an opportunity of hearing at the time of collection also.

(2) **Details of sampling or Panchnama** :- The second important document from which details of method of sampling can be judged is “Details of sampling or panchnama”. Panchnama is memorandum of what happens in the presence of the panchas as seen by them and of what they hear. The Water (P&CP) Act, 1974 does not speak anything about the collection of sample in the presence of panchas, hence unless there is any judgment of High Court or Supreme Court to that effect, person taking sample must follow procedure laid down under Sub-Section 3, 4 & 5 of Section 21 scrupulously. The object of Section 21 is that the proceedings of person taking sample should inspire confidence. As stated above, the duty of sampling personnel does not end just with the collection of samples. He has to obtain various information from the industry which would be highly useful in the analysis of the samples to decide the constituents to be determined, the approximate quantity of them in the effluent sample and to have a check on the analysis and to evolve an effective and economical treatment design. The details of sampling should give following details (1) the person present at the time of collection of sample, marking, sealing and sending it for analysis alongwith their names, designations, residential as well as official addresses.

(2) persons in occupation of the place or any agent of such occupier upon whom the notice is served and in whose presence sample is collected for

analysis. If possible it should contain the names of persons incharge of & responsible to the company for the conduct of business of the company as well as company alongwith names, designation, residential as well as official addresses.

(3) Position of treatment & disposal arrangements, manufacturing plant, materials manufactured and raw materials used in the process with information about process involved, possible contaminations and specific mention on toxic substances such as cyanide, phenol etc. alongwith approximate quantity of them in the effluent.

(4) List of effluent streams/outlets with source of water (surface water/ground water/ocean) giving exact point of sampling where it ultimately discharged and meets stream or water resources 5 proposed future treatment and ultimate point of disposal of effluents (including design, availability of space etc.).

6. The method of sampling from the time entering the factory, inspecting premises till sample is sent for analysis to the Laboratory. This should give details about the inspection containers, quantity of sample, marking, sealing, quantity of sample, collection and preservation of sample and with whom it is sent for analysis.

The details of sampling should further specify the nature & colour of the effluent based on their observations and analytical data, with details as to any treatment method proposed by the Authority and does the industry have adequate water for diluting the effluents ? etc. How sample is collected ? and whose assistance is taken for collection of sample ? The details of samples should be signed by the person taking sample and person present at that time of collection of sample.

3. **Labelling of sample** :- The label is prepared for the information of analyzer and person taking sample. After sample is handed over to Laboratory, for analysis, code number should be written on the label so as to link it with the Report of Analyst. In Municipal Board Faizabad v/s Lal Chand Shrajmal. The point raised was to effect that the link evidence had not been produced to establish that the sample that was sent to the Public Analyst was the same sample that had been taken from him by the Food Inspector. This document is prepared for the sake of person taking sample only, hence, it need not be shown to the occupier.

**Report of Board Analyst and Public Analyst :-**

The Board Analyst shall deliver in form B under Rule 27 of the Maharashtra Water (P&CP) Rules, 1983, a report to the Regional Officer or Sub-Regional Officer of the Maharashtra Pollution Control Board, who has collected sample under Section 21 of the Act and sent it for analysis under Clause (ii) of Sub-Section 3 (d) & 5 of Section 21 of the Act. The Maharashtra Pollution Control Board has established or recognized the Laboratories under Sub-Section(2) of Section 17 of the Water Act, 1974, however, the Maharashtra Pollution Control Board has not appointed Board Analyst for the purpose of analysis of samples of water or of sewage or trade effluent to send for Laboratories established or recognized under Section 17 of the Act. This is important requirement to be fulfilled as early as possible. However, since Laboratory is established by the Maharashtra Pollution Control Board, it should submit report of result of the analysis under sub-Section(1) of section 22 of the Act in Form B.

The Govt.Analyst appointed under sub-section (2) of Section 53 for the purpose analysis of samples of water or of sewage or trade effluent sent for analysis to any laboratory established or specified under sub-section(1) of Sec.52 shall deliver in Form E under Rule 33 of the Maharashtra Water (P&CP) Rules, 1983, a report to the Regional Officer or Sub-Regional Officer of the Maharashtra Pollution Control Board, who has collected sample under Section 21 of the Act and sent it for analysis under clause (i) (ii) of Sub-Section 3(e) & cl.(9) of Sub-Section 4 of Section 21 of the Act.

