

## Netherlands

*Marjan PEETERS*  
*Assistant-professor of environmental law*  
*Maastricht University Metro*  
*Department of public law*

### **I- ENVIRONMENTAL LAW EVOLUTION SINCE 1992**

#### **Integration through the Environmental Management Act**

##### *Regulatory instruments for firms*

The pursuit for much more integrated environmental legislation has resulted in the new Environmental Management Act that came into force in 1993.<sup>1</sup> Instruments for regulating polluting behavior by firms (entities) are (1) a permit-system and (2) so-called general rules. The latter one are meant for smaller polluting activities (about 300.000 firms, like bakeries, petrol stations, market gardens). Entities that fall under a specific general rule have to make a formal announcement to the appointed administrative authority. This authority is not obliged to give a formal decision following this announcement. Of course, this authority has a power to enforce when an announcement is not in line with the general rules, or when the specific activity is not in accordance with the general rules.

In the context of regulatory relief the use of general rules is expected to have less (administrative) costs for governmental authorities and the private sector. As a result of this, it is the idea that much more time would be left over for compliance and enforcement.

Having an integral permit is a legal obligation for the so-called “inrichtingen” (group of installations; entity). In the EMA a definition of “inrichting” has been given.<sup>2</sup> The application of this definition in practice

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<sup>1</sup> Wet milieubeheer, Staatsblad 1992, 551. This Act – as being the central environmental act – has been changed and extended a lot of times during the nineties.

<sup>2</sup> Art. 1.1 EMA.

*Marjan PEETERS*

goes along with interpretation problems. Case law gives more detailed information about this definition.

There is an expansive substantive framework in the EMA along which administrative authorities have to consider if a permit can be given.<sup>3</sup> This substantive framework is also relevant for the decree of general rules. The EMA has a broad objective: a permit can be denied when this is necessary for the protection of the environment. Every possible effect on the environment falls under this criterion, for example also transportation effects, nature aspects, and waste aspects.

It is the intention to make the permits not detailed but global. Thereby, the government tries to link the permit to the internal environmental quality systems some firms have. This approach does not have an explicit base in the EMA, and case law has emerged about this new practice. The administrative court is reluctant in the acceptance of this approach.<sup>4</sup> An explicit base in the EMA seems necessary, or at least favorable in the context of legal certainty.

The firms that cause more serious environmental effects have to publish yearly two reports about their polluting activities (one for the administrative authorities and one public report).<sup>5</sup>

One important part of the substantive framework is the alara criterion. Alara stands for 'as low as reasonably achievable'. According to case law, individual financial circumstances of a specific firm may not be taken into consideration when a request for a permit is in consideration.<sup>6</sup>

#### *Other regulatory provisions in the EMA*

In addition to the integral permit and general rules the Environmental Management Act has other provisions like:

- Some duty of care provisions (one general duty of care for the environment<sup>7</sup>, and one specific for waste<sup>8</sup>),
- Provisions for financial compensation (according to the principle of *égalité devant les charges publiques*)<sup>9</sup>,
- Other financial provisions, like subsidies, a deposit system and a Fund concerning air pollution<sup>10</sup>,
- Provisions for environmental quality standards<sup>11</sup>,

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<sup>3</sup> Chapter 8 EMA.

<sup>4</sup> ABRvS 25 augustus 2000, M en R 2000, 118, m.nt. Van Gestel; AB 2000, 455, m.nt. ChB en M.P. Jongma ( Gerdy T.J.M. Jurgens, *Kroniek van het milieurecht*, in: Nederlands Juristenblad, 7 september 2001, p. 1548).

<sup>5</sup> Chapter 12 EMA, Staatsblad 1997, 170.

<sup>6</sup> ABRvS van 24 juni 1999, M & R 2000, nrs. 7/8, n.nt Verschuuren.

<sup>7</sup> Art. 1.1a EMA.

<sup>8</sup> Art. 10.3 EMA.

<sup>9</sup> Chapter 15, titel 15.4 EMA.

<sup>10</sup> Chapter 15 EMA.

<sup>11</sup> Chapter 5 EMA.

