

## **ENFORCEMENT AT GROUP LEVEL APPLIED TO WASTE DISPOSAL GROUPS**

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### **SUMMARY**

In 2003, the Inspectorate of Housing, Spatial Planning and the Environment decided, as part of a secondary supervision strategy, to take steps towards adopting a different approach to the waste disposal market. In the Netherlands, five waste disposal groups dominate 40% of this market. The new approach focuses on the waste disposal chain within a single group, with inspections being carried out at the different plants belonging to one group across provincial boundaries (in The Netherlands, twelve separate provinces are authorised to implement the Environmental Management Act). In this way a national picture emerges of the quality of the licence issuing process and enforcement across the provinces as well as the level of compliance by the group and its companies.

This survey concludes that enforcement at group level supplements regular supervision at plant level. Chain enforcement within a waste disposal group ("across the group") yields clear added value. Additionally, enforcement at group level makes it possible to improve the supervision of individual plants. Finally, it was noted that while the national government essentially operates in the national sphere, the large waste disposal groups commonly operate on an international scale. The use of licensed waste exchange between domestic and international sites may have unintended and undesirable effects. It is in the interests of all countries that a grip should (once again) be established on the waste disposal groups and that a clear picture be gained of the intra-group transport of waste materials. For this reason, the feasibility of an international project on enforcement at group level within the EU will be explored in 2005.

### **1 DEFINITION OF TARGET AND AUDIT METHODOLOGY**

#### **1.1 Background**

Companies active in the Dutch waste disposal market are, more and more, experiencing both a horizontal increase in the scale of their activities (widening) and a vertical increase in the scale of their operations (expansion to include several links in the waste disposal chain). In 2003, five groups of companies accounted for more than 40% of turnover in the Dutch waste disposal market.

An increase of operations of this

nature carries with it the risk that the market will become impossible to fathom, and hence the possibility of a lack of transparency concerning the issue of licences and supervision. These matters are of importance in the Netherlands because the issue of licences and enforcement of the provisions of the Environmental Management Act in this country are carried out by twelve separate provinces.

For this reason, the Inspectorate of Housing, Spatial Planning and the Environment undertook in 2003, as part of a secondary supervision strategy, a different approach to the waste disposal market. It

was decided to adopt an approach that focuses on the chain within a single group. In 2003, one group of companies was chosen to be audited on the basis of objective selection criteria. A second group was audited in 2004.

## 1.2 Targets

The following targets were formulated for the audit:

- to promote positive compliance behaviour by the audited group and its plants;
- to promote uniform licence issuing and enforcement by the provinces concerned at the plants belonging to a single group;
- to gain an understanding of the working methods employed by a group and the possible risks for licence issuing and enforcement;
- to develop a methodology for enforcement at group level and to gain experience with a group-focused approach by the Inspectorate.

## 1.3 Audit Methodology

An innovative audit methodology was developed for the audit, which will also be used in future Inspectorate audits at the other nationally operating waste disposal groups. In order to allow a proper assessment of the audit targets, it was decided to conduct a chain audit of pre-selected waste flows at different plants within the same group. This was done to gain an insight into the relationship between the different plants in the same group, and to assess whether this has any effect on their compliance behaviour. Allied to the selected waste flows, the licensing and enforcement at the audited plants were also audited.

A second innovative element within the audit was the fact that the audits were carried out within a short period of time, spanning just a few weeks. This was the first time that a decision had been taken to conduct a nationwide Inspectorate audit as a means of carrying out audits of this nature. The reason for this was to gain the best possible and most reliable impression

of the level of compliance of the plants. The group was not informed of the inspections in advance, and a visit to the head office of the Dutch plants was therefore planned on the first day of inspection in order to announce the audit.

## 1.4 Preparation and Implementation

During the preparation and implementation stages, audit decisions were gradually taken to ensure a well-defined and controllable audit. Firstly, the group to be audited was selected on the basis of objective criteria. Next, several waste flows were selected as the focus of the audit. As the audited group has almost 70 plants in the Netherlands, the third step comprised the selection of the plants to be audited. These were plants that may be considered to play a central role in the group. In other words: plants to which and from where a lot of waste is transported. Additionally, a regional spread across the Netherlands was also taken into account, which is in line with the second target of the audit: to assess the level of uniformity amongst the various provinces. Fourthly, in order to be able to compare the data obtained from the audited plants, it was decided to focus the (administrative) audit at the plants on inspection dates that were determined in advance.