The Maharashtra Pollution Control Board has to establish or specify State Water Laboratories under Section 52 of the Act. It is further necessary to appoint such person to be Govt. Analysts for the purposes of analysis of samples of water or of sewage or trade effluent sent for analysis to any Laboratory established or specified under sub-section (1) of Section 52. At this stage, it is to be examined as to whether Report of analysis is submitted in the Form B or in the Form E as the case may be. In Criminal Case No.100/84 filed by Maharashtra Pollution Control Board v/s M/s.Panchsheel Paper Mills, Jalgaon, it was observed that the Govt. Analyst report was not in proper form. The report was salient about the method of analysis. It was necessary that the Govt. Analyst has

to write down the details of analysis and the method of analysis. It becomes therefore, necessary for the Officer in receipt of report as to whether, it is submitted in the prescribed form i.e. Form 'B' or 'E'. Non-compliance with Rules affects evidentiary value of the Report. The Rules are framed in order to prevent the possibility of tampering with the sample, before it reaches the Public Analyst. It is the report or the certificate issued after such analysis that virtually concludes the accused against himself. Hence, the report should give details of analysis and method of sampling as required in Form 'B' and 'E' respectively. The necessary witnesses to be examined on the collection of sample are.

- 1) Person taking sample.
- 2) Any other person other than representative of factory in whose presence sample is collected.
- 3) Any other Asstt. Or employee of the Board present at the time of collection of sample.
- 4) Carrier of sample to the Laboratory.
- 5) Govt. Analyst/Board Analyst on the point of analysis, if necessary. It is not a rule of law that the evidence of person taking sample cannot be accepted without corroboration. He is not an accomplice nor is it similar to the one as in the case of wills, where the law makes it imperative to examine an attesting witnesses under Section 68 of the Evidence Act to prove the execution of the will. The evidence of the person taking sample along if believed can be relied on for providing that the samples were taken as required by law 1.

When person taking sample is unable to enlighten the court on certain material points the defence is perfectly justified in making a request to the court to better summon the Public Analyst, to submit himself to examination<sup>1</sup>. Where the guilt or innocence of the accused turns entirely on the result of the chemical analysis as to the presence of certain ingredients in the article before the Court, it is desirable that the chemical Analyzer should be examined in support of his report and an accused given an opportunity of cross examining him<sup>2</sup>. However, when the prosecution has established it's cases prima facie there is no duty cast upon the prosecution to anticipate some line of defence and to exclude by further expert testimony.

---

1.Babulal Hargovind as v/s State of Gujarat A.I.R. 1971 S.C. 1277 at Page 1280.

The next witnesses to be examined on behalf of the prosecution to corroborate the evidence of the prosecution are any other independent person other than representative of the factory in whose presence sample is collected – The law nowhere prescribes that the prosecution is bound to examine all the witnesses in whose presence the sample was taken or other official/employees besides the person taking sample nor does it anywhere lay down that unless at least two non-official witnesses in whose presence the sample is taken support the complainant's case, no conviction can be recorded. It is not uncommon that witnesses are won over by the accused. It is now well settled that the prosecution is not bound to produce witnesses who according to its information are not going to support its case either because they have been won over by the accused or for some other reason. However, in cases where other witnesses are not examined the person taking sample should be in a position to give appropriate reasons for the same at the time of examination. What has to be seen in a particular case, is whether on the basis of the evidence which has been examined in the case, it can be believed that the sample, which was found to be polluted was taken by the person taking the sample or if the evidence produced is unreliable or shaky or of a doubtful nature. Even if the evidence is not altogether unreliable, if it is shaky or doubtful nature, the courts would certainly give the benefit of the same to the accused, but if the evidence establishes that the sample was taken properly by following scrupulously due procedure for the collection of sample, then though no witness has been called in the witness box in support of the person taking sample and there is no reason why his solicitor statement may not be believed. However, it is to be remembered that the prosecution case will stand or fall on the merits of the evidence examined in support of the same. Hence, it becomes

---

1 Narayan Rajaram Wani v/s State of Maharashtra 1978 Cr.L.J. 1483 at Page 1485(Bombay) Emperor (A.I.R. 1944) Behram Shenkar Irani Irani v/s Bombay 321

necessary to examine other independent witness & official/employees of the Board present at the time of collection of sample to corroborate evidence of the person taking sample or to show that, the sample is taken properly by following all due procedure laid down for collection of sample or to bring forward any other additional evidence to support the evidence of the person taking the sample.

