

“environmental crime prosecution” - the Netherlands -

by

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Environmental crime; what is it?

- unlawful (local) dumping of, e.g.:
 - chemicals (incl. *asbestos*)
 - agricultural toxins (e.g. *nitrates*)
 - plastics and household waste
 - radioactive material
 - biological waste (*biocides*)
 - and also: poaching (animals, fish)
- organized crime, e.g.:
 - “e-waste” from Europe to 3rd world (e.g. Africa)

Container⁻¹: what you see in first instance...



Container ⁻²: hidden behind first layer...



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Container ⁻³: toxic waste...



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Organized environmental crime = big business

■ Recent investigations:

- February 2009: almost 1,000,000 tons of British electronic waste transported from Belgian harbours, to Ghana and Nigeria
- March 2009: The Netherlands' authorities (FPPO) arrested 8 people (5 Ghanaians, 3 Turkish) for illegally transporting toxic waste to Ghana (violation of EU *Waste Electrical and Electronic Equipment Directive*)
- August 2006: "Probo Koala" dumped toxic waste. It gave off many poisonous chemicals, including *hydrogen sulphide*, killing 17 people in Ivory Coast...

Hundreds of tons
of highly toxic
waste...

... and the
consequences:
- 17 dead
- 26,000 injured
- huge damage
to environment



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“Probo Koala”

- Judicial consequences, 2 years later:
 - Ivorian CEO: 20 years of imprisonment
 - Ivorian advisor: 5 years of imprisonment
 - Dutch transporters: 152,000,000 dollar fine
- And why did the offenders do it?
 - high profits: unlawful dumping of toxic waste saves a lot of money



- Waste dump with computers, TV's in Ghana (no processing costs; price paid by Ghanaians)



WHAT? ———> burning of e-waste
=> emission of dioxin's => cause of cancer
WHY? ———> \$ 3,- for 15 kilogram of metal

Judicial organization

- 1 Supreme Court (cassation)
- 5 courts of appeal
- 19 district courts
- 1 Board of Procurators-General
- 5 solicitor-generals' offices (appeal)
- 21 prosecutors' offices (1st instance)
 - incl. National Public Prosecution Office
 - incl. Functional Public Prosecution Office

Facts and figures

(2007)

- 1 Supreme Court
- 5 Courts of Appeals
- 19 District Courts

- 2345 judges
(31% in criminal court)
- 720 public prosecutors
- 14,882 private lawyers

- 271,784 offences
 - 27,300 dismissals
 - 73,800 transactions
 - to court: 138,700 offences
 - 16,000 environment

- 263,992 infractions
 - 36,700 dismissals
 - 53,000 transactions
 - to court = 157,000 cases

Position of the prosecutor in The Netherlands

- Judiciary, appointed by Queen, not for life
- Master of the trial (*'dominus litis'*)
- Gatekeeper to court, absolute monopoly
- Highest investigator, ultimately responsible for criminal investigations:
 - 'minor' cases: afterwards instructions to police
 - 'major' cases: pro-active consultations and instructions to law enforcement
- 'Obligated to objectivity'

Functional Public Prosecution Office

- FPPO (2003):
 - Fraud
 - Economic crime
 - Environmental crime
- National level
- FPPO: responsible for the investigation and prosecution of criminal cases which are being investigated by 'special investigation departments' (SID's)

Why a specialized FPPO ?

- Government expects efficient protection of the environment against crime
- Local prosecutors were neglecting environmental crime
- Environmental crime increasingly complex
 - complex laws, including international regulations
 - complex technical cases (mostly chemical)
- Law enforcement is specializing in SID's
- Defense lawyers are specializing as well (environmental crime is well paid...)

Added value of the FPPPO

- Specialists;
- Concentration of quality and energy,
- Making it an effective enforcement partner for the ministries concerned,
- Giving great authority towards SID's,
- Able to make environmental crime policies
- Defining priorities for investigation

FPPO = chief investigator in environmental crime

- investigation capacity is scarce
- in case of environmental crime:
 - small and simple offenses: (local) police
 - complex environmental crime : specialized law enforcement agency "VROM-IOD" (*Intelligence and Investigation Service of the Ministry for the Environment*)
- priorities by the FPPO, in close cooperation with the Ministry for the Environment

Differentiation in environmental crime -1

- Police: investigating in matters of quality of life ('minor' cases)
 - garbage on the streets, in the park
 - small poaching (illegal fishing or hunting)
 - dumping of small amounts of house hold waste
 - car wrecks
 - etc.

