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## **THE ENFORCEMENT OF THE POLLUTION OF SURFACE WATERS ACT IN THE NETHERLANDS**

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### **SUMMARY**

A short and general view of some actual developments in the enforcement of the Pollution Of Surface Waters Act is given. A central issue in this paper is the co-ordination and co-operation among the competent authorities.

### **1 WATERQUALITY MANAGEMENT IN THE NETHERLANDS: COMPETENT AUTHORITIES**

The Netherlands is the most densely populated country in Europe, having a population of over 14 million people in an area of 37.000 square kilometres. Geographically the Netherlands is a delta bordering the North sea and forming part of the plain of northern en western Europe. A large proportion of the land is artificial. More than 25% of the country is below sea level (more than 50% would be inundated if there were no dunes, dams and other engineering works).

Historically the major concern of the population was therefore the "struggle against water," resulting in flood defences, land-reclamation projects and water quantity management in general. Water quality management has thus been of secondary importance in the past. Nowadays the protection of the quality of surfacewaters is a key issue.

The Pollution of Surface Waters Act (Wet verontreiniging oppervlaktewateren or WVO) came into force in 1970. The provisions of the WVO contain two main features:

- Every discharge of waste-water into a surface water (and in some listed cases into municipal sewers) requires a permit from the competent authority.
- All dischargers are liable to pay a pollution levy according to the "polluter-pays-principle."

The WVO also lays down the allocation of tasks to the various authorities.

The operational section of the Ministry of Transport, Publiik Works and Watermanagement (RWS) is responsible for the waterquality of the (so-called) state-waters (the larger surface waters, e.g. the river Rhine, the lake IJssel and the territorial part of the North Sea).

For all other surface waters (the "regional waters") this responsibility lies in principle with Provincial authorities. These provinces are however allowed to delegate the right to grant discharge-permits (and to charge levies) to other public bodies. Most provinces have used this opportunity and have transferred water quality management to water-boards. At present (1994) 28 water-boards and 2 provinces are responsible for the water quality management of the regional waters. Water-boards with responsibilities for water quality have the additional function of providing and operating the sewage treatment plants.

#### **1.1 Water-boards**

Like the provincial and municipal authorities, the water-boards are also instruments of government. They are independent and have their own areas of authority.

They can draw up regulations which citizens must observe and they can levy taxes. The difference is in the tasks. The municipalities and provinces are involved in various tasks of general

significance (e.g. education, culture, the environment, town and countryplanning etc.). A water-board has only one concern, i.e. the water management of a given area (most of the time water quality- as well as quantity management).

## 2 ENFORCEMENT OF THE WVO

According to the Dutch environmental laws, the permitting authorities are in general also responsible for compliance checking and enforcement. This means that the water-boards (and the other permitting authorities mentioned above) are responsible for:

- The administrative enforcement of the provisions laid down by or pursuant to the WVO (e.g., enforcement of the conditions set in permits and other regulations concerning discharges).
- Collecting and recording information about the discharges (compliance checking).
- Dealing with complaints.

Within a water-board organisation enforcement officers do not deal with granting permits. In order to prevent role-conflicts, these functions are separated.

After the Pollution of Surface Waters Act came into force in 1970, the emphasis was initially placed on licensing. In those "early" years compliance checking and enforcement have largely been in response to complaints. In the 80's most water-boards developed a policy-based, structural approach to enforcement. In general, an important element of this approach was the development of systematic inspection-programms.

In 1992 all the authorities involved with enforcement of the WVO agreed upon a national, uniform enforcement-approach. The policy document in which this approach is formulated, is called "Enforcement equals action" ("Handhaven is doen"). Some elements of of this approach are examined in the following section.

### 2.1 Enforcement policy criteria

There are certain criteria to which all policy must conform: it must be effective, efficient, and consistent. This applies equally to policy on enforcement.

Being consistent means that legislation and regulations must be enforced in a uniform way; that is, similar cases must be dealt with similarly. Consistency also means that every infringement of the law which comes to light must be investigated. It is important to appreciate the need for maintaining credibility. Legislation and licensing must be taken seriously, and those affected should understand that the regulations involved are reasonable. It is of course essential that the government itself is also convinced that its legislation is sensible and does not make any unreasonable demands on those affected.

If the authorities really do intend to take a serious and consistent approach, then they should be prepared, where necessary, to take tough measures to ensure that statutory standards are observed. Compliance with the law is thus encouraged and that all-important credibility factor is strengthened.

Consistency in WVO-enforcement means in concrete terms that every offence has to be investigated and that where possible a public and adequate action has to be taken on the offence. Adequate action can consist of the following civil actions and sanctions:

- A warning.
- Preventive pecuniary penalty.
- Executive coercion.
- Withdrawing a permit.

In case of severe offences, civil action must be followed by initiating judicial sanctions. In the policy-document criteria are given in order to determine if an offence has to be qualified as "severe."

Being *effective* means that the goal of clean water must be achieved by means of the policy devised for that purpose. Measures and procedures not geared specifically to the intended goal should not be employed.