The next witness to be examined by the prosecution is the carrier of the sample to the Public Health Laboratory or Board Laboratory as the case may be. It is to be remembered that only acknowledgment of the Public Analyst/Board Analyst reg. sample is intact or not tampered will not sufficient and it becomes necessary to examine carrier of sample to corroborate the evidence of Public Analysts acknowledgment whenever acknowledgment is itself doubtful. In Hari Om v/s State of Punjab, the sample said to have been taken to the Public Analyst by Karamchand, Peon, but he has not been examined in court and therefore, there is no evidence to show that Rules 17 & 18 of the Prevention of Food Adulteration Rules were complied with. The accused were entitled to an acquittal on the ground that there is a clear cut breach of Rules 17 & 18 being mandatory and that non-compliance of the same vitiates the trial. Musa Mahi Book Shaik v/s State of Maharashtra<sup>1</sup>, it was observed that in absence of any specific evidence of the Inspector about the Outer cover itself being damaged must be held that Rule 17 was not complied with and therefore, the accused was entitled to an acquittal this ground alone. The finding is that whenever evidence of the other witnesses is not sufficient show that sample reached to Public Analyst / Board is not in tact, then, the carrier of same should examined on behalf of the prosecution

---

1. 1982(1) F.A. 66    1 1982(1) F.A.C. 385 at P.

Conclusion :- The statutory provisions seem to attach same sanctity to the report of the Government Scientific Experts including the Chemical Examiner and Asstt.Chemical Examiner, whose reports are made admissible even without the requirement of their stepping into the witness box, however, it become necessary to prove beyond reasonable doubt that all other requirements are being complied with. Hence, it becomes necessary to know above multiple angles of law evidence sample. It is hoped that the paper has wide application and it can be used in many ways. The L.E.S. speaks itself about guilt, hence, it should be collected carefully. It should be representative and there should be iota of evidence to establish that the discharge of Trade effluents is likely to create nuisance or render such water harmful or injuries to public health and safety or the life & health of the animals or plants. This can be proved on the basis of the successive Govt. Analysis Reports and samples collected u/s 21 of the Water (Prevention & Control of Pollution) Act, 1974.

Sd/-

( D. T. Devale )

Sr.Law Officer

**LEGAL WING**  
**MAHARASHTRA POLLUTION CONTROL BOARD**

C.F.C. Bldg., 2<sup>nd</sup> Floor,  
Above Post Office,  
Wagle Indl.Estate,  
Thane-400 604.

No.WP/LW/370

Date : 16/11/1990

**C I R C U L A R**

Regional Officer – Bombay-HQ/Bombay/Thane/Pune/Aurangabad/Nashik/Nagpur.

Sub-Regional Officer- Bombay-I/II/III/Thane/Kalyan/Tarapur/Roha/Pune/Sangli  
Nashik/Aurangabad/Nagpur/Jalgaon/Akola/Nanded.

Field Officer – Ahmednagar.

Sub : Preparation for documentary evidence.

.....

It has been observed in almost all the cases filed by and on behalf of the M.P.C. Board that documentation of various offices is very poor and it becomes very difficult to prove the documents at the time of recording evidence and final hearing because of poor documentation.

If the documentation is not properly done, the Board is unable to prove the documents before the Court and such documents cannot be exhibited i.e. cannot be read into the evidence on behalf of the Board.

It is felt that, lack of knowledge on the part of various officers regarding documentation has created above circumstances. The Board generally rely upon the following documents at the time of preparation of compliant.