Once these preparations had been made, a ruler was developed for licence inspection and operational control. A planning document was also developed for the actual implementation. In addition, an auditor was asked to explain by reference to data that are freely available to the public the possible effects on enforcement of keeping group (financial) accounts.

It turned out that if a group reports its results through consolidated annual accounts, it is not possible for third parties to check how well a particular plant is performing on the basis of the published data. This problem is exacerbated if there is a single legal entity comprising several different plants, and if no financial records are kept of the origin (release) and destination (receipt) of waste flows between the vari-

ous plants of that legal entity. In other words: if two plants are part of the same legal entity, the need to account properly for all deliveries and receipts between the two from a financial/administrative perspective disappears. This has negative consequences for the authorities' ability to inspect the plant.

Furthermore, it is possible that a situation may arise whereby the actual 'route' taken by the waste materials between the different plants does not correspond to the financial 'route', making it hard to trace. This was also found to be the case with the audited group.

## 2 RESULTS AND CONCLUSIONS IN RELATION TO THE GROUP

### 2.1 Compliance Behaviour By The (Plants Of The) Audited Group

It was discovered that the accounting records and registering details that the plants kept with regard to intra-group waste material deliveries were not sufficiently consistent. It has not proved possible to a satisfactory degree to adequately follow the selected waste flows, check the accounting records relating to the selected waste flows, and ensure proper (chain) enforcement within the group. The specific licence issued to the plants under the Environmental Management Act states that certain data relating to waste materials that are delivered and transported must be registered. A failure to register is, therefore, a breach of the licence. The poor quality of the accounting records meant that it was not possible in all cases to show which plant was in breach (the delivering or the receiving plant). Where possible, the provincial authorities were asked to take action and the group was asked to improve its accounting records.

An observation of this nature with regard to the quality of the accounting records will only surface in the context of cross-provincial (chain) enforcement at group level. The general conclusion that may be reached is that enforcement at group level gives more insight into the com-

pliance behaviour at plant level.

### 2.2 Uniformity of Licence Issuing

There is no consistency between the provinces regarding the content of the licence applications pursuant to the Environmental Management Act, nor the content of the decision granting the licence. For that matter, they are not required to do so. The conclusion is justified nonetheless that a coordinated national approach to licences would lead to more uniform and easily enforceable licences. For the sake of completeness, it is noted that this conclusion also applies to similar companies that do not belong to one and the same group. The conclusion applies to a lesser degree to those plants within a group that carry out special activities and actions with regard to (specific) (hazardous) waste flows. Comparability and a need for uniformity amongst these licences are no less significant and tangible than amongst 'ordinary' plants not belonging to one and the same group.

### 2.3 Uniformity of Acceptance Procedures

In the audit, extra attention was focused on the acceptance terms or procedures. After all, if there is no efficient and unambiguous acceptance procedure in place, a situation will arise in which enforcement and inspection become difficult.

It was discovered that the audited group prefers a group-standard acceptance procedure, which may or may not be tailored to the specific situation of each plant. Each province is responsible, separately, for assessing and, where necessary, requesting modifications or additional information (regarding hazardous waste) for each plant. There was no evidence of synchronised activity in this respect. Nor was there any synchronisation of assessment of the procedure by the Ministry of Housing, Spatial Planning and the Environment and the authorised provinces in relation to the licence to collect.

The parties involved were therefore expressly recommended to improve their

coordination, i.e. amongst themselves, of (the assessment of) the acceptance procedures for plants processing hazardous waste within the same group. In the case of the audited group, the Inspectorate has already taken action to ensure such coordination.

#### 2.4 Uniformity of Enforcement

As has already been stated with regard to the compliance behaviour results, it has proved to be difficult to carry out proper supervision of the accounting records. Supervision of the accounting records is important and essential if a clear insight is to be gained into the working methods of the group and the proper enforcement of the Environmental Management Act.

It was discovered that intra-group shipments are only weighed at the receiving plant after which such data are accounted for in the records of the releasing party. The licences do not allow for a plant to be forced to keep records on the basis of data obtained from its own weighings. All this did not lead to the records being consistent with one another, for that matter.