- Environmental impact assessment<sup>12</sup>,
- Environmental plans and programs<sup>13</sup>,
- Procedural requirements, including coordination provisions<sup>14</sup>,
- Provisions for unexpected situations<sup>15</sup>,
- Enforcement provisions (in addition to the Administrative Law Act)<sup>16</sup>,
- Provisions for publicity<sup>17</sup>,
- Provisions for the possibility of judicial review of administrative decisions<sup>18</sup>.

#### *Sectoral legislation*

In spite of the ambition to have a more integrated law, sectoral law is nowadays still into force, like:

- The Water Pollution Act (see also section 2),
- Soil pollution (see more in detail section 2),
- Manure legislation (see also section 2),
- The Air Pollution Act and Noise Nuisance Act have rules for substances and products,
- The Dangerous Substances Act and the Pesticides Act.

#### *Administrative Law Act*

When an administrative authority takes a decision on the bases of environmental legislation, it has to observe the legal obligations given by the Administrative Law Act. In this Administrative Act both substantive as procedural requirements are laid down for decision-processes, enforcement decisions included. In addition to this, the Administrative Law Act gives rules about judicial review. The ALA came into force in 1994, and has later on been extended with several legal provisions. Now proposals for extension are made about – among others – the financial penalty, uniform rules about publicity, and rules about electronic decision-making.

#### *Integration through planning*

According to Dutch law, periodic policy plans and programs have to be made by central and for most themes also decentralized authorities, for respectively spatial planning law, environmental law, water law, transportation law, and nature conservation law. Between several planning procedures specific coordination provisions are laid down in legislation. In practice, some decentralized authorities have already published integral

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<sup>12</sup> Chapter 7 EMA.

<sup>13</sup> Chapter 4 EMA.

<sup>14</sup> Chapters 13, 14, and 8 paragraph 8.1.3.2.EMA.

<sup>15</sup> Chapter 17 EMA.

<sup>16</sup> Chapter 18 EMA.

<sup>17</sup> Chapter 19 EMA.

<sup>18</sup> Chapter 20 EMA.

*Marjan PEETERS*

plans, in which all these policy fields -also with social and economic aspects - are integrated. It is the intention of the central government to change legislation in order to allow experiments with such integral plans.

*Environmental impact assessment*

The Dutch regulation concerning EIA is amended several times<sup>19</sup>, for example to implement directive 97/11/EC) with obligations of the Espoo Convention (the Convention on Environmental Impact Assessment in a Transboundary Context). Dutch law practice is not always in accordance with the European directives about environmental impact assessment. On the other hand, the Dutch procedure for an environmental impact assessment is more extensive than necessary according to EC law.<sup>20</sup>

**Specific (sectoral) legislation**

*Soil pollution: from idealism towards a pragmatic approach*

At first when in the eighties law and policy was to be developed for the regulation of soil pollution, a idealistic approach was chosen. This implied that at each place in Holland the soil must have a maximum level of quality to secure that all kind of actions could be undertaken everywhere. In fact, during the executing of this legislation, the government experienced that this principle was too hard and too expensive to effectuate. Thus, a new more pragmatic approach has been chosen: now it is the idea that the desired soil-quality depends on the actions that will be undertaken onto or into it.<sup>21</sup>The existing soil pollution legislation (probably) has to be changed for giving a base to this new policy approach.

*Soil pollution: who pays the costs of sanitation?*

The first soil legislation (early eighties) was made under the principle that sanitation costs of soil pollution would be financed by private parties. In this context, the central government was very active in the eighties to recover the sanitation costs at firms and private persons. According to case law in the beginning of the nineties, the one who caused the pollution is not in all cases responsible for sanitation costs made by the government, especially not in the case of historical pollution. In particular for pollution that was caused before January 1st 1975 specific evidence must be given that the polluter could know that the government would try to claim for financial payment of sanitation costs.<sup>22</sup> Nevertheless, present soil legislation (that came

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<sup>19</sup> Staatsblad 1994, 99, en Staatsblad 1999, 208.

<sup>20</sup> P.C.GILHUIS, *Milieu-effectrapportage*, in: Ch. BACKES, Th.G. DRUPSTEEN, P.C. GILHUIS, N.S.J. Koeman, *Milieurecht*, vijfde druk, Zwolle 2001, p. 139.

<sup>21</sup> Kabinetsstandpunt kosteneffectieve en functiegerichte sanering, Kamerstukken II, 1996-1997, 25411, nr. 1.

