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## CHAIN ENFORCEMENT COMPLEMENTING THE EXISTING SYSTEMS

KOK, FRED<sup>1</sup>

<sup>1</sup> Secretary of the National Authority of Environmental Enforcement, Koningskade 40, 2596 AA Den Haag, the Netherlands, fkok@lom.nl

### SUMMARY

This paper describes the relatively new concept of 'chain enforcement.' Since the development of environmental legislation and its enforcement, the focus has primarily been on stationary sources. In the last decade however, a lot of attention has been directed towards environmental problems, which are not directly related to stationary sources. The problem-oriented approach is at the moment not entirely compatible with the way the legislation is organised. The problem-oriented approach instead of a task-oriented approach is therefore not self-evident and demands more attention. The fact that there still is unfamiliarity with the chain enforcement approach, stresses that more attention is needed for creating support and confidence.

The National Authority of Environmental Enforcement published the guideline document *Chain Enforcement*, which describes the process of chain enforcement in five steps. The guideline document especially deals with the way the process has to be organised and the conditions that have to be fulfilled for successful chain enforcement.

### 1 PROBLEM-ORIENTED WITHIN TASK-ORIENTED LEGISLATION

Since the beginning of the 19<sup>th</sup> century till the sixties in the 20<sup>th</sup> century, the Netherlands only had one general environmental law. From the sixties onwards, the environmental theme has come onto the public agenda. This meant diverse sector-oriented laws with different permit systems. Within the decentralised government of the Netherlands the following proverb applies: "decentralise whatever can be decentralised, and centralise what has to be centralised." Because of this, a patchwork of systems with different competent authorities has arisen, that even after advanced development of environmental legislation, exists till today. The protection of the environment and its enforcement is done by approximately five hundred different governmental organisations; central, regional and local.

Environmental legislation is mainly directed towards location bounded industrial activities. The main instrument environmental legislation offers is the permit system. Besides the actual environmental protection, the environmental legislation also arranges the division of the different authorities over the five hundred governmental organisations. The legislation gives each government a task assignment to protect the environment for those parts for which the concerned government is appointed to through law as official competent organisation.

Because of this, a task-oriented system exists. Finance, steering incentives and accountability is therefore primarily focused on fulfilling the assigned task.

In the last decade, however, experience shows that there are still gaps in the system with the task-oriented approach. For stationary sources and possibly non-compliance behaviour it can be assumed that the enforcement governments have developed in such a way that they are in general in control with the situation. This doesn't exclude incidents and situations where the willingness to enforce is deficit.

Non-compliance related to non-stationary sources is nowadays more seen as a problem. It mostly involves products, materials and waste streams which have their own cycle. This cycle is a chain consisting of the phases origin-transportation- processing- end application or recycling. In each phase in the cycle an environmental threat can come from these materials. For instance a demolition firm which pretends to dispose of asbestos to a waste company but, in fact, dumps the asbestos in an illegal manner to avoid extra costs.

Because of their non-stationary character, and sometimes, because of the long time-line, depending on the context in the cycle, every time different laws apply and mostly there are also diverse competent authorities.

The enforcement of these kinds of environmental problems sometimes demands an approach that is different from the approach to stationary sources. The National Authority on Environmental Enforcement published a guideline document, which step by step describes the conditions and circumstances for successful chain enforcement. It involves the following steps:

Phase 1: Selection of the chain

Phase 2: Chain research

Phase 3: Intervention strategy

Phase 4: Prepare implementation

Phase 5: Implement and monitor

### **1.1 Consequences for problem-oriented way of working**

The problem-oriented approach takes place within the boundaries of the juridical possibilities and might therefore experience possible resistance. Developments in society are not guided by legislation, but to the opportunities which arise. As one can see, the trade in waste (and such) materials and products has become big business. The same applies to raw materials, which are easily transported all over the world. In this sector, just like all the other sectors, a relatively small part of the market beliefs in ideology on sustainability and are showing an exemplary

behaviour that is compliant. Another small part is after making money and economic profits despite the environmental impacts and are not whatsoever afraid for doing criminal environmental activities. By far most of the actors behave in a calculated manner. They are, in principle, prepared to comply to the rules, especially if the competition in general also comply on a large scale. If by non-compliance, the chances of getting caught, the sanction extent and the damage to the image are great enough, it will stimulate compliant behaviour. On the other hand however it also means that this group will easily join in a culture of non-compliance. Such cultures arise if the incentives (positive and negative) for compliance are insufficient. This trend can also be seen in other countries (on international level). Depending on time, place and prevailing jurisdiction each time different requirements apply in the life-cycle of such harmful materials or activities.

