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## **THE ROLE OF THE INSPECTORATE FOR THE ENVIRONMENT IN TRACING ENVIRONMENTAL CRIME IN THE NETHERLANDS**

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### **SUMMARY**

This paper addresses the role of the Inspectorate for the Environment in tracing environmental crime in the Netherlands.

Since 1985 a large number of staff members of the Inspectorate for the Environment have assisted the police in tracing complicated forms of environmental crime in particular. The Environmental Assistance Team is a work association within the Inspectorate for the Environment composed of about a hundred Inspectorate employees. Besides their regular work for the Inspectorate these people can be brought into action either part time or full time to support the police in tracing regional or national forms of environmental crime. The form and content of this support is further explained in this paper.

### **1 HISTORY OF THE ENVIRONMENT ASSISTANCE TEAM**

As a division within the Ministry of Housing, Spatial Planning and the Environment the Inspectorate for the Environment is subdivided into a number of Regional Inspectorates and the Chief Inspectorate. The Environmental Legislation Enforcement Branch comes under the Chief Inspectorate for the Environment and consists, among other groups, of the division Monitoring Waste Substances, the division Monitoring Substances, Radiation and Products, and the Environmental Offences division. The Environmental Assistance Team comes under the Environmental Offences division.

In the Netherlands investigating environmental crime is conducted by the police, who are supported in this by the Environmental Assistance Team of the Inspectorate for the Environment of the Ministry of Housing, Spatial Planning and the Environment (VROM).

The Environmental Assistance Team was set up 1 February 1985 to promote the environmental crime control. The establishment of this team was a consequence of the environmental scandals involving hazardous waste which had been come to light in the first half of the 1980s. It turned out that compliance monitoring and tracing according to the Chemical Waste Act (1979) failed considerably. The investigation committee formed as a result of this finding, advised the Ministers of Justice and Environment, among others, to appoint a group of experts operating on a national level and specialized in criminal conduct. Also on the basis of this advice the Minister of VROM, in consultation with his colleague, the Minister of Justice, decided to set up the Environmental Assistance Team.

Instead of an independently operating criminal investigation agency, a supporting unit with expert knowledge of environmental affairs was decided upon. The advantage is that the police are always involved when enforcing environmental legislation. An independent environmental investigation team does not stimulate other partners to enforce environmental legislation. It is precisely the strongly regional aspect of the infringements of environmental legislation that pleads for embedding investigations within the regional police in the 25 police regions.

## **2 TASK OF THE ENVIRONMENTAL ASSISTANCE TEAM**

The Environmental Assistance Team must support criminal investigations. Support is given to the police, the Public Prosecutors, and other investigation agencies. Support consists of providing specialised knowledge and technical equipment, as well as offering the assistance of laboratory and research facilities.

## **3 WHEN IS THE ENVIRONMENTAL ASSISTANCE TEAM CALLED IN?**

According to the formation decree for the Environmental Assistance Team (dd. 1 February 1985), the Team is brought into action at the Public Prosecutor's request. Usually, this will be the case in environmental crime of a more complicated character; for example, an environmental crime network involving a large number of people or businesses. In these cases, offences are in general committed which have been qualified as criminal offences. If the Environmental Assistance Team cannot provide sufficient support and a choice must be made between two investigations, the environmental yield will determine to a large extent to whom support is given.

## **4 COMPOSITION, INVESTIGATION COMPETENCE, AND MANAGEMENT OF THE ENVIRONMENTAL ASSISTANCE TEAM**

The Environmental Assistance Team is composed of a staff with specialised knowledge (college level) in the following fields: process technology, chemistry, management and legal affairs, environmental protection, investigation tactics, business administration, and environmental accountancy. Such a diversity in specialisms offers the opportunity to assist, as effectively as possible, in any criminal case. Another important function of the Environmental Assistance Team is that it has a special information position. As a working association within the Inspectorate for the Environment operating on a national level, the Environmental Assistance Team has at its disposal not only information from the monitoring activities of the Inspectorate but it also has a national insight into administrative enforcement.

