
DEVELOPMENT AND IMPLEMENTATION OF INFORMATION EXCHANGE BY ENFORCEMENT OF ENVIRONMENTAL LEGISLATION

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SUMMARY

This paper gives a brief description of the Environmental Offenses Notification Bureau as a component of the 'Information Exchange Framework' established in one of the provinces of the Netherlands to assist in the enforcement of environmental legislation.

The exchange of information is also discussed, in particular the information involved, the recipients and where the information is stored. This framework makes it possible to compile surveys and management reports, which can be of use, for example, in the evaluation of collaborative projects, and the determination of (cooperative) priorities based on the yield for the environment.

Once a good structure for cooperation and consultation has been realized, this system of information exchange will be a step forward in the direction of increasing the quality of enforcement cooperation.

1 Developments

In the Netherlands many government authorities are involved in the enforcement of environmental legislation. Enforcement is not only effected under administrative law. The police and the Public Prosecutions Department are responsible for dealing with violations of environmental legislation under criminal law. To achieve good results it is important that there is close cooperation between these various authorities.

All authorities involved in the enforcement of environmental legislation have representatives in the National Coordination Committee for Environmental Law Enforcement, which operates at a national level. This consultative platform stimulates further implementation of the enforcement structure and facilitates the realization of the national enforcement priorities as established by the platform.

In its intermediate position in the administrative structure, it is the statutory duty of the provincial authority to establish consultative bodies, and to implement a consultation structure between all authorities involved in the supervision and the enforcement of environmental legislation within its territory.

An annex to this paper gives an introductory description of the Netherlands as a decentralized unified state and of the enforcement activities at a provincial level.

In October 1990 the enforcement authorities received a letter from the Minister of Housing, Spatial Planning and the Environment (also on behalf of the Minister of Transport, Public Works and Water Management, the Minister of Justice, and the Minister of Home Affairs) in which the outlines of the administrative enforcement structure were given. This letter stipulated that an enforcement organization should be created, in which all authorities involved in the enforcement of the environmental legislation shall cooperate in order to ensure that systematic attention is given to enforcement.

The broad outlines of this structure have now been realized. A Provincial Environmental Forum has now been established in each province. Administrative and judicial enforcement are attuned to each other in this Forum, by the use of scenarios, annual programs, etc.

Consultations are also held to make a joint assessment of the priorities based on the expected environmental yield. A further objective is to practice integral enforcement wherever possible, i.e. supervision and inspection which are not restricted to one compartment (air, water, soil, waste, noise).

The heart of this cooperative enforcement - and of the enforcement structure - is the intermunicipal cooperation in the regions as defined by the Joint Regulations Act of the Netherlands.

2 Exchange of Information

This cooperation needs a proper mutual exchange of two types of information.

The first type is information about environmental incidents and violations, in particular actions under criminal law, and administrative law from administrative warnings onwards. This information was not previously registered as such, or exchanged.

To this end the Provincial Environmental Forum established the Environmental Offenses Notification Bureau in Groningen a few years ago. This bureau is under the management of the regional police.

The second type is information about environmental licenses, areas and installations within which activities take place which are of relevance to the environment. As a result of the relevant statutory provisions this exchange of information was already operational to a large extent.

A system, a framework, is now needed to facilitate the proper exchange of these two types of information and, where necessary, to store the information. This paper explains which information is stored where, how, and to whom the information is supplied.

2.1 The environmental offenses notification bureau

Those responsible for enforcement in the field also need the right information at the right time. This is one of the reasons for establishing the Environmental Offenses Notification Bureau. This bureau is a joint initiative of the provincial enforcement authorities and uses a computer system which is managed by the police. This computer system is fed with information about environmental offenses from all the enforcement authorities involved, so that those responsible for enforcement have the correct information at their disposal.

ENFORCEMENT: A PRACTICAL EXAMPLE (of how not to do it)

Somewhere in the province a car breaker isn't too concerned about environmental legislation. There's rubbish far beyond the boundaries of his grounds, the drainage ditches are polluted with oil, and the storage of the car wrecks is certainly not as it should be. This attracts the attention of several enforcement authorities. The water control board sends a registered letter which orders the breaker to remove the bits of cars scattered outside his grounds within four weeks. Then the water quality board sends a demand that the pollution of the drainage ditches be rectified within a period of two months. A week later the police draw up an official report because of immediate critical damage to the environment. Finally, the provincial authorities send a warning that the car breaker is conducting a business illegally. He is granted six weeks to take the necessary measures, and to apply for a license.