<sup>22</sup> HR 9 februari 1990, NJ 1991, 462 (Staat/Van Amersfoort), HR 24 april 1992, NJ 1993, 642 (Van Wijngaarden/Staat) en 643, m.nt. C.J.H. Brunner (Staat/Akso Resins).

into force in 1995) still includes powers with which could be effectuated that the person who caused the (historical) pollution or the owner of the land has to carry out and thus to pay for sanitation. Future case law will learn to what extent these legal powers can be executed effectively, and what the limitations especially for historical pollution will be.

#### *Waste*

A lot of case law emerged about the definition of waste in the Environmental Management Act. The problem was that the Dutch definition was broader than the definition used in EC-law. Now a new Act - that changes the EMA - refers to the definition as is laid down in the EC-directive 75/442/EEC.<sup>23</sup>

This new Act on the management of waste that been adopted in 2001 (is not yet into force) implies a much more central approach on the management of waste.

#### *Manure*

Dutch legislation about the manure produced by the bio-intensive industry had to be strengthened, for example for the protection of groundwater (nitrate) and for getting more in line with EC-obligations. One of the actions in this respect was the partly withdrawal of rights for having pigs (the so-called manure production rights, and later: pigs-rights).<sup>24</sup> This new legislation was brought under judicial review. Question was if the withdrawal of these pigs-rights had to be seen as the withdrawal of possession or the regulation of possession under art. 1, First Protocol of the European Convention on Human Rights. This distinction could have implications for the duty to pay a financial compensation. At this moment according to the present case law the partly withdrawal can not be seen as a withdrawal of a possession but as the regulation of possession. The case is still under review at the highest Court (Hoge Raad). Nevertheless, the lower court determined that the foreseen second phase of the general withdrawal of the pig-rights is unlawful.<sup>25</sup>

It is to mention that most of the legislative actions in the context of the negative effects of manure (pollution of soil, groundwater, air deposition, and bad smell) are not included in the Environmental Management Act.<sup>26</sup> Instead of integration, a more sectoral approach is followed.

#### *Water law: the interpretation of discharge*

The Water Pollution Act includes permit-system and general rules for water polluting activities. In addition firms are obliged to pay a levy for

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<sup>23</sup> Staatsblad 2001, 346 (yet not into force).

<sup>24</sup> Wet herstructurering varkenshouderij

<sup>25</sup> Hof Den Haag, 20 januari 2000, M en R 2000, jur. nr. 22, m.nt. Hoitink en Jans.

<sup>26</sup> Interimwet Ammoniak en Veehouderij; Meststoffenwet; Wet verplaatsing Mestproductierechten; Wet herstructurering varkenshouderij.

*Marjan PEETERS*

polluting the water. For the water pollution permit a procedural and substantive coordination with the permit procedure on the bases of the EMA is obliged. The permit is needed for (almost every) discharge of pollution or waste into the surface water. The Dutch Council of State asked a preliminary ruling of the Court of Justice of the EC in two proceedings (art. 234 EEC). In its cases C-232/97 and C-231/97 the Court of Justice made clear that the interpretation of discharge in the Water Pollution Act must be seen much wider as has been done so far in Dutch law practice: especially the emissions of contaminated steam on to surface water must also be seen as a discharge in the meaning of Directive 76/464/EEC. In the other case was decided that the escape of substances as creosote from wooden posts placed in surface water can also be seen as a discharge.

#### *Nature conservation*

The EC-directives on the conservation of wild birds (The Wild Birds Directive; 79/409/EEC) and Habitat protection (92/43/EC) have not been implemented well in Dutch legislation. For example, the Court of Justice of the EC found in the judgement of 19 May 1998 (C-3/96) that the Netherlands had failed to follow the obligations from the Bird-directive by not establishing enough specially protected areas. In this context a procedure to establish 54 new sites was started in 1999.