The Minister of Justice has granted general investigation power for the whole of the Netherlands to the Environmental Assistance Team. Members of the Environmental Assistance Team act as investigation officers in police teams formed ad hoc to offer support either full time or part time in tracing (complicated) environmental crime.

Responsibility for the Environmental Assistance Team rests with a former public prosecutor and a former police inspector. The Inspectorate for the Environment has deliberately chosen these officials in order to guarantee the link required for the network of police work and public prosecution.

## **5 INITIAL EXPERIENCES OF THE ENVIRONMENTAL ASSISTANCE TEAM**

Since its formation in 1985 the Environmental Assistance Team has been specifically brought into action following the decision to give priority to the enforcement of the Chemical Waste Act (WCA). Because enforcement of environmental legislation in the Netherlands during 1984 and 1985 was still in its infancy, attention was mostly focused on national "scandals" in those years, since regionally and locally there was no clear insight yet into either regional or local environmental crime.

Therefore, during the first period after its foundation the Environmental Assistance Team engaged almost exclusively in serious national forms of environmental crime. Frequently, the Environmental Assistance Team took the initiative instead of keeping to its supporting task. In this period it became clear that it was necessary to provide financial means and equipment in order to obtain the cooperation of the police while carrying out investigations.

## 6 DEVELOPMENT WITHIN THE POLICE

As a result of the structural provision of funds from the Dutch National Environmental Policy Plan (1990-1992), police and Justice have become more active in combating especially regional and local forms of environmental crime. Consequently, the police have made a greater demand on the Environmental Assistance Team in tracing these forms of environmental crime in particular. The result has been that the Environmental Assistance Team has had less time to promote the investigation of national forms of environmental crime.

## 7 THE ENVIRONMENTAL ASSISTANCE TEAM CHOOSES PRIORITIES

A report of the Investigation Advisory Committee of the Ministry of Justice (September 1992) states that the waste issue remains a major source of organised, supra-regional forms of environmental crime. Moreover, it is pointed out that the control of supra-regional and international waste crime is failing because a coordinated approach is lacking and information is provided fragmentarily. Furthermore, it is stated that although the activity of the Environmental Assistance Team provides an important incentive for dealing with serious environmental crime, effective control of national and international environmental crime demands that justice, police, the Inspectorate for the Environment, and administrative authorities cooperate more closely and systematically.

As a result of this report the Minister of Justice has appointed the "project-team serious environmental crime" by order of 30 March 1993. This project-team consists of representatives from Public Prosecution, the police, the Central Investigation Information Office, and the Environmental Assistance Team. Its main task is coordinating and stimulating supra-regional activities, especially in the field of processing and disposal of waste.

In 1992 the task of the Environmental Assistance Team was reconsidered as a result of the aforementioned developments, which has led to a readjusted strategy. The new strategy differs in that the Environmental Assistance Team will give increased priority to national forms of environmental crime. Consequently, less time will be available for supporting the regional police to control typically regional or local forms of environmental crime. The Inspectorate for the Environment will promote assistance on a local and regional level by furnishing, for instance, environment experts of provincial and municipal authorities.

In this new strategy the Environmental Assistance Team makes a distinction between:

- *National investigation assistance.* In cases of serious, supra-regional forms of environmental crime, the Environmental Assistance Team offers environmental assistance in combination with legal and investigative tactical assistance to the police and Justice. This assistance is organised centrally and nationally by the Chief Inspectorate for the Environment in The Hague.
- *Regional investigation assistance.* This assistance is provided by members of the Regional Inspections for the Environment and concerns assistance with regard to environmental and legal expertise in cases of typically regional and local forms of environmental crime.
- *Reporting.* This means reporting violations of environmental legislation detected in progress. These activities are carried out by members of the division on Compliance Monitoring Waste Substances, the division on Monitoring Substances, Radiation and Products, and the division on Pest Control, and the Regional Inspectorates. It concerns violations in progress as established by Inspectorate officers carrying out their monitoring tasks (Toxic Substances Act, for instance, CFK and Cadmium Resolution, Regulation on Import, Export and Transit of Hazardous Waste, Pesticides Act, Nuclear Energy Act). Considering the highly specific, technically difficult character of these regulations, investigation of such offences is

not conducted by the police but carried out independently by the Environmental Assistance Team.