Being *efficient* implies that the intended goal is reached with the lowest possible expenditure. If further means are available, then a decision must be made as to which are most suitable for the task in hand.

## 2.2 The balance between criteria and enforcement

There is no question that any well-administered policy of enforcement, corrective or otherwise, should produce some deterrent effect.

Statutory standards, in particular environmental standards, should be enforced strictly and consistently. If little or no importance is attached to this, or little or nothing is done to put it into effect, there will be little incentive to stay within the law, in view of the profit to be gained from not doing so. The deterrent effect is aimed at making potential offenders appreciate the consequences of their actions. A relatively small-scale enforcement operation can lead to a large-scale response in terms of compliance with the law. Deterrence is really effective only when a number of conditions are met, such as:

- The risk of being caught must be perceived as sufficiently real. The risk of detection must be great enough to deter people from offending.
- There must be an adequate response whenever an offence is detected. This implies that any offence should be rapidly penalised, using sanctions whose severity is proportionate to the offence.

This means that enforcement must be properly balanced. It seems reasonable to assume that the inclination to offend or reoffend will be reduced if the chance of being caught is sufficiently great and the response is adequate. The number of infringements of the law will then show a real reduction, and less energy will have to be expended on enforcement.

A downward spiral could eventually be created, whereby:

- The number of offences goes down.
- A more flexible, revised policy of enforcement is developed.

### 2.2.1 Factor 1: The risk of being caught

risk of being caught = number of recorded offences/number of offences committed

The number of recorded offences refers to all offences which have come to notice within a given period, be it through surveillance and investigation, or through reports from third parties.

The number of offences committed refers to the total number of offences, in an absolute sense, which have been committed within the same period. It is only possible to estimate the total number of offences, since forbidden activities often tend, by their nature, to remain elusive.

If the risk of being caught infringing the WVO is sufficiently great, then potential offenders will be less inclined to offend or, as the case may be, reoffend. One should, however, bear in mind that the risk of being caught must inevitably be greater in some situations than in others—priorities are unavoidable. A person guilty of discharging highly toxic substances, for example, stands to profit considerably (in a financial sense) by not being detected and will, therefore, only be deterred if the risk of detection is significantly higher than in the case of someone disposing of household waste water, for instance.

### 2.2.2 Factor 2: An adequate response

adequate response =  $\frac{\text{number of recorded offences against which adequate action is taken}}{\text{number of recorded offences}}$

Although a high risk of being caught is undoubtedly important, the response to a detected offence is perhaps even more important. There should be no "gap" between the number of recorded offences and the number of offences which result in action—prosecution or otherwise—being taken. This would mean that some offences which came to notice were not acted upon in a way which was either socially or politically required, and that the credibility of policy on enforcement would thereby be damaged.

The document "Enforcement equals action" assist enforcement officers in closing this "gap." It expands upon the three criteria—greater consistency, effectiveness and efficiency—required for a proper enforcement policy, and should lead to an adequate response to reported offences.

## 3 CO-OPERATION AND CO-ORDINATION

The national association of water-boards, the association of provinces and the RWS are members of a national steering committee "DUIV" (in connection with administrative enforcement) and to the Water Committee of the Public Prosecution Department (in connection with criminal enforcement). Besides these committees there is a national co-ordination committee in which administrative as well as criminal enforcement policies are discussed: the "LCCM." The mentioned authorities themselves are also represented in provincial and regional environmental consultative committees.

All the authorities, involved with the implementation of the environmental laws and the enforcement of these laws have agreed upon the goal that the implementation (e.g., granting permits) and enforcement have to be on an adequate level in 1995.

In order to reach the enforcement-goal, a national, provincial and regional structure has been created in order to stimulate co-ordination and co-operation between the authorities that are responsible for the WVO-enforcement and authorities that are competent to enforce other environmental laws (e.g. municipalities). Where possible water-board should operate together with these other official bodies, especially in order to achieve an integrated compliance checking. (In this way in one visit an establishment can be inspected on every activity that can have effects on the environment.

Co-operation however cannot always be achieved. The policy that is formulated in the document "Enforcement equals action" is focused on a national, uniform approach of compliance checking and enforcement of the WVO. This policy includes directives for priorities. As enforcement of other environmental laws can lead to other priorities, co-operation by means of integrated inspections can easily be frustrated. Besides these differences in policies, practical problems can occur. Inspections of WVO-permits are, for example, often carried out by means of measurements and sampling during a couple of days or even weeks. Therefore it is not always practical and effective to co-operate. Nevertheless it is important that water-boards make the best possible contribution to the various co-operative structures.

## 4 CONCLUSION

Considering the developments that are viewed above, it is obvious that the competent authorities in the Netherlands are growing to a more uniform and structured enforcement of the environmental laws. Within the area of the WVO there already exists a national, uniform approach. This co-ordination and co-operation within the field of the WVO however makes it difficult for the WVO-authorities to co-operate with other official bodies. Co-operation therefore cannot be a goal in itself, but has to lead to a more effective and efficient WVO-enforcement.