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## **ENFORCEMENT OF THE “POLLUTION OF SURFACE WATER ACT” IN THE NETHERLANDS, 1970 to 1994**

PLATE, FLORIS

Director of Law Division Rijkswaterstaat, Ministry of Transport, Public Works and Water Management, PO.Box 20906, 2500 EX The Hague, Netherlands

### **SUMMARY**

A brief view of the history of the Pollution of Surface Water Act is given. Thereafter the beginning of the enforcement effort is mentioned, to be followed by an explanation of the first formal enforcement policy in the eighties. In the early nineties this policy was tightened up, but the aim to end all illegal discharges appeared very difficult. Therefore so called general rules were introduced as a new instrument. Recently a broader approach has been developed. Instead of more or less isolated efforts to enforce the law the complete regulatory chain is now under consideration.

### **1 INTRODUCTION**

The Pollution of Surface Water Act came into force in 1970. It was the first modern environmental act that later on was to be followed by other acts e.g. for the protection of air and soil. Before 1970 some local or regional regulations had provided some protection against water-pollution some of which dating back as far as the 17th century. However, these were no longer considered adequate. The new act forbade the discharge of all polluting substances in surface water by means of “a work” without a written license. For the local and regional waters the so called “waterboards” (special government authorities in charge of water management and flood protection) became responsible for the execution of the act. Central government was responsible for the main waters, i.c. the big rivers Rhine, Meuse and Scheldt, the coastal waters and the most important canals.

Apart from the prohibition of emissions without a proper license the act introduced levies on discharges according to the principle that “the polluter pays”. Both industry and households had to pay those levies. The income was used to finance anti-pollution measures such as the building of waste water purification installations.

Thanks to the new legislation and in particular the nationwide building programme of purification installations good progress was made during the first decade after the introduction of the act. In particular the emission of oxygen-consuming substances was reduced considerably. Also progress was made with respect to heavy metals. Organic micro-pollutants and nutrients appeared more difficult.

### **2 EARLY ENFORCEMENT EFFORTS**

Around 1980 some criminal pollution scandals got much nationwide attention. Suddenly every politician and administrator in the country realized that prohibition and licensing alone could not stop illegal discharges and that enforcement was the indispensable crowning piece of any effective policy. So both money and manpower became available for inspection and, if necessary, enforcement.

In principle the law of the Netherlands provides for three different ways to enforce environmental law. In the first place the administrative law gives some instruments that the authority in charge can use. For instance it can order the ending of the illegal discharge and, if this order is not obeyed within a reasonable period of time, it can end the illegal activity itself at the expense of the offender. Another, more recent, possibility is the order that if the illegal activity is not ended within a

reasonable period of time the offender will have to pay a certain amount of money for each day that it takes longer. So far the law of the Netherlands does not provide for administrative fines in the case of illegal pollution.

The second possibility is the use of civil law. The government authority can ask for a court order that requires the ending of the illegal activity in conjunction with a penal sum to be paid for each day that this court order is ignored.

Finally the judicial authorities can be informed and the offense be brought before a criminal court. As a rule this way is used for the more serious cases. Both financial penalties and imprisonment are possible punishments for environmental crimes.

It should be mentioned that the authorities in charge of water management have their own specialized criminal investigators. Besides the regular police forces spend quite some time on the investigation of environmental crimes. Efforts are made to establish effective co-operation between both kinds of investigators. So far the results vary.

### **3 ENFORCEMENT EQUALS ACTION**

In the early eighties the enforcement of the Pollution of Surface Water Act gradually came into effect. Nevertheless numerous illegal discharges were still being tolerated and time and again the national parliament urged for more effective policies. In 1987 the first Enforcement Plan for the Pollution of Surface Water Act was made. Manpower was increased and the organization of the inspection-force of Rijkswaterstaat (government agency in charge of the management of the main waters) was improved. Also the waterboards enlarged their enforcement capacity.