Differentiation in environmental crime -2

- Special Investigation Department:
 - death or injuries
 - irreversible serious damage to environment or public health
 - environmental crime by an organization or company
 - very profitable environmental crime
 - high publicity

Investigation problems -1

- Environmental crime = difficult because of complex regulations
- Evidence is also difficult:
 - what traces are relevant?
 - how to secure them?
 - how to determine them?
- Netherlands' Forensic Institute (NFI):
 - assisting prosecutor and SID

NFI: forensic investigation in laboratory and on crime scene



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Example: incident at chemical industry



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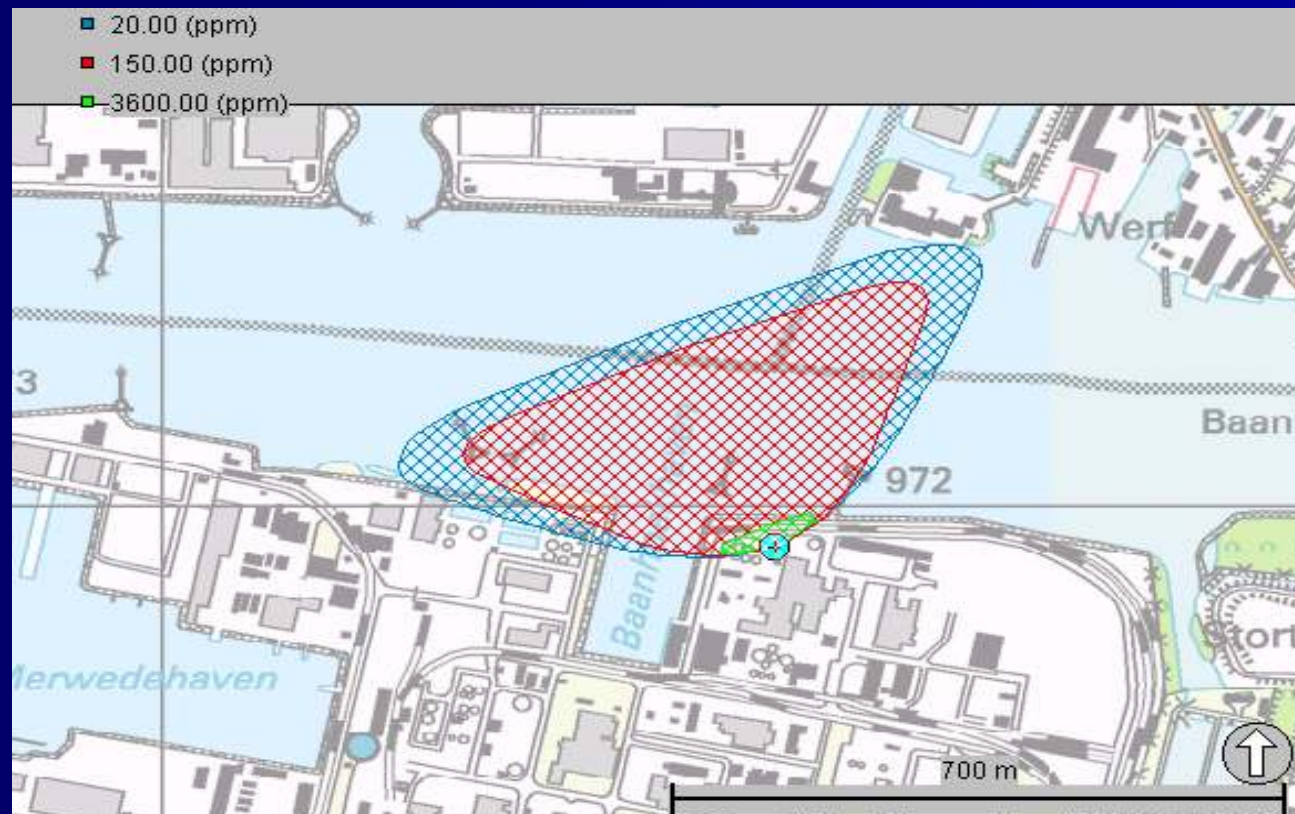
Leading to a cloud of dangerous *hydrochloric acid*



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NFI: calculation of health risks

Health risks, 20 minutes after the incident



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Investigation problems -2

- Question: accident or intentionally?
 - Difficult to answer; interpretation of circumstances
- Assistance by NFI:
 - Forensic analysis of traces
 - Forensic advice
 - Risk assessment
 - Education (training and courses)

Conclusions

- Environmental crime:
 - difficult to investigate and to prosecute
 - important to investigate and to prosecute
- Necessary:
 - specialists
 - education
 - clear regulations

Thank you for your attention !

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