A new Nature Protection Act has already been adopted by parliament in 1998, but still is not fully into force.<sup>27</sup> One is arguing if this new Act must be changed for getting more in line with the EC-Directives. A lot of case law has emerged about nature protection and the meaning of the EC-Directives. The administrative court has the present opinion that as long as the European list as is described in art. 4, section 2 of the Habitat Directive has not been established, art. 6, sections 2, 3 and 4 if the Habitat Directive are not applicable law.<sup>28</sup>

Furthermore, the Netherlands is for example Party of the Treaty of Bern (Treaty on the Protection of Wild Animals and Plants and their Natural Environment in Europe) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

#### *Climate change*

The Netherlands are Party to the UN Convention on Climate Change. The Dutch legislator has started a procedure for ratifying the Kyoto Protocol.<sup>29</sup> Thereby, policy-measures are formulated implying actions for the reduction of the greenhouse gas emissions. A first part contains domestic measures by which 50% of the reduction target (25 Mton Co<sub>2</sub> per year) would be achieved.<sup>30</sup> Among others, the institution of a national emissions

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<sup>27</sup> Staatsblad 1998, 403.

<sup>28</sup> ABRvS 27 maart 2001, *Milieurechtspraak 2001*, 32, m.nt. A.A. Freriks.

<sup>29</sup> Kamerstuk Tweede Kamer, 27089.

<sup>30</sup> Kamerstuk Tweede Kamer, 26603, nr. 2: Uitvoeringsnota Klimaatbleid I.

trading scheme is under consideration.<sup>31</sup> According to the policy proposals, the other 50% of the reduction target will be realized abroad, by the flexible mechanisms under the Kyoto Protocol.<sup>32</sup>

## **Compliance and Enforcement**

### *Disasters cause a renewed attention for enforcement of environmental law*

The enforcement powers for administrative authorities are now incorporated in the Administrative law Act (in addition to this some specific provisions are laid down in the Environmental Management Act). In 2000 two big disasters occurred in the Netherlands, whereby a lot of people died (the first case was a big explosion of fire-works in Enschede, and the second was a fire in a café in Volendam). Because of this the lack of enforcement of rules by central and decentralized administrative authorities gets a lot of attention nowadays. The responsibility of the specific administrative authorities (entities) according to tort law is in this context an important legal topic.

### *Tolerance of compliance lackages*

Typical for the Dutch approach by administrative authorities is that in cases where environmental law is offended not always an enforcement action is undertaken. In practice, even by formal administrative decisions the breach of environmental law is tolerated. Against those decisions judicial review can be undertaken. The courts are very reluctant in the acceptance of decisions that tolerate an offence of law. In case law the principle emerged that administrative authorities are in principle obliged to enforce the law.

## **Civil law**

### *Environmental policy through Voluntary Agreements*

Starting in the eighties, and also in the nineties, especially the central government has made agreements with groups of industry, on a voluntary base. Such a agreement is called covenant. Examples are the covenant for the metal industry (1992) and the covenant for benchmarking for the energy industry. About the legal acceptability of these voluntary agreements, especially seen in the light of the need to use the existing administrative powers given by legislation, and seen of the light of the position of the third-parties, a lot of questions exist. The use of voluntary agreements can therefor only be done with scrutiny.<sup>33</sup>

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<sup>31</sup> See [www.co2handel.nl](http://www.co2handel.nl)

<sup>32</sup> Kamerstuk Tweede Kamer, 26603, nr. 23: Uitvoeringsnota Klimaatbeleid II.

<sup>33</sup> N.S.J. KOEMAN, *Milieuprivatrecht*, in: Ch.Backes, Th.G. DRUPSTEEN, P.C. GILHUIS, N.S.,J. KOEMAN, *Milieurecht, vijfde druk*, Deventer 2001.

*Marjan PEETERS*

*Access to justice for environmental organizations*

Civil legislation came into force in 1994 that facilitates environmental organizations to go to civil court.<sup>34</sup>

*Tort law: soil pollution*

(see under paragraph 2, section b).

### **Criminal law**

*Can the government be prosecuted?*

In the nineties case law has emerged - especially instigated by environmental activities by governmental entities - about the prosecution under criminal law of the State and other governmental entities. Headline of the present case law is that the central government - i.e. the State - can not be prosecuted.<sup>35</sup> It is the idea that Parliament has to deal with unlawful acts of central administrative authorities. Decentralized governmental entities can only not be prosecuted under certain conditions, formulated by case law. One of these conditions is that the action must concern a typical governmental task that can not be done by a private entity (like the enforcement activity).<sup>36</sup>

*Criminal enforcement of duty of care provisions*

Duty of care provisions imply a general and vague obligation for citizens and firms to have respect for (parts of) the environment and to impede pollution. From a perspective of *lex certa* the criminal enforcement of duty of care provisions could be hard to do. But, the criminal prosecution of duty of care provisions - when carried out in a just way - can be done successfully.

