

**COOPERATION AMONG THE POLICE, THE JUDICIARY, AND
GOVERNMENT TO CONTROL CRIMES AGAINST THE ENVIRONMENT**

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SUMMARY

About 25 years ago, the Netherlands started the structural development of the necessary legislative instruments to deal with environmental issues. Until that time, environmental legislation had virtually been limited to regulations aimed at controlling local nuisance caused by industrial activities, resulting in the Nuisance Act which dates from the mid-1800s. Over the past 25 years, environmental laws have been introduced for surface water, noise, air, waste, and for the soil.

It was not until the late 1980s that a serious start was made with the development of an efficient organization to enforce environmental laws. Government, the police and the judiciary were attracting many new employees, and they largely focused on developing their own organizations and on enforcing the environmental laws for which they were competent.

However, some violations proved to be so serious that the term "crimes against the environment" was introduced. This also led to the awareness that crimes against the environment cannot be properly controlled by individual organizations. Cooperation became the key word because:

- The police and the judiciary are primarily experts in investigating and prosecuting environmental violations, and government has experts with the necessary knowledge of environmental issues. Crimes against the environment can only be successfully controlled through the supplementary use of such experts.
- The competencies of the police and the judiciary are not the same as those of government. The competency of the police and the judiciary is to enforce environmental laws and regulations through criminal prosecution and repressive measures. Government has the task of preventive enforcement. Cooperation in controlling crimes against the environment, after weighing the possibilities to do so, leads to deployment of the best possible instrument(s).
- The transport of waste typically involves different regions or even countries. In order to effectively control unauthorized transports, an extensive enforcement network of authorities who are prepared to cooperate is an absolute requirement.

This paper outlines the various forms of cooperation among the main authorities assigned to control crimes against the environment in the Netherlands, and explains how this cooperation was achieved.

1 INTRODUCTION

In the Netherlands, environmental legislation is embedded in a large number of laws and regulations. Dutch environmental legislation in the 1970s was divided into sectors. Statutory regulations for environmental issues such as water, air, noise and waste were covered by separate laws. During the 1980s and 1990s, these regulations were increasingly integrated, resulting in the Environmental Management Act.

Several authorities are responsible for enforcing these laws and regulations. Basically, government (national, provincial, municipal) is responsible for licencing and for enforcing the rules laid down in environmental laws and licences. This is also referred to as preventive enforcement. The police are primarily responsible for repressive enforcement, and the judiciary is responsible for prosecuting violations presented as a result of repressive enforcement.

The results of the efforts by the aforementioned authorities strongly depend upon the degree to which they cooperate in matters which are within the competencies of two or more of these authorities. Thus, this cooperation is very important in controlling crimes against the environment.

This memorandum will first describe the term "crimes against the environment" as it is used in the Netherlands. This will be followed by a discussion of relevant legislation, enforcing authorities and their tasks. Subsequently, the different forms of cooperation will be described in detail. Finally, a number of examples and results will be described.

2 CRIMES AGAINST THE ENVIRONMENT

For the purpose of clarity in the discussion, it is important to have a clear understanding of the term "crimes against the environment" as it is used in the Netherlands.

In recent decades, the phenomenon of crimes against the environment has frequently been the topic of research in the Netherlands, with different definitions of this term. From this multitude of definitions, we have selected the following definition because it is short, clear and practical. It is a definition of organizational crime which can also be applied to crimes against the environment. It describes organizational crime as follows:

Crimes committed - either individually or in a group - by members of respected, bona fide organizations in the exercise of their organizational tasks

As a working definition and as a framework of thought for this memorandum, the description of the term organizational crime will be used for crimes against the environment.

3 LEGISLATION

To properly understand the need for cooperation in controlling crimes against the environment, it is important to have an overall understanding of applicable (environmental) legislation in the Netherlands.

The Environmental Management Act is the most important law. It includes such items as: a planning framework, regulations for waste management, the framework for licencing, enforcement competencies, and instruments for harmonization with other environmental laws. The Environmental Management Act is a so-called framework law, which means that it is

detailed in implementation regulations, such as the Facilities and Licensing Order for Environmental Management, and in provincial environmental regulations. The memorandum entitled "Environmental Law Enforcement in Practice in the Netherlands, an Integral Approach"¹ discusses the details of legislation and the organization of enforcement.

Other important laws in addition to the Environmental Management Act include the Pollution of Surface Waters Act and the Soil Protection Act. The names of these laws already indicate the aspects covered. The reasons why these aspects are covered by separate laws, in addition to the Environmental Management Act, are primarily of a historical nature and they fall outside the focus of this memorandum.

Violations of environmental laws are punishable under the Economic Offence Act. Depending upon the seriousness of the violation and whether or not it was committed intentionally, the maximum punishment is six years imprisonment. The Economic Offence Act also defines the competencies of criminal investigators with regard to the enforcement of environmental laws. We will clarify, below, which authorities are currently responsible for enforcement or investigation, and we will also clarify the meanings of these terms.

The investigation of matters which can be considered crimes against the environment often involves common penal law. Crimes against the environment frequently go hand-in-hand with offences such as fraud and forgery. Whenever such offences are present in environmental violations, the investigation team can make use of the often more extensive competencies pursuant to the Code of Criminal Procedure. Competencies such as observation, the monitoring of telephone conversations, and house searches, may be options in certain cases.

