
THE NETHERLAND'S MANUAL: INVESTIGATIONS OF COMPLEX ENVIRONMENTAL OFFENCES

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SUMMARY

The Manual "Complex Environmental Offences," published by the Inspectorate for the Environment in 1994, is intended for those active in the area of environmental enforcement who may be involved with criminal investigations. The manual was drawn up in cooperation between the partners in the enforcement network: the Public Prosecutions Department, the police, the local authorities, and the Environmental Assistance Team.

An important reason for publishing this manual was the realization that the specialized knowledge and experience needed for the investigation of major environmental offences was quickly disappearing from these enforcement groups, for reasons including the turnover of staff and reorganizations.

The manual is also very useful when dealing with less complex environmental offences.

The English-language version of the manual has been revised; those matters which are relevant only to the situation in the Netherlands have been either omitted or rewritten.

As is usual legal practice in the Netherlands, the public prosecutor has the leading part in criminal investigations. In other countries these duties may fall either partly or completely under the responsibility of the judiciary.

1 PURPOSE

The purpose of this manual¹ is to provide support during the investigation and prosecution of complex environmental offences by:

- Serving as a guideline when setting up an organization for the investigation of an environmental offence, and during the actual execution of the criminal investigation.
- Providing an insight in the duties of the bodies which may be involved in an investigation.
- Furthering a consistent interpretation of concepts pertinent to the kind of investigation involved.

The text of the manual is built around a flow chart which describes the course of a criminal environmental investigation. Important decisions to be made during the investigation are shown in the flow chart and further discussed in the text.

A three-stage investigation is assumed:

- The informative investigation, to establish whether there are reasonable grounds to suspect that an environmental offence has been committed; and if an offence has been committed, then whether a criminal investigation is the most suitable means of dealing with the offence.

- The preliminary investigation, in which the more detailed and more extensive information needed for an effective prosecution is collected.
- The factual investigation, the stage at which it becomes known that the judiciary, the police, and the assisting authorities are conducting an investigation. The purpose of this investigation is to collect the definitive evidence for the trial by conducting an administrative investigation together with the interrogation of witnesses and suspects.

The manual also gives a number of useful suggestions and recommendations concerning enforcement matters, which are based on experience. This makes the manual of use to all involved in the investigation and prosecution of complex environmental offences.

The emphasis of the manual's contents is especially on those aspects in which criminal investigations of environmental offences differ from criminal investigations according to the general provisions of the Dutch Criminal Code. Examples are:

- The timely recognition of pitfalls in environmental legislation and environmental protection.
- Differences in culture which may be encountered during cooperation between the authorities and the police.
- The powers provided by legislation other than just legislation concerning criminal proceedings as proscribed in the Dutch Code of Criminal Procedure (examples are the Economic Offences Act and the Environmental Management Act).
- Making efficient use of the enforcement network.
- The continual balancing of the interests of criminal investigations (investigation of the offender) against the interests of the environment (investigation of the causes of the act committed, and its consequences for the environment).

2 THE INSPECTORATE FOR THE ENVIRONMENT IN THE FIGHT AGAINST CRIME

The Inspectorate for the Environment has been involved in the investigation of environmental offences since the formation of the Environmental Assistance Team in 1985.

The Environmental Assistance Team was established with the intention of intensifying efforts to combat environmental crime. This was seen to be necessary in the aftermath of a number of environmental scandals in the Netherlands in the early 1980s, which also revealed significant deficiencies in both the inspection and the investigation of matters concerning environmental legislation. As a result the Minister of Housing, Spatial Planning and the Environment and the Minister of Justice decided to form a national group of experts specialized in criminal behaviour.

In the beginning the Environmental Assistance Team had a pioneering role. The Team concentrated on the furthering of investigations carried out by the police, who were confronted with the new field of environmental offences. In recent years various agencies have become closely involved in the enforcement of environmental legislation; this involvement is in the form of inspection and investigation. There has been a substantial build-up of resources among the police and the judiciary, and special investigating officers have been attached to a number of administrative bodies for the specific purpose of the investigation of environmental offences. Experience has also shown that, to obtain the best possible information concerning the enforcement of environmental legislation, close cooperation is required with inspection agencies and officers in the investigation of environmental offences.

The Environmental Assistance Team is comprised of officers from the various divisions of the Inspectorate for the Environment. These officers have complete powers of inspection and complete powers of search throughout the country, and have followed special training to enable them to act as investigating officers. They have also undergone a security screening.

The duty of the Environmental Assistance Team is to provide practical assistance during the conduction of criminal investigations, and to participate in them. This is provided to the police, the Public Prosecutions Department, and other investigating agencies. Assistance is given by supplying the necessary specialized knowledge and technical aids, and the provision of laboratory and research facilities. The Environmental Assistance Team can also carry out inspections and inquiries in companies or particular categories of companies, in order to collect information for administrative and/or judicial purposes. The Environmental Assistance Team can provide specialized knowledge in the following areas: process technology, chemistry, administrative and legal affairs, environmental protection, criminal investigation and business administration.²

ENDNOTE AND REFERENCE

1. Ministry of Housing, Spatial Planning and the Environment, Publication document number 1993/79.
2. The investigative activities of the Inspectorate for the Environment. Planned developments 1993 - 1998.