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## **THE INTEREST OF COOPERATION BETWEEN POLICE PUBLIC PROSECUTORS AND GOVERNMENTAL AUTHORITIES IN THE FIELD OF ENVIRONMENTAL ENFORCEMENT**

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### **SUMMARY**

The paper includes a short explanation of the constitutional organisation in The Netherlands. The organisation of the responsibilities of the province, as the 'middle level' of government is discussed. An actual example, that of polluted sludge, is used to demonstrate how the cooperation between police and general government can lead to satisfying results. Finally, several recommendations are made with respect to policy and legislation in the future, in the field of enforcement of environmental law.

### **1 INTRODUCTION**

A general impression of the duties of the different levels of government in the Netherlands, especially those of the province, will firstly be given.

It is important to note that the Netherlands has a parliamentary democracy on all three levels of government. This requires a system of cooperation between the government and parliament for central government, the province and the municipality. Since a system of proportional representation is abided by the government needs a parliamentary majority each time items of policy are changed or produced. The government works under the rule of law, which means that the power of governmental bodies is based on a legal competence.

#### **1.1 Decentralization**

The State of the Netherlands is a unitary, but decentralized state. The framework of the State and State laws comprises of:

- provinces
- municipalities

On a spacial level these both consist of a region which is part of the State's land. The governments of the provinces and the municipalities have their own councils of elected representatives. They work in the general interest of the public inhabiting these regions.

#### **1.2 Main responsibility to ministers**

The main duties and aims of policy have been assigned to the ministers of state. Specific planning systems have been set up for most of the fields of policy, both on the national and provincial level. For example:

- environmental plans
- spacial plans
- water management plans

## 2 THE PROVINCIAL ORGANIZATION

There are three organs that govern the province:

- The **Provincial Council** or Provincial State. This is the provincial parliament consisting of 55 members, directly chosen by the inhabitants of the province.
- The **Executive Committee**, comprising of 7 members, chosen from the members of the Provincial Council. Theirs is a full time job, governing the province. As a member of this committee the author is responsible for affairs in the field of the environment, agriculture, nature, landscape and public information.
- The **Queen's Commissioner**, who is appointed by the Queen. He chairs the Council and the Executive Committee.

There is also a provincial administration helping the Executive Committee to prepare and implement policy in all the different fields.

The province consists of seven different departments, including the department of water quality, spacial planning, traffic and transport, welfare and economic affairs, and the environment and water management.

### 2.1 Decentralization/role of the province

Since 1970 there has been a great increase in the amount of legislation in the fields of the environment and water management. Many of the tasks and responsibilities have been decentralized to the province, municipality or water board.

It is important to emphasize that the province has an important strategic role in the field of;

- spacial planning/land use;
- environmental planning;
- water management planning.

Although there is no formal hierarchy between the national and the provincial environmental policy plans, the provincial government takes account of the main aims of the national environmental policy plan, as well as those of the European Community. Besides planning the province is responsible for granting and enforcing permits to larger industries and installations, and to large-scale activities in the open field, with the Executive Committee as the competent authority.

### 2.2 Task of municipalities

The municipalities are not obliged to make an environmental policy plan. However they are responsible for granting and enforcing permits for installations, businesses and activities in the open field with less environmental impact.

## 3 ENFORCEMENT ACTIVITIES OF THE PROVINCE

The enforcement activities of the province will now be discussed.

### 3.1 Inspection and control activities

The province is the competent authority to grant licenses and also carry out inspections to enforce the environmental law. Therefore several civil servants have been appointed as provincial inspectors. They regularly pay visits to the permit-holding industries and firms.

### 3.2 Coordination and enforcement activities

Many authorities are involved in enforcing environmental law in The Netherlands. Enforcement does not only involve administrative enforcement, but also the police and the Public Prosecutor tracing and persecuting criminal activities which break the environmental laws. Close cooperation is necessary to achieve good results. The provincial administration, as the administrative body on the 'middle level' has been given the legal responsibility to organise regular meetings between the representatives of the organisations involved with enforcing the environmental laws. It has done so by instating a consultative body.

### 3.3 Tasks of the provincial policy council for environmental law enforcement

- To compare and adjust the enforcement policy of all the authorities involved.
- To set up a network for enforcement and to promote cooperation.
- To exchange all kinds of enforcement information.
- Scenario.

The 'Scenario enforcement of environmental law for the province of Groningen' discusses the common aspects of enforcement, which are of importance for all the authorities and for the different regulations. Things discussed include general aspects such as:

- publicity
- exchange of information
- coordination
- recommendations concerning the supervision
- the choice between a criminal and/or administrative approach.