4 TASKS

The fragmented nature of environmental laws and regulations is not the only factor which makes enforcement complicated. Tasks and competencies are divided among many different authorities. As indicated earlier, government is primarily responsible for preventive enforcement, and the police and judiciary are responsible for repressive enforcement. However, the actual situation is different from what one might expect based on this simple structure.

First of all: who is government, and who are the police and the judiciary? Government in the Netherlands is the civilian government. In environmental laws and regulations, they are identified as the competent authorities. Examples of competent authorities include the State, the 12 provinces, the nearly 600 municipalities, and the approximately 30 district water boards.

The police in the Netherlands include regional police forces and a national police force. Their tasks are basically divided as follows: the regional police forces carry out all police tasks within their specific regions, and the national police force only carries out those tasks which cannot be carried out regionally or which can be carried out more efficiently and effectively on a national basis. Examples include coordination in supra-regional matters, the supervision of national highways, the water police, and the Aviation Department.

The judiciary is also divided into regions. Without going into further details, it is important to note that crimes against the environment are handled at the district court level. Violations presented by the police are initially prosecuted by the various district courts.

Government is the competent authority for enforcing environmental laws. Enforcement is: verifying whether companies act in accordance with environmental laws and regulations without necessarily suspecting them of any violation. The Association of Provinces (IPO) and the Environment Inspectorate (IMH) also continuously strive to achieve quality improvements in enforcement. The project entitled "Quality in Enforcement"² was established for this purpose.

The police are the main investigation authority. They have competencies to initiate investigations, also when there is a reasonable suspicion that a punishable act has been committed.

To make the situation even more confusing to outsiders, a number of enforcement officers employed by the various competent authorities have also been appointed as police officers. As a result, they also have police competencies. These officers have specific knowledge and skills with regard to the environment which regular police officers frequently lack.

5 COOPERATION

The above situation provides ample reason for establishing and maintaining structural forms of cooperation. However, each enforcing authority also has its own sources of information. For example, the competent authorities have many (in)formal contacts in companies, and the police and judiciary have many local contacts.

Provincial and regional consultative bodies have been established throughout the Netherlands in order to make optimal use of the knowledge and skills available within the above organizations. Within this structure, they establish contacts, exchange information, and conduct joint enforcement campaigns. This structure has thus far worked very well for the regular enforcement of environmental legislation, but companies committing crimes against the environment require a different approach. From the early 1990s, a number of major criminal-type investigations have been conducted by teams composed of police and government officials. Since these teams would be dissolved upon completion of each investigation, there has been a movement during the past two years to replace these ad hoc teams by structural teams at various levels. Such teams would greatly improve the level of efficiency and effectiveness in dealing with crimes against the environment. Knowledge would be retained, transitions between different investigations would be smoother, and time would be used more efficiently.

Structural enforcement teams to control crimes against the environment have already become operational at the national level, such as the core team for serious crimes against the environment. Provincial and regional teams currently include those in Utrecht, Zeeuws-Vlaanderen and Zuid-Holland. The province of Noord-Holland is about to establish its own team also. A number of other enforcement teams are expected to be established shortly.

6 EXAMPLES AND RESULTS

Various extensive environmental investigations have been conducted in the Netherlands in recent years. Many of these were triggered by environmental scandals in the form of excessive soil pollution, water pollution, or odor nuisance. These investigations showed that many of these signals were only symptoms and that the underlying actions could be considered environmentally criminal behavior. Below is a summary of cases which were the subject of recent investigations:

- a. The investigation of Company A was related to the systematic illegal discharge, processing and export of hazardous waste originating from vessels. The company was suspected of discharging a total of 3.5 million kg of chemical waste into the surface water over a two-year period. A multi-disciplinary investigation

team investigated these facts for several years. Various managing directors and owners of this company were eventually sentenced to long-term imprisonment and to fines of several millions of guilders.

- b. The investigation of Company B involved a monopolist in the processing of sewage sludge and organic waste. The government had become dependent upon this company. The company took advantage of this situation by failing to carry out, or failing to carry out as agreed, the agreed processing of the several hundreds of thousands of tons of this type of waste per year. This caused odor nuisance to the vicinity and it resulted in the large-scale use of this waste material as fertilizer in agriculture. This case was investigated by a multi-disciplinary investigation team. The company and the Public Prosecutor eventually settled the matter by payment of 5.5 million guilders.
- c. The investigation of Company C involved a company which discharged bottom sludge as non-cleanable soil instead of hazardous waste. By using this construction, the costs for discharging this material were only a fraction of what they would have been if the bottom sludge had been discharged as hazardous waste. This case was investigated by a multi-disciplinary investigation team and will be handled in court, or settled, in 1998.

The above cases are only a sample of cases that have been investigated. The enforcing authorities do not think that the worst is over. This view is partly supported by the many new initiatives, both provincial and regional, to establish permanent enforcement teams with the exclusive task of controlling crimes against the environment.

REFERENCES

1. Environmental Law Enforcement in Practice in the Netherlands, an Integral Approach. Capelle aan den IJssel, May 1995, pp. 25-70 and 91-120
2. IPO/IMH, Quality in Enforcement, Arnhem, August 1996, pp. 5-26

