



Environmental damage to Water and Land resources and police response

IMPEL Water and Land Conference – Lisbon (Portugal) – 11-12th October 2022.

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OFB : the French Biodiversity Agency



A **new** public establishment, **merging** several national agencies and offices, created in **January 2020**

**AGENCE FRANÇAISE
POUR LA BIODIVERSITÉ**
ÉTABLISSEMENT PUBLIC DE L'ÉTAT



Under the supervision of two ministries

2800 agents

Metropolitan and Overseas territories



5 main missions

Knowledge, research and expertise through data and coordination of national information systems on species and ecosystems

Support for the implementation of public policies with all biodiversity stakeholders at the national and international level.

Mobilizing society through engagement projects.

Management of protected areas directly or by supporting other managers

Police mission



Main mission : ENVIRONMENTAL POLICE

Around 60% of the activity at local level



which

OFB = specialised police body dedicated to nature and biodiversity

works under 2 Authorities :

- **ADMINISTRATIVE AUTHORITY for Administrative POLICE** (Executive power representative at local level - *préfet* - government) :
 - To help making regulations (technical support to the Administration)
 - To help controlling regulations are enforced on the field (*inspections*)
- **JUDICIARY AUTHORITY for Judiciary POLICE** when breach of the law (infringement) (Prosecutor - criminal investigations)



PREVENTING
(upstream)

REPRESSING
(downstream)



Context of environmental police and Justice in France

- Strong **legal framework** with progressive reinforcement (1976 -> 2016 -> 2019 -> 2021 (« *écocide* »)
- Progressive reinforcement of **judiciary prerogatives** for nature OFB policemen
- Towards a **specialised environmental Justice** (Law on 24th Dec 2020 which creates *Regional environmental pole of Justice*)
- **Training programmes** for magistrates



A few examples on recent water and land offences: police response, prosecution and judgment



Illegal works on a stream

In september 2020, OFB gets information about works in a small stream on a commune situated in the Natura 2000 site.

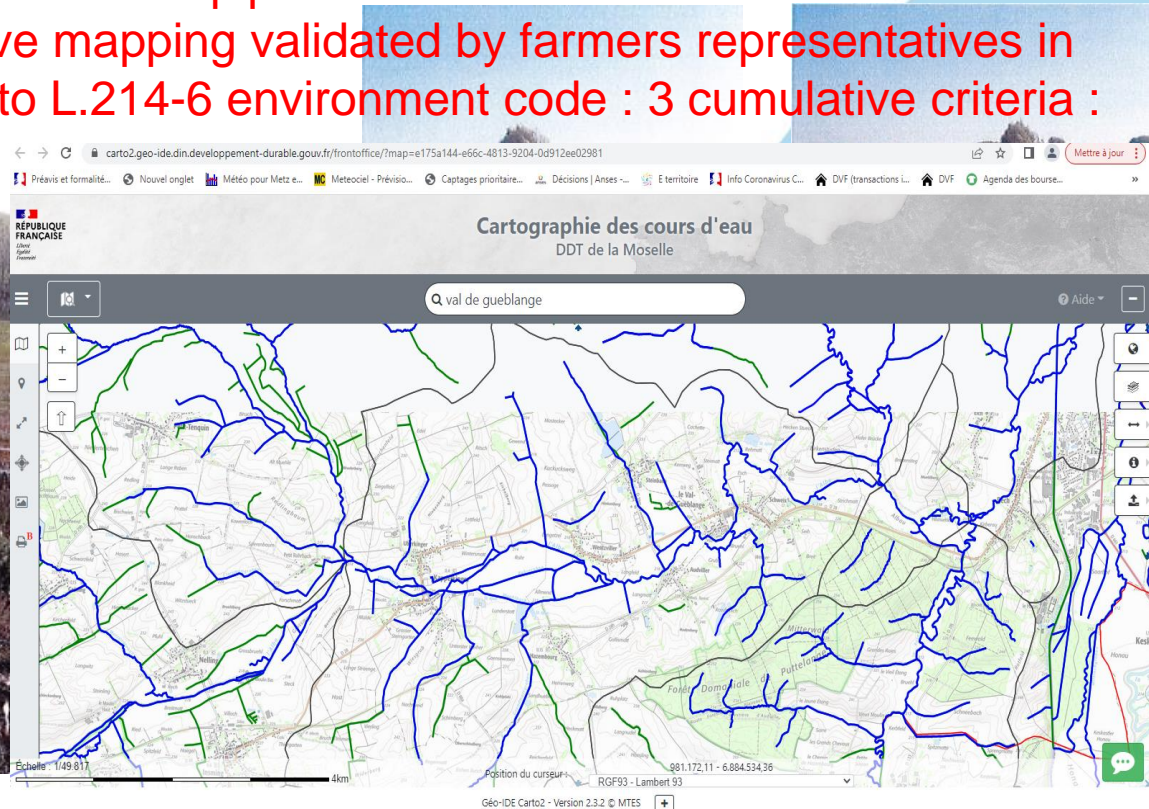
In France, this kind of works need administrative autorisation (penalty : délit – NATINF 13167)

In November 2020, the Administration confirms having not received any demand concerning those works.