Companies or traders, who behave in a calculated manner make use of these circumstances and know how to organise themselves in these chains, or keep the chain entirely in their hand. To adjust and make (mis)use of the circumstances surely pays off against the chances of being caught for non-compliance.

Enforcement governments who want to be effective in this chain, shall have to organise themselves in a similar way. For this, a system is set up in the Netherlands.

## 2 SELECTION OF THE CHAIN

The methodology for selecting chains which have priority is based on the Compliance Strategy of the Ministry of Housing, Spatial Planning and the Environment. For subjects wherefore chain enforcement is a suitable solution, the following steps are taken:

1. Divide the working area into chains e.g. with waste materials the following phases can be identified a) dispose b) collect and store c) process d) useful application / permanent removal; and list and select the relevant types of impact (sustainability, public health, safety and also the social impacts which can occur).
2. Specify and assess each chain and chain phase for disadvantageous impacts that in principle can occur.
3. Analyse and assess each chain for the chance that impacts might occur; different chance determined factors are being assessed.
4. Determine the risk of each chain (total impact score X total chance score) and based on this prioritise.
5. To assess the need for chain enforcement.

Step 1 till 4 also occur in other methodologies and will therefore not be discussed here. To assess if chain enforcement is desirable, the following aspects have to be considered:

- Risks which are caused by insufficient insight into and grip on the whole impact of industrial activities of companies, processing and transport within in the chain of materials.
- Insufficient compliance in the moments of transfer between the different stages of industrial activities in the chain. A characteristic of a material stream is that a lot of legislation and rules apply to the diverse links in the chain. Even some material streams can change their identity and for instance become from waste a raw material (input). The value of a material also changes then. It can therefore be attractive and even easy to violate the rules.
- Risks in one link can have an impact on the whole chain.
- Risks related to legislative tasks and policy tasks that are, compared to other risks in the chain, clearly the most important.

In general the following aspects in the process of selecting a chain are useful:

- Work is structured and follows the described steps, but uses the quick-scan method. Do not waste energy to detailed study; this will come in a later stage.
- In this phase have confidence in your professional intuition. The methodology has a lot of sufficient elements further on where you can confirm your assumption or not.
- The different interests can even play a role in the first phase. Independent process management can offer safeguard against this problem.
- Make sure that the report is well founded and that even a layman can understand it.

### **3 CHAIN RESEARCH**

Formulate a clear main question and aim, so it can give direction. The main question and aim indicate where the focus of the chain research lies. Clearly define the research area and also make clear where the chain research is not focused on.

Step by step, the research can have the following features. Make the aim explicit and derive the central question from it. From this central question, different sub-questions can be formulated which determine the way the data will be used and which methods to apply. By answering the sub-questions, the central question can be answered and subsequently steps can be taken to achieve the aim.

With such an approach a project leader is needed, who has full confidence from the involved government and who is given the opportunity to do his research independently and/or with the help of hired expertise.

In general the following notions in the phase of the chain research apply.

- Invest energy in a clear but short project – or research plan with the necessary elements.
- Consider, if possible with the directly concerned (potential project group members), explicitly the project organisation and decide to do it yourself or hire expertise.
- Make a time management plan and make a realistic estimate of the budget needed
- Invest in organising a data facility. Make sure that the chain research is not alienated from daily practice.

#### 4 INTERVENTION STRATEGY

When setting up an intervention strategy, it is wise to use a broad scope. The problem and especially the key moments which maintain the problem is the departure point for the intervention strategy. This gives opportunity to abstract from task and roles which are laid down in existing regulations. The legislation is especially directed towards territorial and functional competence. In an intervention strategy on the contrary, aims and the desired impacts are defined and the assigned competences are just an instrument to achieve the aims.