## **8 PROCEDURE OF THE ENVIRONMENTAL ASSISTANCE TEAM**

The typical method of working for the Environmental Assistance Team when investigating serious environmental crime is that it participates actively and usually full time in multidisciplinary police teams often formed ad hoc to carry out the investigation. In order to use manpower as efficiently as possible, investigations are conducted in a structured way. We distinguish a number of phases. After each phase a decision is made in consultation with the police and the Public Prosecution about whether it is justified and advisable to start the next phase.

In order to conduct the preliminary investigation and the criminal investigation, each time a written cooperation agreement is drawn up between police, other participating agencies, Justice, and the Environmental Assistance Team. In this agreement the objectives, the availability of people, means, equipment, and duration of the investigation are included.

We distinguish the following phases.

- *The information investigation.* In this phase, during a period of six weeks at a maximum, a tip received or an indication resulting from analysis of available information is followed up for reliability and environmental relevance. The information investigation is concluded with a written report, which determines the decision whether to continue or not.
- *The preliminary investigation.* This is concentrated primarily on gaining and verifying any further information and making contacts with relevant authorities, experts, and agencies. Preliminary investigations are carried out by a small team in cooperation with the police. Participation of the Environmental Assistance Team can vary from providing purely environmental technical advice to providing active technical and tactical support.
- *The criminal investigation.* In this phase, the criminal investigation is conducted by a multidisciplinary investigation team. This investigation almost invariably starts with a search to seize the business administration in combination with an environmental technical investigation on location of the infringement. In order to rubricate and read the administration seized, computer programmes are used which have been specifically designed for this purpose. In this phase the procedure is carried out thematically. Early on in this phase the projects to be investigated are defined in consultation with the Public Prosecutor. In general, the investigations have the character of an investigation into fraud, in addition to which, for some time now, attention has also been given to depriving illegally derived advantage. Only when all projects have been investigated, are suspects detained and questioned. The investigation is subsequently concluded with a so-called business written report. The projects that have been investigated are classified in separate business files; also, personal files are kept so that it is clear which suspect is involved in which case.
- *The aftercare phase.* During the preceding phases it may turn out that action can or must be taken in the field of administrative law or criminal law. The necessary actions are laid down in an aftercare programme, which in most cases is carried out by a Regional Inspectorate for the Environment in cooperation with the competent administrative authorities. In this phase, specific problems with regard to the enforcing of regulations are also set down in a "bottleneck" memo, which is subsequently brought up for discussion by the Chief Inspector for the Environment in the regular consultation meetings with the policy officials concerned with the

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Directorate-General for Environment Management of the Ministry of Housing, Spatial Planning and the Environment (VROM).

## **9 THE SURPLUS VALUE OF THE ENVIRONMENTAL ASSISTANCE TEAM**

The surplus value of the Environmental Assistance Team lies foremost in the field of expert operational support of the police, because in any criminal case the Environmental Assistance Team can offer tailor-made assistance as a result of its broad and varied composition (see Section 4). However, the surplus value of the Environmental Assistance Team is also derived from the circumstance that it is a working association of staff members of the Inspectorate for the Environment that conducts its investigation activities in conjunction with its other inspection duties. The most important of these duties are the monitoring of the waste streams policy and the supervision of the implementation of the Toxic Substances Act.

