

The State Secretary for Infrastructure and the Environment, Ms W.J. Mansveld
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Date: 17 June 2013 **Enclosures:** 1
Our reference: lenM/BSK-2013/124131
Subject: Advisory report 'Safety at BRZO companies: responsibility and effective action'

Dear State Secretary,

In recent years, several incidents have occurred in the Netherlands involving companies which handle, process and/or store hazardous materials as part of their core business activities. There are approx. 400 to 500 such companies in the Netherlands. They are subject to the specific requirements set out in the Dutch implementation of the Seveso directive: the Major Accidents (Risks) Decree (*Besluit risico's zware ongevallen*, BRZO), and are therefore known collectively as 'BRZO companies'.

Incidents at these companies generally attract considerable media coverage and prompt parliamentary debate because they can have a major impact on the environment, human health and the national economy. Despite the possibility of serious consequences, the immediate social setting in which these companies operate is unable to influence their activities to any significant degree. Moreover, ongoing shortcomings have been noted even where companies have been subject to prior inspection.¹

The Council for the Environment and Infrastructure (Rli) is not the first organisation to offer advice on this topic. We are aware of the body of past reports and recommendations, all of which have

¹ Inspectorate for Housing, Spatial Planning and the Environment (2011), *Quickscan BRZO-bedrijven: steekproef 2011*. This publication presents the findings of a joint investigation by the Inspectorate for Housing, Spatial Planning and the Environment (BRZO companies) and the Inspectorate for Public Order and Safety (disaster management and communication plans). See also: Human Environment and Transport Inspectorate (2012), *Onderzoek naleving Brzo: uitvoering motie Van Tongeren – versie 1.7*, The Hague.



been thorough and helpful. We believe that it is now time to proceed with the practical implementation of those recommendations. This calls for a forceful and energetic approach.

In an earlier letter (reference IENM/BSK-2012/236438, dated 27 November 2012), the Council undertook to advise you on this matter. We do so further to our statutory advisory responsibility in this domain and build on the work of the Hazardous Substances Council (AGS).

A summary of the conclusions is presented below. This is followed by a brief account of the context of this document, the analysis on which the conclusions are based, and suggested directions in which the government and private sector may seek solutions to the problems identified.

Summary of conclusions

- Safety at BRZO companies must be improved, as must the relevant supervision and enforcement activities.
- The measures already implemented, which include the formation of six regional BRZO executive agencies (*Regionale Uitvoeringsdienst*, RUD), can usefully be accompanied by a broad enforcement mandate, whereby the director of each RUD is empowered to take and implement enforcement decisions on behalf of the competent authority. This will go part of the way towards solving the current problems. However, the approach will call for effective cooperation between the six executive agencies.
- Integral safety assessment and standardisation required abandoning the dividing line between 'internal' and 'external' safety. The recent Environment and Planning Act (*Omgevingswet*), or possibly new legislation addressing physical safety, may provide the means to do so.
- Knowledge-sharing between the new RUDs, other Inspectorates and knowledge institutes must be promoted. This process should make use of the existing knowledge infrastructure.
- Responsibility for safety must be more evenly divided between the public sector authorities and the private sector. Companies should be encouraged to enhance their safety level and to pursue ongoing development of a safety culture.

Administrative and societal context

Major Accidents (Risks) Decree 1999

Prior to 1999, a number of legislative instruments were in place to control the activities of companies which handle, process or store hazardous substances as a significant part of their core business activities. These instruments were then combined to form the Major Accidents (Risks) Decree (*Besluit risico's zware ongevallen*, BRZO), which represented the Netherlands' implementation of the European Seveso Directive². The Decree is concerned with safety both on the business premises ('internal safety') and beyond ('external safety'). It stipulates that an effective safety management system must be in place, together with an inspection programme. It further establishes the roles and responsibilities of central government departments (the Ministry of Social Affairs and Employment, the Ministry of Infrastructure and the Environment, the Ministry of Security and Justice) and those of the provincial and local authorities.

The Major Accidents (Risks) Decree has points of convergence with other, extremely diverse, legislative instruments. Employee safety, for example, is regulated by the Working Conditions Act (*Arbeidsomstandighedenwet*), while responsibility for fire prevention and control is established by the Safety Regions Act (*Wet veiligheidsregio's*). Environmental protection falls under the aegis of the Environmental Management Act (*Wet milieubeheer*).

Political and societal discussion

Very recently, on 3 April 2013, the topic of safety in the chemicals industry was once again raised in parliament following the enforced temporary closure of port facilities operated by the Norwegian company Odfjell in Rotterdam. On this occasion, members tabled motions calling for companies to contribute towards the costs of additional inspections, the permanent closure of any company committing a third serious infraction of the regulations, stricter regulations governing the transport of chemicals, and the fast-tracking of the official report on the Odfjell affair.

A debate on safety is often sparked by a single incident. However, that debate is soon clouded by numerous considerations, including the possibility of further incidents, the actual damage that has or may be caused, risks and uncertainties. In its report *Evenwichtskunst* ('Balancing Act') the Scientific Council for Government Policy (WRR) considers each aspect in isolation in order to offer greater clarity. The current advisory report is largely concerned with permit issuance procedures, supervision and enforcement rather than 'damage' (in the sense of adverse environmental impact). Nevertheless, this term does provide a useful perspective from which to view the question of responsibilities.