- 1) Application for consent.
- 2) Consent letter in original issued by the Board alongwith subsequent amendments.
- 3) Visit reports of the various officers of the Board, to the defaulting industries.
- 4) Vigilance sample report and communication thereof to the defaulting industries.
- 5) Warning letters issued by the Board from time to time to the defaulting industries pointing out breach of conditions on the part of defaulting industry.
- 6) Reply to the said warning letters by and on behalf of the industries.

- 7) Show Cause/ Warning Notices issued giving ultimate warning and reply to the same received by the Board.
- 8) Notice of collecting sample under Section 21 of the Water Act, 1974.
- 9) Details of sampling alongwith sealed documents.
- 10) Forwarding letter to the Govt. Analyst and acknowledgment by the Govt. Analyst regarding receipt of sample.
- 11) Receipt of analysis report from Govt. Analyst and Board Laboratory and communication thereof to the industry under sub-section 2 of section 21 of the Water Act, 1974 by RPAD alongwith acknowledgment thereof.

It has been observed that in most of cases, the letters are issued in a stenciled format without giving actual position of the particular industry. Even such letters issued by the ordinary post without keeping any acknowledgement of defaulting industry. It is suggested that further letters addressed to the industry should be acknowledged by the officer of the industry. It is also observed that even show cause notices and warning notices are not issued by RPAD or only typed on stencil as "BY RPAD" appears on the office copy but no acknowledgment of RPAD is enclosed to the office copy of the notices. Even replies received to the various letters and notices are also not properly filed. It is suggested that every show cause/warning notices should sent by RPAD only. This should be addressed to the person incharge of and responsible for the conduct of defaulting industries by name. Any reply received to such notices should be properly filed and follow up action on the said reply should be taken up immediately.

Every vigilance sample report as far as practicable served upon the industry by hand by respective officer and acknowledgment of the same should be taken on the office copy of such report. It is further pointed out that visit report should be prepared on the spot and signature of the officer-incharge or the occupier of the factory should be taken on the office copy of the visit report. The visit report should specify the names of persons in-charge of and responsible for the conduct of business of factory.

It has been observed that persons collecting sample u/s 21 of the Water Act, 1974 are not following procedure laid down u/s 21 of the Act scrupulously. Section 21 has laid down 3 situations in which samples are to be collected.

1. On request of occupier or his agent, sample is to be divided into two parts. One part is to be sent to the Public Health Laboratory, on behalf of the Board and second part to the laboratory of the Board. In most of cases, it has been noticed that analysis report of Board Laboratory is never communicated to the factory and has not brought on the record of the case. Because non-availability of record, it creates difficulty at the time of preparation of complaint. In most of cases, results of both Board Laboratory and Public Health Laboratory are communicated to the defaulting industry by R.P.A.D. or alongwith acknowledgment. Because of this, number of cases filed before the court are likely to be affected because it is mandatory on the part of the officer of the Board to send copies of report of analysis of the Board Laboratory and Public Health Laboratory to the defaulting industry under Sub-Section 2 of Section 53 of the Water Act, 1974.
2. Second situation is where occupier or his agent willfully absents himself, when the sample of sewage or trade effluent is taken, in that case, the sample should be sent to the Govt. Analyst appointed under sub-section 1 or sub-section 2 of Section 53 with the information that occupier or his agent willfully absent at the time of collection of sample. It has been observed that such cases are not reported to the Govt. Analyst and in no case cost incurred in getting such sample analysed was recovered from the defaulting industry.
3. Third situation is when the occupier or his agent does not make a request for dividing the sample into two parts, in that case, only one set of sample is to be send to the Laboratory established or recognized by the said Board under Section 17.

The above procedure are not carefully followed by the officers of the Board and therefore, number of cases are likely to be affected.

This office therefore, called upon all the officers of the Board to carefully consider the documentation part on behalf of the Board. First of all, it is necessary that every document duly signed by the officer of the Board under his own hand should be preserved properly.

: 4 :

Secondly, correspondence should be seen that it is served upon the persons incharge of the factory either by post or in person. In case, it is served by post, postal acknowledgment should be preserved by affixing it with the office copy or with letter. If it is served in person, then acknowledgement by the person incharge of the factory alongwith his name and designation should be taken on office copy or on that particular letter.