*Criminal enforcement of administrative rules*

A lot of infringements of administrative rules are qualified as criminal offences in a specific act (Act for Economic Offences). This Act was changed in 1994. As a part of this change, the maximum penalties were substantially increased. The Act gives specific (much wider) powers for the tracing and prosecution of offences. A new development is that administrative authorities have the power to propose an offender to agree with a financial transaction instead of undergoing a prosecution.<sup>37</sup>

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<sup>34</sup> Art. 3:305a BW.

<sup>35</sup> HR 25 januari 1994, NJ 1994, 598, m.nt. G.J.M. CORSTENS (Vliegbasis Volkel).

<sup>36</sup> HR 6 januari 1998, NJ 1998, 367 m.nt J. de HULLU (Pikmeer II).

<sup>37</sup> Transactiebesluit milieudelicten, Staatsblad 2000, 320, gewijzigd bij Staatsblad 2001, 165.

## II- SPECIFIC TOPICS

### The fields

#### *Overview of present Dutch law concerning landscape protection*

According to Dutch law, the Nature Protection Act gives legal instruments for the protection of particular habitats. For specific natural areas that need legal protection, it can be decided that they qualify as a nature protection area. Within those areas, a permit is needed for activities that may harm the interests of nature. Besides the Nature Protection Act, also spatial planning law can add to landscape protection.

A new Nature Protection Act has been adopted by Parliament in 1998 but has not been entered fully into force yet<sup>38</sup>. In present Dutch law the EC Bird and Habitat Directives are not correctly implemented. Moreover, it is uncertain if with the new Nature Protection Act (1998) a correct implementation has been made of these Directives. In this Act an administrative agency has the power to indicate which areas can be specifically designated in order to implement Treaties and other international duties (art. 27). The Nature Protection Act (1998) does not make clear which legal effects such a determination will have. In addition to the determination of an area on the basis of art. 27, general rules can be laid down. It is uncertain to what extent these rules can give specific protection to these designated areas. In literature has been argued that it would be better to amend the Nature Protection Act in order to provide a correct legal regime for the implementation of the EC Directives.<sup>39</sup>

In the new Nature Protection Act a new specific instrument has been laid down for the protection of particular landscapes that have natural-historical values.<sup>40</sup> When such a landscape has been designated, protection must be given by a spatial plan.

In Holland, manure produced by the bio industry causes a lot of damage to natural areas as well. Legal measures are in preparation in order to move the industrial agriculture to other areas, away from the nature zones.<sup>41</sup>

The Netherlands are Party to many international Conventions and Treaties that aim at the protection of habitats. Examples are the Ramsar Convention, The Convention on Biological Diversity, and the Antarctica Treaty.

A governmental note on the protection of nature, woods and landscape in the 21<sup>st</sup> century is presented to parliament in July 2000.<sup>42</sup> The

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<sup>38</sup> Staatsblad 1998, 403.

<sup>39</sup> Ch.BACKES, *Natuurbeschermingsrecht*, in: Ch.BACKES, Th.G. DRUPSTEEN, P.C. GILHUIS. N.S.J. Koeman, *Milieurecht*, vijfde druk. Deventer 2001, p. 491-492.

<sup>40</sup> Natuurbeschermingswet 1998, art. 23.

<sup>41</sup> Wetsvoorstel Reconstructiewet concentratiegebieden. Kamerstukken 2000/01, 25 356.

<sup>42</sup> Kamerstukken 2000/01, 27 235.

*Marjan PEETERS*

intention is to accelerate the measures to realize the ecological structure and to extend the policy to protect the natural environment.

### **Democracy, access to justice and environment**

#### *Actio popularis and Dutch environmental law*

It is an old principle of Dutch environmental law that every one has the right to participate in the administrative decision process about polluting activities, and to have access to justice against administrative decisions. This *actio popularis* is still laid down in present administrative and environmental law.<sup>43</sup> Hence, the access to justice was always pretty broad in Dutch administrative law. In civil law a right for access to justice for environmental organizations has been laid down as well as in the civil code.

