

## ENFORCEMENT ASSISTANCE PROGRAM FOR FIREWORK STORAGE SITES

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### SUMMARY

The Inspectorate of the Netherlands Ministry of Housing, Spatial Planning and the Environment (VROM) has given high priority to the supervision of firework storage sites because of the great safety risks associated with storing fireworks. In 2004, the Inspectorate launched a major nationwide project focused on the safe storage of fireworks, beginning with companies that revealed poor compliance with the Fireworks Decree. The Inspectorate subsequently started a joint enforcement assistance program with the other law enforcement agencies (provincial authorities, municipal authorities and the Public Prosecution Service) to ensure the safe storage of fireworks. The inspections data is still being processed, but there is already an expectation that the outcome will not be positive either in terms of compliance with the law by firework companies or in terms of enforcement of the law by provincial and municipal authorities.

### 1 INTRODUCTION

A major firework explosion occurred in the Dutch city of Enschede in 2000 caused by the unsafe storage of fireworks. There were numerous casualties and considerable damage to property. This disaster led to more stringent regulations for fireworks and greater attention to the enforcement of regulations.

The tighter regulations for fireworks were incorporated into the new Fireworks Decree of March 2002. The Minister of Housing, Spatial Planning and the Environment holds political responsibility for implementing the Fireworks Decree. The Inspectorate is part of the Ministry and has two types of duties:

1. Enforcement of numerous regulations embodied in the legislation for which the Ministry is responsible, notably in respect of waste and hazardous substances. The Inspectorate acts as the enforcement agency when companies breach the law.

2. Supervision of the implementation and enforcement of those laws by provincial and municipal authorities. The 12 provincial authorities and approximately 450 municipal authorities in the Netherlands are responsible for enforcing the conditions attached to the environmental licences issued to almost all companies. They also enforce the regulations contained in the Fireworks Decree for firework storage sites. The provincial and municipal authorities are required to ensure rectification of breaches of the regulations. The Inspectorate examines whether provincial and municipal authorities perform their enforcement duties properly. This is called "second-line supervision."

The Inspectorate has given high priority to the supervision of firework storage sites because of the great safety risks associated with storing fireworks. In 2004, the Inspectorate launched a major nationwide project focused on the safe storage of

fireworks. The project focuses on the second task mentioned above, namely supervision of provincial and municipal authorities. This paper deals with the following subjects:

- structure of the project: objectives and activities;
- poor compliance with regulations: absence of automatic fire extinguishing systems in many cases;
- enforcement assistance program;
- results of enforcement assistance program.

## **2 STRUCTURE OF THE PROJECT: OBJECTIVES AND ACTIVITIES**

The objectives of the Inspectorate's project are to:

1. Check the enforcement of legislation covering firework storage sites by provincial and municipal authorities. Are the provincial and municipal authorities taking proper action against companies that breach the law?
2. Assist enforcement by provincial and municipal authorities. The ultimate goal is for firework companies to comply with the regulations and store fireworks safely.
3. Provide a national picture of compliance with laws for firework storage sites.

The most important activities being undertaken as part of the project to achieve these objectives are:

1. conducting inspections at firework storage sites;
2. examining enforcement dossiers at provincial and municipal authorities;
3. informing provincial and municipal authorities of the results of these inspections and examinations.

When the Inspectorate observes breaches of the law at firework storage sites, it requests the provincial and municipal authorities to take enforcement action.

The project is linked to the expira-

tion of the transitional periods defined in the Fireworks Decree. The Fireworks Decree came into effect on 1 March 2002. Large firework storage sites (i.e. sites where more than 10,000 kg is stored) were given two years from that date to meet the more stringent requirements embodied in the Fireworks Decree, i.e. by 1 March 2004. Smaller storage sites (i.e. those with not more than 10,000 kg) were given six months longer (until 1 November 2004).

The project was launched mid-2004 and will be completed mid-2005. All the major storage sites – about 50 companies in all – are being inspected first. The provincial authorities are responsible for enforcing the law at these companies. Subsequently, approximately 50 randomly selected small storage sites will be inspected. In total there are almost 2000 small storage sites. The random sample thus represents 2.5% of small storage sites. The municipal authorities are responsible for enforcing the law at these companies.

The inspections focus on the most important safety regulations, namely:

- Fire safety regulations: the most important requirement is that firework storage sites must possess an automatic fire extinguishing system (“sprinkler system”).
- Electrical safety regulations: the electrical system must have safety features that prevent sparking.
- Safe distances: there must be a sufficient distance between the firework storage site and vulnerable properties like residential dwellings.

## **3 POOR COMPLIANCE WITH REGULATIONS: ABSENCE OF AUTOMATIC FIRE EXTINGUISHING SYSTEMS IN MANY CASES**

At the start of the project, the Inspectorate had reasonably positive expectations about enforcement and compliance with the Fireworks Decree. The reasons for these positive expectations were:

- the Fireworks Decree generally contains clear regulations;
- the fireworks industry appeared to be well aware of the regulations;
- the Fireworks Decree allows fairly ample transitional periods for meeting the more stringent requirements;
- companies unable to meet the more stringent requirements were able to end their business with compensation from the Ministry;
- attention to enforcement had increased sharply following the Enschede firework disaster;
- the Ministry, provincial authorities, municipal authorities and the Public Prosecution Service had agreed clearly-defined arrangements for enforcing the Fireworks Decree.

Despite these expectations, the first round of inspections at large firework storage sites revealed poor compliance with the Fireworks Decree. A majority of companies did not possess an automatic fire extinguishing system.