- Monitoring waste streams deals both with compliance monitoring of transboundary shipments of hazardous waste and the so-called chain-monitoring waste substances. The chain-monitoring of waste substances is aimed at investigating and registering thematically the origin, transport, processing, and disposal of a specific waste stream in order to ensure that certain waste streams are transported, processed, and disposed of legally, efficiently, and in an environmentally safe manner.
- The supervision of the implementation of the Toxic Substances Act consists of upholding the various Ministerial Orders, such as the CFK-Resolution.

Because of these monitoring tasks, the staff members have a great deal of up-to-date information about people and companies at its disposal, which in practice turns out to be of great value in investigations into illegal environmental activities. This information is the staff members' stock-in-trade when they assist in an investigation.

## **10 COOPERATION OF THE ENVIRONMENTAL ASSISTANCE TEAM WITH OTHER INVESTIGATION AUTHORITIES**

An investigation usually involves various authorities, such as the Public Prosecution, the Judicial Laboratory, the Central Investigation Information Office, the police, and the supervising authorities (provinces, municipalities, district water boards, Department of Public Works, and the Inspectorate for the Environment). Adequate investigation demands good cooperation. This cooperation is necessary to combine proper expertise on the one hand and to prevent overlapping efforts and competence conflicts on the other. Therefore, the Environmental Assistance Team has made structural working agreements with various investigation partners.

For instance, working agreements have been made with the division on Environmental Crime of the Central Investigation Information Office. The Central Investigation Information Office (Justice) is assisted in the collecting, analysing, and registering of confidential environmentally criminal information by an investigator of the Environmental Assistance Team. This investigator is the liaison officer with regard to criminal information between the Inspection for the Environment and the Criminal Investigation Offices of police and Justice.

## **11 TRANSFER OF KNOWLEDGE TO THE POLICE**

In order to give other investigation officers access to knowledge about how to approach environmental crime, a loose-leaf "Handbook of the Environmental Assistance Team" has been

compiled. This handbook contains, along with other information, examples of written reports, contracts, scenarios for searches and technical investigation, safety procedures, and agreements about the provision of information. In addition, video recordings are sometimes produced after a criminal case so that the criminal *modus operandi* can also be explained audiovisually.

## **12 ÉDUCATION PERMANENTE**

Members of the Environmental Assistance Team are expected to have a high and up-to-date level of knowledge. This is provided by a training scheme (*éducation permanente*) developed especially for the Environmental Assistance Team. There is a new, extensive introduction programme for new staff members in which skills such as sampling are further perfected.

## **13 EXAMPLE OF A CRIMINAL INVESTIGATION**

### 13.1 Background

Recently a large-scale investigation in the field of environmental fraud has been started. In the years 1989 to 1990 the Public Prosecution received a large number of written reports (42) made on violations pertaining to the Surface Water Pollution Act (*Wvo*) versus the suspected company. In nearly all cases, the Public Prosecution offered a transaction to the suspect, which was accepted. In 1991 and 1992 eight reports pertaining to the same facts were made and settled by transaction. In 1992 a report was made against the same suspect for obtaining a permit from the Minister of VROM to export hazardous waste to France with the use of forged analysis data. This permit concerned the export of 1500 tons, at the maximum, divided among 65 transports. To transport this waste to France, forged transport documents (EC documents) were used. Considering the foregoing, it was presumed that the suspected companies structurally violated environmental legislation and the communal criminal law.

### 13.2 Information investigation

In order to unravel this case, an information investigation was started. All available information gained from various sources was analysed and clarified. On the basis of these data, a report of findings was drawn up and offered to the Public Prosecutor, who decided to start a preliminary investigation.