An intervention strategy consists of three levels:

- Strategic → what do we have to do or what has to be done to achieve the aims and impacts?
- Tactical → what is the best way to do it?
- Operational → who has to do which activity when and with what result?

The strategy is the answer to the question what do we have to do or what has to be done in order to achieve the aims and impacts and thus get sufficient grip on the problem. This will be answered within the context of the whole chain. The territorial and functional competence is a part of this answer and certainly not an independent aim. For instance, a strategy formulated in the intervention strategy 'Building and Demolition Waste' of the National Authority of Environmental Enforcement is to prevent that building and demolition waste—during building and demolition—is not contaminated with asbestos, paint tins, etc.

The strategy is provided with different tactics. That means what is the best way to do it. An example of a tactic from the intervention strategy 'Building and Demolition Waste' is to force the separation of waste- during building and demolition- through permits.

The tactic is an important step and should be a well-considered decision. Good decisions are mostly taken in steps. Advisable are the steps: forming a picture, judging and decision-making.

- To form a picture: which solutions (measurements and instruments) are in principle conceivable? Each member of the project group can think of and write down different solutions.
- Judging: how can the solutions be measured against each other? What are the advantages and disadvantages? In this step the different solutions are discussed and measured against each other.
- Decision-making: finally, based on the discussion on the advantages and disadvantages of the different possibilities, a decision is made.

If the tactics are determined, then for each tactic it is worked out who is responsible for the operational actions. An example of an operational action formulated in the intervention strategy 'Animal Fats' is: the Inspection Department of the Ministry of Environment should list (mid 2005) all the companies that are active in the fat recycling chain. All actions together form the operational action program for this problem.

To develop a strategy the following general remarks can be made:

- Do not restrict the scope. Think creative and work in the lines of broad to narrow in strategies and tactics. First develop solutions that are conceivable and then determine which are practical and from which one more is to be expected.
- Make sure, more than in the chain research phase, that there is enough input of practical expertise and experience. The intervention strategy has to be feasible.
- Safeguard the implementation in the intervention strategy by explicitly describing the way the implementation should be organised.

## **5 IMPLEMENTATION AND MONITORING PLAN**

The implementation plan consists of elaborate information for the people who are responsible for the governance, the managers and the enforcers. These target groups are discussed in the following paragraphs.

## 5.1 People responsible for governance (governing officials)

To get support from the governing officials it is important to give them insight into:

1. The environmental problem and the related enforcement question.
2. The 'organisation exceeding' character of the problem: let the governing officials understand the risks of these problems which cannot be solved alone within their own organisation and make them aware of the positive role they can play.
3. The importance of chain enforcement to solve the problem
4. Who plays preferably which role.
5. What are (roughly) the costs and benefits to participate in the implementation.

A characteristic of environmental problems in a chain is that the distance between the violation and the harmful impacts are great. Because of this, the risk exists that the problem feels more like a problem that is far away and it is much easier to shift the problem instead of solving it. Therefore offer administrative perspective that creates room for responsibility that is not only within the boundaries of its own domain. Be aware that the description is meant for governing officials: keep it short.

To make decisions governing officials would like to have insight into the costs and benefits. Think of the following advantages:

- Advantages on micro-level. Advantages for the own organisation, for instance to get grip on the risks within the own domain.
- Advantages on region-level. Advantages on regional scale and to achieve goals together with other similar responsible government organisations.
- Advantages on macro-level. National or international advantages like governments operating united and aspects of international solidarity.

## 5.2 Managers

To a great extent, managers need the same information as the people responsible for governance. They also have to convince the board in staff meetings.

In addition managers are responsible for the daily management. They want to have an overview of the whole chain input-throughput-output-outcome. Aims and impacts should be presented in a practical manner.

Managers should take into account how the organisation should be organised and the different modalities for possible forms of organisation should be given to them.

Special attention should be given to the aspect: exchange of information. Effective cooperation depends on the willingness to exchange information and also to actually do it. The necessity should be founded. Think of the following types of exchange:

- Exchange of information in the own organisation between the different departments.
- Exchange between enforcement partners. This concerns data which one organisation gathers and is also put at disposal and is available for other fellow organisations.
- Exchange among different organisations and an agreed central point. The information can then also be available for monitoring performance and input.