Observation on field: 130 meters of works with a pipe burried to drain the meadow.

Destruction of the stream (Administrative mapping validated by farmers representatives in regards with the Law definition L.214-1 to L.214-6 environment code : 3 cumulative criteria :

- Natural river bed ;
- Minimum flow during the year ;
- Existing source upstream





Illegal works on a stream: OFB police investigations



OFB Investigations reveals that the transgressor asked in august 2020 the commune to make those works.

The commune told him in September 2020 to contact the Administration due to the Administrative regime and autorisation needed.

It turns out that the transgressor has already been fined previously and he has been convicted for dangerous wastes abandonment.

After those first investigations OFB summoned the person to a police hearing/interrogation in december 2020. The offender said that he did not ask any autorisation because the works were already done and he recognised the infringement he did (admission)



Illegal works on a stream: OFB police investigations

In May 2021, OFB reported the case to the magistrate.

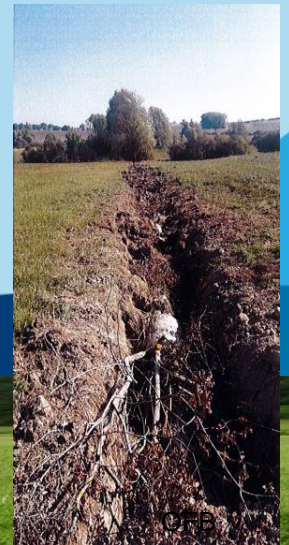
-> **Prosecutor decision** : to give 6 month to the offender to repair the environmental damage.

- If yes, the case will be closed
- If not, the case will be prosecuted

In november 2021, no remediation on the field. In the meantime, the offender asked an authorisation to the Administration but the content was inadequate.

In parallel, the commune lodged a formal complaint against the offender.

-> **Prosecutor decision** : The case will be prosecuted at the Court (Tribunal).





Illegal works on a stream: Judgment



February 2022 : **audience to the Court.**

April 2022 : judgment released :

- On **PUBLIC ACTION** :

- The offender is convicted of having executed works on a river protected by the Law without any authorisation ;

- 3 months of prison sentence (suspended sentence)

- 15 000 € of fine (including 10 000 € suspended)

- Order to repair the environmental damage by refurbishment before 31th December 2022 in 2 phases : 1 during the dry season, another during the autumn (planting tree hedge along the river). If not -> daily-fine of 30 €/day during one year. The convicted person is requested to give a technical report to the Administration with the technical prescriptions of the refurbishment. After agreement of the Administration, he will make the works ;

- publication of the judgment at the townhall.

- On **CIVIL ACTION** : 1000 € for the commune (complainer)



Water pollution

August 2020, 9th : a fisherman report a pollution with fish mortality on the river « Aisnes » on the commune of « Challerange ».

Fireman and police go on site. An industrial leak comes from a pipe on the river with a brown-color liquid. O₂ is measured : normal upstream and zero downstream of the pipe. This pollution affects 13 km with an **important fish mortality** and would be due to a dysfonctionning of the water treatment plant of a large entreprise categorised at risk for environment -> **organic pollution suspected**.

Prosecutor decides to request OFB and « Gendarmerie » to work jointly on the police investigation for a judiciary enquiry.



Numerous dead fishes downstream the pipe. None upstream.



Poissons en voie de décomposition, films gras sur la surface

Water pollution



Retour d'une des barques de bénévoles. Parmi les espèces présentes : silure, sandre, brochet, lotu, barbeau, goujon, perche, gardon, chevesne, brème...

First conclusions on the environmental impact : more than 3 tons of dead fishes were collected in 4 days : the polluting flow has killed the quasi totality of the fishes.

Numerous dead fishes and mussels including *Unio crassus*, protected by the law.