The indicative enforcement assessment revealed that each competent authority carries out enforcement in its own way and maintains different frequencies of visits. There is a potential risk, which was touched upon in the background to this audit, that the group might exploit differences in enforcement. This was not shown in the investigation.

#### 2.5 Uniformity of Licence Issuing And Enforcement of the EU Waste Shipment Regulation

When defining the parameters of this audit, it was decided to restrict the audited intra-group waste material chain to within national borders. During the audit, however, it became clear that exports of waste materials and the related intra-group transportation of these materials within the country make up a significant proportion of all transports between the plants and centralised group activities. Each day the

group decides at the national level which EU Waste Shipment Regulation decision will be used via which plant to transport materials. Then the group as a whole makes optimum use of the EU Waste Shipment Regulation decisions awarding licences to the various plants.

With regard to enforcement of the EU Waste Shipment Regulation, it is noted that there must be clear agreement within the Inspectorate as to when it is permissible to export waste on a decision awarding a licence to another plant, and when it is not. The Inspectorate has now made agreements in this regard in a set of internal procedures.

It was also discovered that the wording in the EU Waste Shipment Regulation decisions with regard to the export of waste is often not in line with the terms of the licence awarded under the Environmental Management Act, or what happens in actual practice.

A commitment has been given to the political parties in the Netherlands that, where necessary, steps will be taken to check whether the wording of the export notices is in line with what a company may or can do under the Environmental Management Act. The State Secretary at the Ministry of Housing, Spatial Planning and the Environment has said that although an inconsistency of this nature does not form a ground for refusal under the EU Waste Shipment Regulation, a competent authority may nonetheless take action pursuant to the Environmental Management Act.

#### 2.6 Insight into the Working Methods Of Groups And Possible Risks

As stated above, it is not possible to gain insight into the financial position of individual plants belonging to the same group on the basis of data freely available to the public. Additionally, the actual 'route' taken by waste materials between the plants does not always correspond to the financial 'route'. This makes it more difficult to follow the paper trail of waste flows.

Generally, it can be stated that there is evidence of a national policy and

efforts to promote professionalism within the audited group, combined with specialisations, such as specific activities, that have been developed at plant level. This is expressed by, for instance, a comparison of the licences issued by the various provinces, but also through the daily optimisation (maximum return at minimum cost) of which waste materials are stored or transferred, or processed or handled, at which site or through which site, and exported using which EU Waste Shipment Regulation decision.

This method of working and a breakdown of the different sites into regional private limited companies mean that it is no longer possible to talk of separately functioning plants.

The centralisation, moves towards increased professionalism, and degree of coordination within the group that were noted have not (yet) been mirrored in a similar move by the government with regard to the issue and enforcement of licences. This audit has shown that there is added value in such a move towards greater coordination and more cross-plant (and cross-provincial) inspections of waste disposal groups.

### **3 REVIEW OF ENFORCEMENT AT GROUP LEVEL**

Enforcement at group level supplements the regular supervision of individual plants. There is clear added value to be gained from (chain) enforcement within a waste disposal group. Implementing enforcement at group level reveals inadequacies and shortcomings in accounting records (with regard to the intra-group transport of waste flows) that are not revealed during the regular supervision of individual plants. Accordingly, chain enforcement enables better supervision to take place of the individual plants under the Environmental Management Act and allows action to be taken against shortcomings at plant level.

The audit methodology that was developed has proved to be a useful tool for assessing the aims of the audit. A

“cross-group” inspection that focuses on pre-selected waste materials is an effective way of gaining insight into a group’s working methods with respect to waste materials and the level of compliance amongst the individual plants. The methodology will be fine-tuned on the basis of the findings and experiences and will be used in future audits to be conducted by the Inspectorate of waste disposal groups that operate on a national scale.

It is further noted that the waste disposal groups operating in the Netherlands are international business groups that determine their policy and strategies in international, i.e. cross-border, terms. The conclusion may therefore be drawn that the (inspection of) imports and exports of waste materials should be a major focus of any audit of a group. The Inspectorate is recommended to embed enforcement at group level in its inspection schedule and to take the first steps from national to international enforcement at group level.

Finally, the audited group reacted positively to the inspection methodology and the working method employed by the Inspectorate. The group has taken positive action on the points raised with regard to the individual plants and has given an adequate response to remedy the breaches. The group also stated that this was the first time they had experienced this type of approach and that they considered that the audit had the look and feel of an external audit.

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