Thirdly, every show cause notice / warning notice should be issued by RPAD only and acknowledgment thereof should be affixed or stapled to the office copy of that notice. Further reply to the same notice or warning letter should be properly filed and follow up action regarding non-compliance should be taken.

Fourthly, every visit report should be prepared as far as practicable on the spot giving specific observations about non-compliance and the same should be communicated then and there alongwith adverse remarks by taking appropriate acknowledgement on the office copy with the name and designation of officer upon whom the same is served.

Fifthly, every vigilance sample report should be collected duly certified from the laboratory established by the Board and should be communicated adverse remarks with the copy of the same by taking appropriate acknowledgment on the office copy alongwith name & designation of officer to whom the results are communicated.

Sixthly, every report of analysis received under Section 22 should be communicated to the defaulting industry by making specific comments about adverse results, which should be sent by RPAD only and acknowledgment thereof should be stapled with office copy of forwarding letter.

The above instructions are issued on the basis of experience gained by this office in conducting number of cases after going through the files of the various offices only. These instructions should be followed scrupulously in order to make our cases successful.

Sd/-  
(D. T. Devale)  
Sr.Law Officer

: 5 :

Copy submitted to-  
Hon'ble Chairman, MPC Board, Bombay-1, for favour of information.

Copy submitted to-  
Member Secretary, MPC Board, Bombay-1, for information and necessary orders.

He is requested to kindly keep office copies of consents & renewal letters issued from the Board office under the original signature of the Member Secretary, instead of stenciled signature to be produced before the Court of Law because the Courts have refused to exhibit stenciled copies of the consent in number of cases and also expressed their concerned as to how such type of important documents in original are not preserved by the Board in form of office copy. Regional Officers issuing consents to industries having 10 M3 effluents may also be instructed suitably to preserve office copies of consents duly signed by them.

Copy submitted to:  
A.P.A.E., MPC Board, Bombay-1, for information and similar line of action.

### **Section 19 of the Water (Prevention & Control of Pollution) Act, 1974 :**

19. Power of State Government to restrict the application of the Act to certain areas ;

#### **Sub Sections :**

- 1) empowers the State Government, after consultation with or on the recommendation of, the State Board, by notification in the Official Gazette, restrict the application of this Act to such area or areas as may be declared therein as water pollution, prevention and control area or areas and thereupon the provisions of this Act will apply only to such area or areas ;
- 2) states that each water pollution, prevention and control area may be declared either by reference to a map or by reference to the line of any watershed or the boundry of any district or partly by one method and partly by another.
- 3) Empowers the State Government to, by Notification in the Official Gazette :-
  - (a) alter any water pollution prevention and control area whether by way of extension or reduction; or
  - (b) define a new water pollution, prevention and control area in which may be merged one or more water pollution, prevention and control areas or any part or parts thereof (S.19)

### **Section 19 of the Air (Prevention & Control of Pollution) Act, 1981 :**

**Section 19 : Power to declare air pollution control areas : Section 19 of the Air (Prevention & Control of Pollution) Act, 1981 provides for the applicability of the Act to certain areas.**

- (1) The State Government may, after consultation with the State Board, by notification in the official gazette, may declare any area or areas within the State as air pollution control area.
- (2) The State Government may, after consultation with the State Board, by notification in the official gazette,
  - (a) alter any air pollution control areas whether by way of extension nor reduction.
  - (b) Declare a new air pollution control area in which may be merged one or more existing air pollution control areas of any part.
- (3) If the State Government, after consultation with the State Board, is of opinion that the use of any fuel, other than an approved fuel, in any air pollution control area may cause or is likely to cause air pollution, it may, by notification in the official gazette, prohibit the use of such fuel in such area with effect from such date as may be specified in the Notification.
- (4) The State Government may, after consultation with the State Board, by notification in the official gazette, direct that with effect from such date as may be specified therein, no appliance, other than approved appliance, should be used in the premises situated in an air pollution control areas. However, different dates may be specified for different parts of an air pollution control area or for the use of different appliances.

- (5)** If the State Government, after consultation with the State Board is of the opinion that burning any material in air pollution control area may cause or likely to cause air pollution, it may, by notification in the official gazette, prohibit the burning of such material in such area.