A new Act on the administrative decision process is proposed to parliament.<sup>44</sup> This new procedure will replace two present procedures that are laid down in the Administrative Law Act. The proposal gives the right to participate in an administrative decision process and to have access to justice only to concerned parties. It does not include an *actio popularis* (which gives the right to anyone to intervene, not just to those who have an interest at stake). But for environmental decisions the *actio popularis* probably can be upheld with specific environmental legislation, but to what extent this will be done is not certain at this moment. This topic will be discussed between central government and parliament.<sup>45</sup>

#### *Treaty of Aarhus*

The Netherlands (and the EU) are parties to the Treaty of Aarhus. In the context of the development of the EU measures according to the implementation of the Treaty of Aarhus, the Netherlands strive for the recognition of environmental organizations as concerned parties by the European Court of Justice.<sup>46</sup>

#### *The position of third-parties and new regulatory instruments*

Question is how the legal position of third parties will be affected in alternative environmental regulatory instruments like environmental taxes and emissions trading. This position is also under pressure because of the use of instruments that fit into modern concepts of regulation, like covenants.

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<sup>43</sup> A study has been done about the effects of the abolition of the *actio popularis* : Universteit Utrecht, *De actio popularis in het ruimtelijke ordenings- en milieurecht*, presented at March 17th 1999 to Parliament.

<sup>44</sup> Kamerstukken 1999/00, 27 023.

<sup>45</sup> Nota over de toekomst van de milieuwetgeving Met recht verantwoordelijk, Kamerstukken 200/01, 27664, nr. 2, p. 99.

<sup>46</sup> Nota over de toekomst van de milieuwetgeving Met recht verantwoordelijk, Kamerstukken 200/01, 27664, nr. 2, p. 96.

## **Legal conditions of the integrated management of the environment**

### *Present situation*

It is the intention of the Dutch government to proceed with the integration of environmental acts into the Environmental Management Act. It is the idea that this will support the simplicity and also a comprehensible approach of environmental problems.<sup>47</sup>

Under present law, next to the EMA several specific environmental acts are into force. For example, for the protection of water quality the Water Pollution Act provides the main legal framework. Research will be started on the relation between the Environmental Management Act and specific other environmental acts, in order to find ways for a more integrated approach. Also coordination mechanisms will be subject of this research.

Another present proposal is that the criterion 'protection of the environment' that has been laid down in the Environmental Management Act, will be extended with sustainable development.<sup>48</sup>

The integration of several planning programs (environment, spatial planning, nature, water, etc) is under consideration. Some provinces have already published such integral programs.

### *Synergy of European environmental measures*

The Dutch government has stressed the need for more synergy between European regulations and directives like the environmental assessment directives, the IPPC-directive, and the EMAS regulation.<sup>49</sup>

### *New instruments*

When one is thinking of the use of new regulatory instruments to control polluting behavior instead of the classical command and control approach, also the principle of integrated management must not be overlooked. For example, for the climate change problem the use of market-based instruments, especially emissions trading, is in strong consideration. The Dutch government has installed an advisory committee that must examine the use of a domestic emissions trading scheme.<sup>50</sup> Question is how such a sectoral regulatory approach fits into the Dutch pursuit of having an integrated environmental law. Also the question if a system of tradable permits fits into the European IPPC Directive needs attention.

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<sup>47</sup> Nota over de toekomst van de milieuwetgeving Met recht verantwoordelijk, Kamerstukken 200/01, 27664, nr. 2, p. 5.

<sup>48</sup> Nota over de toekomst van de milieuwetgeving Met recht verantwoordelijk, Kamerstukken 200/01, 27664, nr. 2, p. 5-6.

<sup>49</sup> Nota over de toekomst van de milieuwetgeving Met recht verantwoordelijk, Kamerstukken 200/01, 27664, nr. 2, p. 125.

<sup>50</sup> See for more information [www.co2handel.nl](http://www.co2handel.nl).

*Marjan PEETERS*

## **Dangerous substances and activities**

### *Chain-approach*

The Dutch government proposes a renewal of the legal regulatory instruments to introduce a chain-approach for substances and products.<sup>51</sup> Thereby it is the intention to get clear what the relation is of environmental effects of production and consumption, and at what moment measures can be undertaken most effectively and efficient. Together with this, the introduction of the precautionary principle, and more access for public to information about the risks of substances and products, are under consideration.<sup>52</sup>

## **The local management of the environment**

### *Professionalism*

Because of the fact that environmental law has become complicated, an approach towards more professionalism has been recommended (see also topic 10). As a consequence, in future enforcement powers might be attributed to administrative organizations that operate on a more central level.