### **5.3 Enforcers**

A summary of information given to governing officials is desirable, so that the enforcer has insight into the context of his conduct. The plan also has to consist of supervision and enforcement instructions like:

- Where the focus should be during the supervision
- How the violations can be established and confirmed
- How the violations related to evidence should be determined
- How the feedback to the management is arranged

To conclude this chapter some general remarks can be made.

- Make the implementation plan, especially concerning the part that is directed to the executers, as concrete as possible.
- Make clear to the governors and managers why the approach to the problem needs an attitude that should look above their own domain to other domains. Especially in the attitude, there is potential for recognition and appreciation of its own contribution.
- Look critically at the implementation plan if it attractive to participate, especially for the individual governments. Participation is not self-evident and also not compulsory. Tempt them.

## 6 IMPLEMENTATION, EXECUTION AND MONITORING

In this phase a distinction can be made between the different steps.

1. Prepare the implementation of the action program
2. Implement the actions of the action program
3. Monitor and periodically assess the performance of the implementation

The action program can take form through a cycle process called quality circle of Deming (plan, do, check). In general the following advice can be given.

- Form an implementation group with people of a 'certain level' chosen from the involved organisations. Try to win them over, inspire and motivate them, and make expectations explicit. Try to involve them in the decisions and the actions that have to be taken. Try to be open for criticism and foresee, enumerate and react to resistance and criticism.
- Try to achieve concrete results, quick wins always work inspiring. The longer concrete results fail to occur, the harder the implementation is and reverse.
- Try to quickly approach difficult cooperating organisations. Do not hesitate to seek help for such problems on a higher level. Successful cooperation is not the responsibility of one person.
- Use the circle plan, do, act & check consciously and make the different steps explicit, on the level of the action program and also on the level of the different individual actions to be taken. Do not restrict the scope. Think creatively and work from broad to narrow, in strategies and tactics. First think of solutions that are possible, and subsequently determine which are practical and from which one the most is expected.
- Make sure of - more than in the chain research- input of expertise and experience. The intervention strategy should be practical.
- Safeguard the implementation by explicitly describing the way the implementation should be organised.

## 7 EPILOGUE

The methodology offers a rational model for the possible approach to chain enforcement. The National Authority of Environmental Enforcement already has experience with the implementation of the intervention strategies asbestos, building and demolition waste, animal fat and prohibited consumer fireworks, started in 2005. Experience has shown that chain enforcement can be a good

answer to the fact that companies are not operating independently but are part of a chain where there are opportunities between two links where compliant behavior does not always have the preference.

In spite of all rationality, to create support and confidence for this approach is essential. The Dutch experience shows that creating support on the enforcers-level delivers the least problems. They are constantly banging their head against the wall because they can not operate effectively with the restrictions of the current system. The chain enforcement gives them opportunities to increase their effectiveness. To get the support and confidence of governing officials and managers is more complicated. It is politically correct to affirm the chain problems and support the chain approach. At the same time one can observe there are certain reservations because of the implications support has for its own organisation. Governing officials and managers are pointing at the essential pre-conditions which first have to be fulfilled before they take action. For the managers an extra complication is that they are not only responsible for the environment but also for daily management and most often the tasks are directed towards this. These are task assignments and performance commitments which mostly focus on the classical territorial and functional domains, instead of the broader view which underlies the chain enforcement.

It is therefore important to achieve support and confidence from governing officials and on managerial level and also for the implications it might have on its own organisation. It is also important that from the cooperating governments, one governing official in particular is responsible for the performance and also to report it. Especially to prevent that responsibility for all, sometimes means in practice that will no one is taking responsibility or action in the end.

Besides the eagerness of an appointed project leader it is also important that a governing official is involved who is also interested to turn the project into a success. The governing official should recognize possible stagnation in the project as if it is his own failure and should be able to approach his colleague if there is a problem. Such a committed sense of urgency is needed for the management to legitimately reserve capacity in their internal management. At the same time the management is also an important advisor to the governing official. The sense of urgency message should be expressed by the management to convince the governing official of the chain enforcement approach.

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INECE Secretariat  
2300 Wisconsin Ave, NW Suite 300B  
Washington, DC 20007  
[inece@inece.org](mailto:inece@inece.org)  
<http://www.inece.org>