The breaker is now on the verge of despair. He does not have the faintest idea which authority has demanded what measures be taken within which period of time. So for the time being he does nothing at all.

This situation could have been avoided by calling in the Environmental Offenses Notification Bureau.

2.2 The Environmental Offenses Notification Bureau: a practical aid

An enforcement authority can exchange operational information in consultation with a police environmental inspector. Here the Environmental Offenses Notification Bureau can be a source of information with a clear added value. All police environmental inspectors have direct access to the database. For example, the information from the bureau can show whether another authority is already dealing with the same case. Or it might show that the perpetrator has previously committed a similar offense. The bureau enables the enforcement authority to be fully informed before it takes any action. The information provided by the bureau may lead to the authority deciding to conduct a joint action.

As well as information of a more general nature, the Environmental Offenses Notification Bureau can also supply information which can be traced back to one specific individual. The Data Protection Act requires that two conditions shall be met before such information may be exchanged: the exchange must be necessary for the enforcement and may only be exchanged between two competent persons (for example between supervisory officials from an administrative authority and investigating officers from the police).

2.3 Environmental Offenses Notification Bureau: a management tool

The Environmental Offenses Notification Bureau is more than an aid for just those responsible for enforcement in the field. It can also be a tool for the collaborating enforcement authorities when deciding on policy matters. For example, the bureau can show trends in violations, or it can provide information about the results of enforcement actions during a specific period of time. For easy reference this information is presented graphically. On request, members of staff of the bureau can also compile management reports.

2.4 Up-to-date information is important

The Environmental Offenses Notification Bureau can assist in ensuring that the right information is available in the right place at the right time. Obviously the extent to which the bureau can do this depends entirely on the entry of up-to-date information. This information must be provided by all the enforcement authorities. The information is indicative information: the relevant information after a specific stage in enforcement.

When the bureau is to be used for project evaluation then it is also necessary to provide it with additional information.

This means that in addition to the information processed by the Environmental Offenses Notification Bureau, the bureau also has to have information at its disposal about environmental licenses, areas and installations within which activities take place which are of relevance to the environment.

2.5 Central information and coordination points

It was decided that the municipalities would manage the information about environmental licenses, areas and those installations within which activities take place which are of relevance to the environment. In accordance with the statutory obligations the municipal administration already receives all licenses, both new and modified, in so far as these are for installations within the territory of the municipality concerned. In turn, the municipalities constitute three intermunicipal collaboration groups within the province. The municipalities periodically provide their collaboration group with the latest available relevant information on environmental matters, and in so doing constitute a Coordination and Information Point for environmental enforcement.

3 Use in Practice: The Information Exchange Framework

Agreement has now been reached about the way in which the municipal administrations and the other enforcement authorities involved receive the requisite information, and how they make the information available to the others. These arrangements have been laid down in a written agreement in order to further compliance with them by all parties involved. This forms the structure of the information exchange framework as established in the province of Groningen.

3.1 The added value of information exchange

Information exchange is intended to be a support tool for the enforcement activities; it is not an objective as such. Information exchange should contribute towards a better enforcement of the environmental legislation. The formulation of the general assumptions and the specific agreements for each authority involved provides structure to the agreements on information exchange; this is the added value.

Overlaps in providing information are discontinued; it becomes clear who has what information at his disposal. The intention is that information exchange be at an optimum rather than a maximum.

3.2 Just two telephone calls

As a result of the designation of two concentration points for up-to-date information (municipalities and the Environmental Offenses Notification Bureau) just two telephone calls are sufficient to determine the environmental status of any specific installation: one telephone call to the relevant municipality for the administrative status, and one telephone call to the Environmental Offenses Notification Bureau for information about violations (under both administrative law and criminal law). It should be realized that both bodies have only a referral duty. This means that they only state whether, for example, a license has been issued; or that, for example, there is some violation of environmental legislation. More detailed information about the license and the violation should be requested from the relevant enforcement authority. Mutual contacts between enforcement authorities remain essential. An additional advantage of the reinforcement of the municipalities as a concentration point for information is that they now have a much better idea about matters concerning their own territory. This will be of help to them, for example in responding to complaints from their citizens. The additional information can also be used in the execution of the municipality's own enforcement tasks. The Coordination and Information Point plays no part in keeping the information up to date.