Moules fraîchement mortes avec des restes de chair encore présent, dont *Unio crassus*, espèce protégée



Environmental Police investigations

Water samples for analysis :

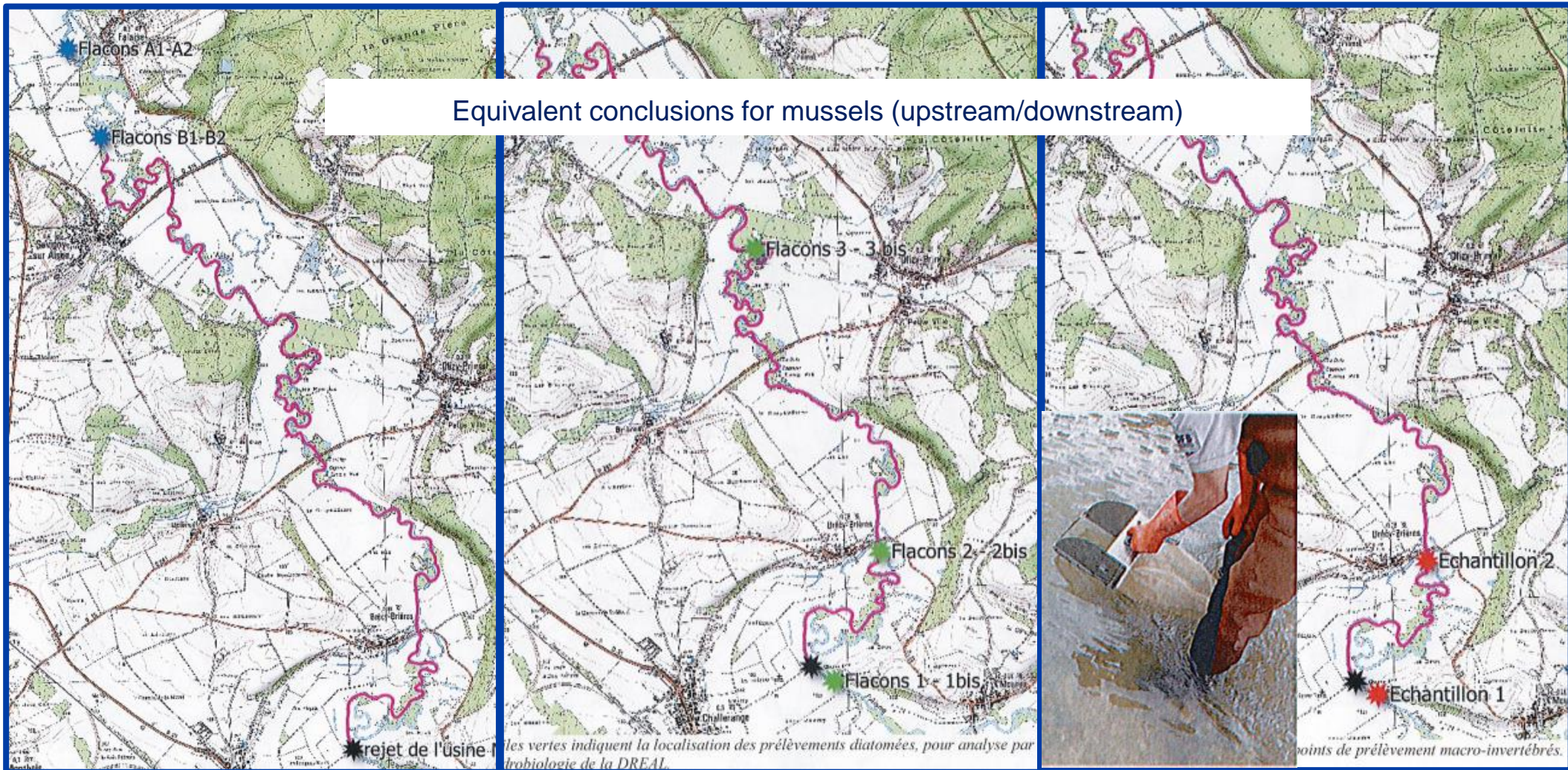
Laboratory conclusions : organic pollution with O2 level which reached zero in some parts.

Diatomées :

Similar conclusions with at station 3 a population characteristic of organic pollution with O2 decline.

Macro-invertebrates :

- Upstream : biological cortège consistent with and equivalent to the previous year (WFD station)
- - downstream : pollution-sensitive species have disappeared whereas pollution-resistant species are stable



Police investigations and prosecution

Industrial police investigations also revealed further dysfunctioning and non compliance with the enterprise activities in regard of Industry regulations (-> breach of Authorisation and prescriptions)



The Administration took necessary actions in order to ask the Industry correcting the non compliance activities (Administrative police), which has been done by the enterprise quickly. On 30th September 2020, all the requests were done

Prosecution on potential Environmental breach of the Law : 4 « NATINF » (délits)

NATINF 29697 : délit d'atteinte non autorisée par personne morale à la conservation d'espèce animale non domestique - espèce protégée défini par art.L.173-8, art L.415-3 1°A), art. L.411-1 §11°, art.R.411-1, art.R.411-3 C.ENVIR. art.121-2 C.PENAL ; réprimé par art.L.173-8, art L.415-3 al.1, art. L.173-5 C.ENVIR. art.131-38, art.131-39 2°, 3°, 4°, 5°, 6°, 8°, 9° C.PENAL.