In 1989 a firm target was set by both the minister of the Environment and the minister of Water management to end all illegal discharges before 1995. This implied that the connivance of offenses should end as soon as possible. Discharges without a proper license were furthermore out of the question except for a few very special cases. From that time each finding of an illegal emission should be followed by a proper reaction from the government to stop the offense. Pressure also came from environmental protectionist groups who many times brought about court orders that forced government into action against offenders.

In this way much progress was made, but in spite of a considerable improvement the standards of the basic quality for surface water had not been achieved by the end of the eighties. A new approach became necessary.

### **4 GENERAL RULES**

Since 1989 much effort was spent to end all illegal discharges. This meant either ending of the discharge or licensing. Under law of the Netherlands, however, this is a difficult and often time-consuming task. Legal procedures are long and complicated and both the discharging industries and the environmentalists have many possibilities to claim and pursue their supposed rights. The authorities in charge of licensing therefore had much problems to adhere to the time-schedule as set by both ministers. In some branches of industry, e.g. greenhouse agriculture (responsible for a great deal of the Netherlands export!), the number of emissions was so high that licensing appeared simply impracticable.

Still connivance had to stop before 1995, because both parliament and the State Council (high court for administrative cases) had announced that they would no longer accept it. Court orders to issue licenses would mean considerable face-losing for the government and also constitute a major political problem for the ministers in charge.

In order to avoid such a painful situation a new instrument was introduced in the legislation. Instead of issuing thousands of licenses a set of general rules was established for a number of activities as different as dental practice, householding in unpopulated areas, yacht harbours, coating

of metal objects and greenhouse agriculture. Each set of rules pertains to a particular activity. It can be considered as a standardized license for the emissions that are the result of that type of activity. If the discharge remains within the limits of these general rules a license will no longer be required, provided the discharge is properly announced.

It is clear that this will save much licensing effort for the authorities in charge of water management. The number of inspections and enforcement activities will remain the same, but as a result of the standardization also in this field efficiency will be improved. Although the general rules are not yet effective it is hoped that from 1995 on they will relieve the task of licensing and enforcement considerably.

## **5 THE PHILOSOPHY OF THE REGULATION CHAIN**

In 1992 Rijkswaterstaat (government agency in charge of the management of the main waters) evaluated their activities to enforce the Pollution of Surface Water Act. The conclusion was "Not more, but better". By this was meant that manpower was not the problem, but that the available manpower could and therefore should be used more effectively. To this end it was emphasized that enforcement is no isolated activity, but that instead it is part of a complete regulation chain. This chain has the following elements:

- Policy making,
- Legislation and regulation,
- Setting of standards,
- Licensing,
- Execution,
- Enforcement.

All parts of the chain should be in line with the others. For instance: Policy planning should take into account that the execution of the policy may depend on the possibilities for adequate legislation. Policy goals should be set in such a way that they can be translated into realistic standards. Legislation should be the basis for proper licensing. Licenses should be granted in such form that enforcement in accordance with law becomes practicable. Finally enforcement results may give rise to adaptation of policies. In other words, each element of the chain depends on the others. Only when all are in accordance with the others satisfactory results may be obtained. If one element fails, the whole chain fails and all efforts will be fruitless. Enforcement is often the last and therefore somewhat neglected part of the chain, but without an effective and tailor-made enforcement no policy can be successful.

The philosophy of the regulation chain also implies that it is important that wherever possible the responsibility for all elements of the chain should be under one roof. Integrated responsibility improves the harmony between all elements of the chain and provides for very important cross-fertilisation and evaluation of policies. Moreover it can avoid the commitment to policies before their practicability has even been considered.

## **6 CONCLUSION**

So far the enforcement of the Pollution of Surface Water Act in the Netherlands has been a learning process. Also in this field the philosopher's stone has not yet been found and it is unlikely that this will happen soon. New ways will have to be found all the time. Nevertheless some encouraging results have been made. There are signs that illegal discharges will be under control within a few years. Therefore pollution from diffuse sources (air, groundwater) soon will be the major problem.