### *Local environment, local government*

In Holland, municipalities will get a more explicit role in the forthcoming years in the context of determining local environmental quality. One is thinking of decentralization of powers concerning soil sanitation, and for noise.<sup>53</sup>

### *Experiments within the context of cities and environment*

Under present law an opportunity exists for selected cities to experiment with new local environmental measures, by which can be deviated from existing environmental legislation. Through these experiments one wants to get more insight into possibilities and restrictions for a local integral and area-specific approach. This experiment will be evaluated at the latest in 2005.

## **Legal mechanisms of control and follow-up of environmental measures**

### *New regulatory instruments*

In Holland, a lot of attention is paid in policy and literature to the choice of regulatory instruments with which polluting behavior can be regulated with maximum effectiveness and efficiency. From the idea that the

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<sup>51</sup> Nota over de toekomst van de milieuwetgeving Met recht verantwoordelijk, Kamerstukken 200/01, 27664, nr. 2, p. 50.

<sup>52</sup> Nota over de toekomst van de milieuwetgeving Met recht verantwoordelijk, Kamerstukken 200/01, 27664, nr. 2, p. 51-52.

<sup>53</sup> Nota over de toekomst van de milieuwetgeving Met recht verantwoordelijk, Kamerstukken 200/01, 27664, nr. 2, p. 87 e.v..

classical command and control approach has too much administrative costs and is not effectively enough because of bad compliance, new instruments are considered. An important topic is 'self-regulation', whereby it is the idea that entities shall take (more) responsibility for their actions.<sup>54</sup> Within a regulatory framework, the polluting entities should be given freedom in their decisions about their environmental behavior. The government does not want to prescribe in detail how entities must act. It is the intention to provide a framework to entities within they can choose which option is most suitable. The connection of permits to internal environmental systems of firms is in this respect an important subject in Dutch law. Also the use of covenants can be seen as a more horizontal way of regulation. Also market-based regulatory instruments fit into the idea of more self-regulation.

*Access for citizens to information about illegal activities*

Dutch government is preparing a legal provision for access of citizens to the results of control and enforcement of environmental law. Under present law it is not clear to what extent citizens can get this information. When citizens have a wider access to this information this can imply an incentive for control and enforcement.

*Professional help for legal actions against unlawful activities*

From 1994 to 1999 the central government subsidized an experiment on professional legal help for access to justice in the field of environmental law. Citizens and environmental organizations could ask help from specialized environmental lawyers for their juridical actions against polluting activities and / or administrative decisions. The evaluation showed that this experiment was successful. In particular the environmental organizations brought on cases with relevant (broader) implications for environmental law.<sup>55</sup>

*More professionalism into administrative enforcement*

A recent Dutch topic concerns the fact that government has great problems with executing her control and enforcement task. More professionalism has been recommended.<sup>56</sup> The several administrative bodies should execute their powers in a more effective way, have to develop policy-strategies for their enforcement task and should make agreements with each

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<sup>54</sup> Nota over de toekomst van de milieuwetgeving Met recht verantwoordelijk, Kamerstukken 200/01, 27664, nr. 2, p. 38 en verder, and the Circulaire Vergunning op hoofdzaken en vergunning op maat.

<sup>55</sup> Nota over de toekomst van de milieuwetgeving Met recht verantwoordelijk, Kamerstukken 200/01, 27664, nr. 2, p. 93.

<sup>56</sup> Commissie bestuursrechtelijke en privaatrechtelijke handhaving, handhaven op niveau, Deventer 1998, en : A.B. Blomberg. Integrale handhaving van milieurecht. Een juridische studie over de handhaving van milieurecht in een democratische rechtsstaat, Den Haag 2000.

*Marjan PEETERS*

other about their enforcement activities. Also the attribution of administrative enforcement powers to specific administrative bodies (regional enforcement authorities) is under consideration.<sup>57</sup>

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<sup>57</sup> As is discussed for example in: Tweede Kamer, TK 102-6326, 13-09-01 (kamerbehandeling wetsvoorstel 26929)