The fireworks industry association asked the State Secretary for Housing, Spatial Planning and the Environment to allow fireworks companies more time to install an automatic fire extinguishing system. The State Secretary rejected the request for postponement. He pointed out that force majeure could exist only in individual cases, i.e. where companies had done everything reasonably possible to have an automatic fire extinguishing system in place on time, but had been unable to do so due to circumstances beyond their control.

The Inspectorate wanted to avoid a situation where firework storage sites keep fireworks on premises not equipped with an automatic sprinkler system. Given the safety risks involved, this would be an irresponsible situation. A salient point is that most of the small storage sites sell fireworks to members of the public at the end of the year. People in the Netherlands let off a lot of fireworks at midnight on New Year's Eve.

Without an automatic fire extinguishing system, members of the public would be insufficiently protected during the sales period against potential fires on premises. Another consideration was obviously the risk posed to the surroundings. Many small firework storage sites are located in ordinary shopping streets, in some cases in between residential dwellings.

The Inspectorate's project was designed to inspect only 2% of small storage sites. It was uncertain what municipal and provincial authorities would do in the way of enforcement with regard to the other 98%. Would all of those companies be inspected? Would proper enforcement action be taken against breaches of the law? Given this situation, the Inspectorate launched an enforcement assistance campaign additional to its own project.

#### **4 ENFORCEMENT ASSISTANCE PROGRAM**

To set up an enforcement assistance program, the Inspectorate convened a meeting of all law enforcement agencies involved: provincial authorities, municipal authorities and the Public Prosecution Service. Provincial and municipal authorities are responsible for enforcing regulations under administrative law at firework storage sites. The Public Prosecution Service (through the police) is responsible for enforcement under criminal law. Through this joint action, the Inspectorate wanted to:

- work out a joint enforcement approach with the aim of enforcing laws and regulations uniformly and effectively at all firework storage sites;
- maximise the number of inspections by provincial authorities, municipal authorities and the police;
- facilitate enforcement by adopting standard enforcement methods;
- maximise the deterrent effect towards the fireworks industry by giving a lot of publicity to the enforcement assistance program.

The ultimate goal was naturally to

ensure the safe storage of fireworks. The State Secretary for Housing, Spatial Planning and the Environment mounted a publicity offensive at the start of the enforcement assistance program. He sent out the following message in powerful terms on television and in newspapers: "Without an automatic fire extinguishing system there will be no storage of fireworks; this requirement will be strictly enforced."

This gave the fireworks companies the choice of as yet installing an automatic sprinkler system or ceasing to store or sell fireworks. The Inspector General of the Inspectorate subsequently sent a letter to municipal and provincial authorities conveying the same message and urging them to enforce regulations properly. The organisations that represent the provincial and municipal authorities supported these calls in letters sent to their members. The Public Prosecution Service instructed public prosecutors about the action required under criminal law.

All information about the enforcement assistance program was published on a special website. This enabled rapid communication on new developments. A helpdesk was set up to answer practical questions from law enforcers. One of the standard enforcement methods was a framework for examining recourse to force majeure. The Inspectorate designed this instrument in close consultation with the enforcement partners. The framework made it possible for law enforcement agencies to easily determine whether force majeure existed. It also enabled a uniform examination of this question.

The aforementioned instruments, intended mainly to facilitate enforcement, are best described as enforcement assistance. "Compliance assistance" is about making it easier for companies to comply with the law. "Enforcement assistance" is about making it easier for law enforcement agencies to enforce the law.

The enforcement program devoted special attention to the fireworks industry using several influencing techniques:

—**Deterrence:** The industry received a

letter making it clear that fireworks traders who supplied fireworks to fireworks companies without an automatic fire extinguishing system would be committing a criminal offence.

—**Consultation:** Regular consultations were held to provide information and respond to developments in the industry.

—**Publicity:** The fireworks industry tried to emphasise through the media that the industry was not to blame for insufficient compliance with the law. The industry pointed to circumstances that included an alleged shortage of companies to install automatic fire extinguishing systems. The Inspectorate always responded alertly by seeking publicity itself and properly informing the law enforcement partners.

## 5 INITIAL IMPRESSION OF THE RESULTS OF THE ENFORCEMENT ASSISTANCE PROGRAM

The Inspectorate's project for fireworks storage sites has not yet been completed. At present (February 2005), the data from the inspections is still being processed. However, the expectation is that neither compliance nor enforcement will produce a positive picture.

The enforcement assistance program will be evaluated separately. The first impression looks positive, however. The deterrent effect appears to have been considerable. The publicity given to the program left the fireworks companies in no doubt about the great likelihood of being caught and of the possible penalties. A large proportion of the companies quickly had an automatic sprinkler system installed. This is evident from an increase in the number of orders received by the installation companies. There was such an increase in demand for the systems that a shortage of parts occurred, but this problem confronted only those companies that were already far too late in ordering the installation of a system.

There would appear to be few

cases where enforcement resulted in fireworks being removed from storage sites that did not have automatic fire extinguishing systems. To a large extent this seems to be due to the circumstance that the enforcement program had greatly reduced the group of companies without such a system. However, it is also possible that provincial and municipal authorities did not consider it necessary to order the removal of the fireworks in the short term after weighing up safety risks and business interests in individual cases. The analysis of the inspection results from the project

and the evaluation of the enforcement assistance program will help clarify whether this is the case.

The cooperation between the law enforcement partners can be considered another positive outcome of the program. This collaboration yielded considerable knowledge and experience of effective and efficient enforcement of the law at firework storage sites. Provincial and municipal authorities can take advantage of this knowledge and experience when conducting their regular inspections at firework storage sites in 2005.