Destruction of protected species by legal entity

NATINF 21919 : délit : déversement par personne morale de substance nuisible dans les eaux souterraines, superficielles ou de la mer (art.L.216-6 C.ENVIR.) défini par art.L.216-6 al.1 C.ENVIR. art.121-2 C.PENAL, réprimé par art.L.173-8, art. L.216-6 al.1, art.L173-5 2° C.ENVIR. art.131-38, art 131-39 2°, 3°, 4°, 5°, 6°, 80, 9° C.PENAL.



Discharge of damaging substances into waters by legal entity

NATINF 23624 : délit : rejet en eau douce ou pisciculture, par personne morale, de substance nuisible au poisson ou à sa valeur alimentaire - pollution (art.L.432-2 C.ENVIR.) défini par art.L.432-2 al1, art.L.431-3, art.L.431-6, art.L.431-7 C.ENVIR. art.121-2 C.PENAL, réprimé par art.L.173-8, art.L.432-2 al.1, art.L.173-5 2° C.ENVIR. art.131-38, art.131-39 2°, 3°, 4°, 5°, 6°, 8°, 9° C.PENAL.



Discharge of damaging substances for fishes into waters by legal entity

NATINF 4808 : exploitation d'une installation classée autorisée sans respect des règles générales et prescriptions techniques (définie par les articles R. 514-4 3°, R. 181-43, R. 181-45, L. 512-1 du code de l'environnement, et réprimée par les articles R. 514-4, L. 173-5 et L. 173-7 du code de l'environnement.)



Functioning of an enterprise without compliance with technical Administrative prescriptions



Justice response

New tool for Environmental Justice since a Law on 24th December 2020 : Public interest judiciary Agreement (*Convention judiciaire d'intérêt public – CIJP*)

Justice proposes to the enterprise to sign an agreement which:

- Recognizes the responsibility of the Enterprise by paying a public interest fine and paying the plaintiff in order to repair the ecological damage ;
- Avoid any penal prosecution for penal audiencing or alternatives (sensus stricto).

On September 2022, advocating its Social and Environmental Repsonsability, the Enterprise has accepted to sign the Agreement proposal which:

- **Requires 40 000 € of public interest fine ;**
- Taking into account the following
 - **475 000 € of compensation** were paid to the Fishermen local Association in regard to the ecological prejudice ;
 - Agreement between the Enterprise and an animal welfare Foundation ;
 - Agreement between the Enterprise and 3 others nature protection NGOs.

10 days after signature and subject to accomplishment of all those duties, no further prosecution will be done against the Entrerprise by Justice.

Particularity : the validation Order of the Tribunal does not mean the guilty (in a criminal sense) of the Enterprise and does not have the same nature and effects of a criminal conviction judgement (sensus stricto).

Remark : Environmental CJIP allows to reach a fine until 30 % of the turnover of the legal entity (French Law on 24th December 2020)



Pesticides



Figure 3: Végétation brûlée par un herbicide dans le fossé routier des abords de la RD18



Figure 1: Localisation des constatations sur la commune de Beuveille, source : géoportail IGN 1/25000 ème



Figure 2: Localisation des traitements de produit phytopharmaceutique sur l'espace public, source : géoportail IGN photo-aérienne et cadastre.



Figure 4: Fossé de la RD18 traité par un herbicide sur 21,6 mètres

5th May 2022 :
Herb is burned along the road in the commune of Beuveille (54) Coloration is characteristic of pesticides use.

In France, Pesticides use on public land is prohibited by Law.

In total : 60 meters were treated

On this basis, OFB starts police investigations



Figure 5: Fossé et abords de la RD18 brûlés par un herbicide sur 39 mètres

Pesticides – OFB police investigations

On the field, we meet a person who state spontaneously that he has just did the treatment with an herbicid called ROUNDUP (Glyphosate). This product is of professional use and the person states that the product comes from a farm nearby. The farmer gave him the pesticide. In France, it is prohibited to give pesticides of professional use without autorisation.