The scenario also deals with diverse specific subjects such as fertilizer and waste products. It also concentrates on what (and at what point in time) is expected from whom with respect to specific issues.

Good administration and official consultation also takes place on a local level between the municipalities, province, police, inspection service and Public Prosecutor. These consultations take place regularly (5 to 7 times a year). These consultations also allow the participants to get to know one another better.

## **4 CASE STUDY: HOW THE ENFORCEMENT AGREEMENTS IN THE FIELD WORK; CLOSE COOPERATION IN TACKLING POLLUTED SLUDGE**

The prevention of the spread of material mixed with polluted sludge, which looks like compost, is a good example of close cooperation between all the authorities involved in the enforcement of environmental law.

### 4.1 What is the problem?

Farmers are offered compost-like material to be used as organic fertilizer on their land, against very low prices. Any reasonably intelligent person should realize that something is not quite right if they are offered fertilizer at such a low price, or are even offered money to accept the material. Fertilizers which do have a positive effect on the fertility of the soil always cost money. Those farmers which accept the 'compost' therefore must have a guilty conscience. Not only regarding society and the environment, but also regarding their own farm. The soil itself is the basis of high production for the farmer. Thus to take such a large risk of damaging and even permanently polluting the soil seems

incomprehensible to me. Since this kind of activity can take place all over the place it is very difficult to trace it. The role of the local police is therefore very important.

Some time ago approximately 4,000 tons of this 'compost' was found being stored without a permit in a village in the province. Partly because of the good agreements laid down in the scenario, it was possible to discuss the problem with all the enforcers involved early on. Each one of them had their own role and contribution. The police had the role of keeping their eyes open in the field, combined with their experience and authorities in the criminal detection work in such cases. The inspector from the Ministry of Agriculture, Nature and Fisheries applied his knowledge of the composition of fertilizers and the trade in fertilizers. The police informed the province of the problem as soon as they suspected illegal waste processing. They began to suspect this because the material was radiating heat and it smelt unpleasant.

A permit from the province is necessary for the storage, processing or spreading of large amounts of waste. Since it was necessary that the government reacted quickly and effectively it was necessary to organize a 'temporary measure' to allow the police to take samples and test these on their chemical composition. Therefore the Public Prosecutor forbade the owner of the terrain to dump the material or spread or dispose of it without having the province's permission. The ban was applicable until that time that the province had decided what to do with the material. Tests soon showed that the material was actually polluted sludge which could not be spread on the land. Further analysis was necessary to establish which dump the waste should be sent to.

The legal procedure brought against the province's decision by the owner of the terrain, is still in process. This means that the Public Prosecutors temporary measure is still in effect.

#### 4.2 Discussion

Initially no articles were published in the press, to allow the research to go smoothly. Even though it was not certain whether the material was polluted sludge right from the start, it was known that this type of waste is being offered in several places outside the province. It was believed that the farmers in the province should be warned about the trade in such materials. Before doing so an emergency meeting was held at the provincial headquarters, in which the province, the governmental inspectors from the Ministry of Agriculture and the Ministry of the Environment, the police and the Public Prosecutor were invited to discuss the situation with one another to agree on a joint point of view. This was a very useful meeting.

#### 4.3 Publicity

The unions for the agricultural organisations were obviously the most suitable partner to help write and publish the warning to the land users. The joint press release had effect, since a large amount of attention was paid to it in both the regional and national papers as well as on local radio.

#### 4.4 Conclusion

The close cooperation on local, provincial and national level, with as its aim adequate action against this suspected violation was successful. The network which had been established functioned well. It appears that the wish for close cooperation between the different qualified authorities definitely exists.

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## **5 RECOMMENDATIONS**

### 5.1 'Chain' supervision

This is a very important point. This whole enforcement case took place at the end of the 'chain'. Transportations are followed or discovered via other methods. The 'compost' is often immediately spread and then the damage has already been done. It is important that the source of the waste is discovered. The necessary measures should then be taken to prevent or limit production and if necessary to process the waste. Here lies a stimulatory role for the provincial administration. A national and international approach should be established, together with central government and the ministries and authorities involved.

### 5.2 Combatting criminality

It is important to draw attention to combatting environmental criminality. Experts in this field believe that the detective force should start thinking in a totally different way. They are tackling people and companies that have a business-like approach to environmental pollution and earn large amounts of money in this way. These people do not allow themselves to be caught as a result of forms that have not been filled in properly or because of (waste) accounts which do not make sense. Instead attention should be paid to chains of transport, storage and processing, both on a national and international scale; a very different approach.

### 5.3 Necessary measures

The legislator should take adequate measures which are appropriate to the problem. The existing regulations, both international, national and provincial, shall continually be critically considered, so that they remain appropriate to the developments in the environment and society.