3.3 Identification of trends and developments

An additional benefit is the identification of trends and developments, which is possible for two reasons. First, the supply of information to the Environmental Offenses Notification Bureau has been improved. Second, information is periodically compiled at the Coordination and Information Point - and the Coordination and Information Point can readily compile the information because the municipalities within each Coordination and Information Point use the same software. Together these advantages allow this information to be combined and processed in order to identify trends and developments. This analysis allows more efficient use of the limited means the cooperating enforcement authorities have at their disposal.

3.4 Guarantee and quality control

This information exchange is guaranteed by making and implementing clear agreements, and obtaining firm commitments. Information exchange supports enforcement. It furthers cooperation, and it assists in the execution of the enforcement tasks. This means that information exchange responds to developments in cooperation, and in methods of enforcement. It is necessary to make an annual evaluation of the agreements which have been made, and the extent to which they are being complied with. For this reason the agreements are being integrated in the 'enforcement of environmental legislation' manual. The interests and improvement of this guarantee and quality control should also be borne in mind with regard to both personnel and the organization. All enforcement authorities involved have signed an agreement in which they declare themselves willing to allow a verification of the quality of the information they provide. This has created a framework within which information exchange can further develop.

3.5 Usefulness to others

This paper shows that information exchange at a provincial level, in consultations with all involved, can be brought to a higher level. The precise way in which this is achieved in other situations is dependent on the specific conditions within the cooperation.

4 Expectations For The Future, Together Towards a Better Environment

The Environmental Offenses Notification Bureau was officially launched in September 1994. From that moment on the bureau was available for consultation. Obviously the framework is continually being perfected, with the wishes of the various cooperating enforcement authorities being taken into account. Practice will show that the efficiency of environmental policy and its implementation will be improved by this information exchange - if possible linked to other information systems, together with the consultation of other national and possibly international information exchange networks. This will allow the information needed for individual cases to become available, together with the preparation of surveys for monitoring and for management information.

This is why it is important that information is processed in one standardized manner, that the systems are compatible with each other, and that, where necessary, they can be linked to each other (on-line).

This standardization will make the cooperating enforcement authorities more decisive - and more credible to the general public, and to offenders. And... the environment will be the better for it.

ANNEX AN INTRODUCTION TO THE NETHERLANDS

1 Introduction

A general impression of the duties of the different levels of government in the Netherlands, especially of the province will 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, provinces and municipalities.

Since a system of proportional representation is abided by the government needs a parliamentary each time items of policy are charged 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 Kingdom of the Netherlands is a unitary, but decentralized state. The framework of the State and State laws comprises of:

- provinces; and
- municipalities.

On a special level these both consist of a region which is a part of the State's land. The government 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;
- spatial plans; and
- water management plans.

2 Provinces

The situation in the province of Groningen is as follows:

- 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 Queens 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, spatial planning, traffic and transport, welfare and economic affairs and the environment and water management.

2.1 Decentralization 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 provinces, municipalities or water boards.

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

- spatial planning/land use;
- environmental planning; and
- 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 are:

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 for those activities which have the greatest effects on the environment (10%).

The municipalities are responsible for the environmental licenses for the rest of the activities.

The waterboards are the main authorities to grant licenses and also carry out inspections to enforce the Pollution of Surface Water Act.

Therefore several civil servants have been appointed by the province, municipality and waterboard as inspectors. They regularly pay visits to their license-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 organize regular meetings between the representatives of the organizations involved with enforcing the environmental laws. It has done so by instating a consultative body.

3.3 Tasks of the provincial policy 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; and
- 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; and
- the choice between a criminal and/or administrative approach.

The scenario also deals with diverse specific subjects 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 take place on local level between the municipalities, province, police, Inspectorate for the Environment and Public Prosecutor. These consultations take place regularly (5 to 7 times a year). They also allow the participants to get to know one another better.