Potential prosecution on 2 infringements :

Mis en cause, identité(s) et domiciliation(s)	Dates, heures et lieux des faits Commune (INSEE)	Natinf et qualifications
	Faits commis entre le 1 janvier 2022 et le 5 mai 2022 sur la commune de BEUVEILLE (54067)	33166 (6 mois 150 000 euros) : Utilisation pour un usage non professionnel de produit phytopharmaceutique Définie par : ART.L.253-17 3°, ART.L.253-7 §III, ART.L.253-1 AL.1 C.RURAL. Réprimée par : ART.L.253-17 AL.1, ART.L.253-18 C.RURAL.
	Faits commis entre le 1 ^{er} janvier 2017 et le 5 mai 2022 sur la commune de BEUVEILLE (54067)	33167 (2 ans 300 000 euros) : Mise sur le marché de produit phytopharmaceutique pour un usage non professionnel. Définie par : ART.L.253-15 §I-1BIS, ART.L.253-7 §III, ART.L.253-1 AL.1 C.RURAL. Réprimée par : ART.L.253-15 §I AL.1, ART.L.253-18 C.RURAL.

Pesticides – police investigations

24th May 2022 : hearing/questioning of the « user » offender. The offender recognises having used the pesticide (admission) but states that he does not know the regulations and that he will not start again using this kind of product.

27th July 2022 : hearing/auditionning of the « giver » offender (farmer) : the owner of the farmer is not responsible. His employee gave the product to the « user » without his consent. He took 5L of the product into a larger spray machine and states that he knew that it is forbidden but he gave him to « help cleaning his garden ».

Prejudice : the commune of BEUVEILLE takes part of the river bassin of the river « Crusnes » which is a salmonidae facies river. It takes part of the water resource FRB1R547 CRUSNES 2 which is in bad chemical status and medium ecological status in regards of the WFD. One of the **driver of the bad and medium status is the detection of diverse chemicals** as Isoproton and Cyperméthrine at high concentration level which jeopardise reaching the WFD objectives for 2027.

Misuse of pesticide such as Roundup (Glyphosate) can have cumulative effects on the quality of the river and waters, *a fortiori* when they are used directly nearby a stream or a river considering as well that those products should only be used by professionals and for agriculture.

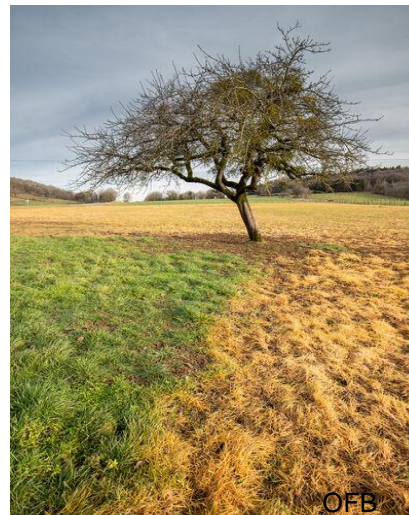
Pesticides – police investigations

The prosecutor suggested an alternative to audiencing to the Court

-> the Prosecutor proposed to the offender to recognise his responsibility and criminal guilty and to pay a fine (« *composition pénale* »)

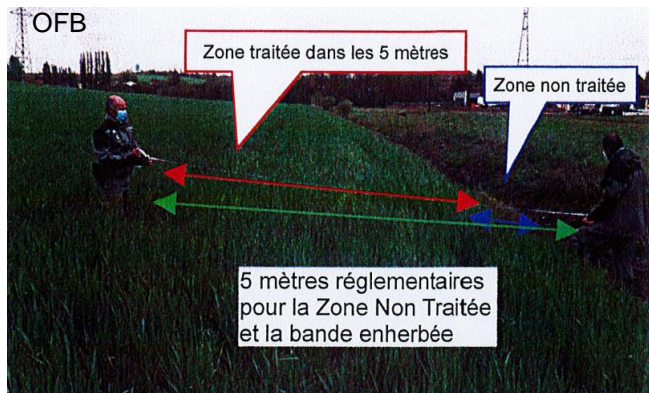
Results :

- For the offender of « giving » the pesticide : **150 € fine within 2 months ;**
- For the offender of « using » the pesticide : **150 € fine within 2 months.**



Other examples of environmental police investigations and prosecutions

Pesticides along a river (< 5 m)



- 5 000 € fine



Misuse of pesticides (2 cases on the same commune)

Misuse of Buggy greenline on 390 m



- 2400 € fine
- 1800 € for civil action to 2 NGOs

Misuse of Buggy greenline on 1000 m

- 1200 € fine
- 2000 € for civil action to 2 NGOs



**Thank you
for attention**