### 13.3 Preliminary investigation

A multidisciplinary investigation team of 25 people was formed consisting of personnel from:

- The Municipal Police Rotterdam
- The Municipal Police Amsterdam
- The Environmental Assistance Team
- The Criminal Investigation Department of the Ministry of VROM
- The Central Investigation Information Office
- The Fiscal Information and Investigation Office
- The Tax Office in Amsterdam

A police inspector, assisted by a coordinator with technical environmental knowledge and a coordinator specialised in investigation tactics from the Environmental Assistance Team, was charged

with the day-to-day management of the team. A contract pertaining to this investigation was signed by all participating agencies and the Public Prosecution (see Section 8).

This preliminary investigation took about 10 months. During this period a complete analysis was carried out as to the permit situation of the suspected companies, the notified transports, and the companies' financial position. Furthermore, dumping conduct was followed with the aid of modern techniques—observations took place and transports were checked. Whenever possible, project files of criminal offences to be investigated were made. A report of findings was drawn up subsequently and offered to the Public Prosecutor, who decided on a criminal investigation.

#### 13.4 Criminal investigation

For this purpose a preliminary judicial inquiry was started (an investigation by a judge of instruction, who has additional competency with regard to search and seizure). In December 1993 a raid was carried out on the suspected companies. About 250 investigation officers took part in this raid. The Environmental Assistance Team of the VROM participated with 45 members. Searches led by judges of instruction from Rotterdam, Amsterdam, and Groningen were carried out at 13 locations in the Netherlands and Belgium. On this occasion business administrations were seized. At 4 locations technical environmental investigations were carried out by the Environmental Assistance Team. This kind of investigation is led by a technical coordinator of the Environment Assistance Team who has a number of sampling teams at his disposal. These sampling teams consist of 3 to 4 people and are led by an environmental staff member.

Following the search and the environment technical investigation, an inventory and an analysis of the data obtained are made. On the basis of this information, the project files to be investigated are compiled definitively and in consultation with the Public Prosecutor. It is to be expected that after completion of the project files, witnesses and suspects will be questioned in the spring.

Preliminary findings show that the suspected companies structurally violated the Pollution Surface Water Act; that is to say, they dumped hazardous waste in surface water although permits had not been granted at all.

The companies accepted a number of hazardous waste substances. These substances either cannot be processed in the existing plants or may not be processed according to the Wvo-licences granted. Because these dangerous wastes were not handed over to other licence holders, it is suspected that illegal dumping c.q. illegal export of hazardous waste to other countries has taken place by means of false c.q. forged (EC) documents.

## 14 RESULTS 1991 AND 1992

Other than the criminal investigation presented as an example, the following activities resulted in 1991 and 1992.

**Table 14.1.** Actions of the Environmental Assistance Team in 1991 and 1992

|                                      | 1991 | 1992 |
|--------------------------------------|------|------|
| Number of cases handled              | 12   | 15   |
| Number of man-days spent             | 3022 | 3200 |
| Number of preliminary investigations | 11   | 39   |
| Number of information investigations | 80   | 132  |

**Table 14.2.** Survey Convictions "MBT-cases" in 1991-1992

| Case | Offence                                    | Conviction  | Appeal |
|------|--|---|--------|
| 91/1 | Penal Code                                 | 2 years unconditional, 1 year conditional   | Yes    |
| 91/2 | Chemical Waste Act and Penal Code          | f 630,000 fine; 1½ years unconditional; 6 months conditional                      | Yes    |
| 91/3 | Chemical Waste Act                         | Settlement: amount dependent on the sanitation costs to be paid by suspect        | No     |
| 91/4 | Chemical Waste Act and Waste Substance Act | f 15,000 fine and special condition of soil sanitation                            | No     |
| 91/5 | Toxic Substances Products Act              | f 240,000 fine for company; f 11,250 fine and 2 months conditional for director   | No     |
| 91/6 | Penal Code, Chemical Waste Act             | Settlement of f 250,000, environment-audit of f 50,000                            | No     |
| 92/1 | Penal Code                                 | f 400,000 fine for company; 18 months, of which 6 months conditional for director | Yes    |