The current societal debate is even more pertinent given the government's desire to reduce its direct involvement in regulatory activities. This 'hands-off' strategy extends to many areas, including the financial sector and corporations sector, and is itself subject to much discussion.

² Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances ('Seveso II Directive').

Incidents, commissions and advisory reports

In recent decades, a number of commissions have been established to examine the topic of safety. They have issued a number of advisory reports, some of which are cited below. The reports offer an overall impression of the situation and the context of the debate. Viewed in combination, they demonstrate that the implementation and enforcement of specific measures is now far more important than reiterating the general discussion or devising alternative solutions.

Among the previous reports is *Je gaat erover of niet*³ ('You're either in charge or you're not'). It was produced in 2005 by a cross-party parliamentary commission chaired by Frank de Grave, charged with examining 'administrative coordination', i.e. the manner in which tasks and responsibilities are divided between the various layers of government. The report concludes that provincial and local authorities do not possess sufficient knowledge and expertise to administer a permit system for the complex BRZO sector. The report also comments on the large number of inspectorates in existence, each with its own management principles, and notes a high degree of fragmentation. Strengthening the role of the coordinating authority would create greater opportunity for effective direction and consistent action. In the view of the De Grave Commission, the administrative organisation could be simplified by bringing together certain enforcement tasks and responsibilities within one of the existing inspectorates, or by merging the inspectorates themselves. The report goes on to call for the creation of a national expertise centre, and recommends devolving more responsibility from the public to the private sector, whereby the government's role would become more that of auditor rather than inspector.

In 2008, a commission on the enforcement of environmental and planning legislation⁴ (the Mans Commission) once again noted a lack of enforcement capacity and a high degree of fragmentation. The Commission remarked that local authorities seemed hesitant in taking enforcement action even where the law was clearly being broken. "The key problem is caused by fragmentation and an overly casual approach to cooperation and implementation," the report states (here in translation). The Mans Commission recommended the creation of local environmental and planning supervision departments (which are now in existence) and a central enforcement agency at national level.

In 2010, concerns were raised about the activities of Thermphos, a chemical processing company based in Vlissingen and alleged to be responsible for emissions of cadmium and dioxin. The report on the Thermphos case, which devoted particular attention to the role of the provincial authority, arrived at conclusions very similar to those cited above.⁵ Administrative responsibilities had not been assigned in a satisfactory manner, the authority had shown undue leniency over an extended period, and had been too slow to act when matters reached a head. The Provincial Executive had not been prominent enough, while the Provincial States had been insufficiently alert. The recommendations in the report are chiefly concerned with the permit issuance procedures and with subsequent enforcement. Both are governmental responsibilities, the report contends, but should

³ De Grave Commission (2005), *Je gaat erover of niet: rijksbrede takenanalyse*, The Hague.

⁴ Mans Commission (2008), *De tijd is rijp*, The Hague.

⁵ Mans Commission (2011), *Rapport Thermphos*, commissioned by the Provincial States of Zeeland, Middelburg.

not be considered as a service provided by the government. The report therefore calls for enforcement to be given a clear organisational position separate from that of permit issuance.

In January 2011, a serious fire at a BRZO company, the ChemiePack plant in Moerdijk, prompted a far-reaching public and political discussion about safety. In its report on the incident, the Dutch Safety Board (OVV) noted an overly casual approach to permit issuance, whereby it was by no means certain that compliance with all safety requirements had been ascertained. Fragmentation throughout the Dutch supervision system had seriously detracted from the cohesion and integration which underpins BRZO legislation. In the words of the report itself (here in translation), "It is difficult to gain and maintain an overall picture of the company's activities." The Dutch Safety Board's report devotes attention to the direct responsibilities of companies in the implementation of the *Veiligheid Voorop* ('Safety First') programme, which was devised by their own industry federations, and examines the position of those companies which are clearly failing to make the necessary progress.

Companies' safety management performance will now be reported annually as part of the National Supervision of Risk Management programme (LAT RB). The first report reveals that over half of all BRZO companies were found to be in breach of the current regulations⁶, although there are major differences in terms of the seriousness of the infractions.

In 2011, the Inspectorate for Housing, Spatial Planning and the Environment conducted a 'quick scan' in which 84% of all BRZO companies were inspected. One or more infringements were noted in 60% of the companies visited⁷. Virtually all such infringements (99%) prompted enforcement action, whereupon in mid-2012 it could be reported that 60% of these cases had been resolved. Of the remainder, 3% had definitely not been resolved, while the status of the remaining 37% was unknown. The majority involved only minor infractions.⁸

⁶ National Supervision of Risk Management programme (LAT RB) (2012). *Monitor naleving en handhaving Brzo-bedrijven 2011*.

⁷ Inspectorate for Housing, Spatial Planning and the Environment (2011), *Quickscan BRZO-bedrijven: steekproef 2011*. This publication presents the findings of a joint investigation by the Inspectorate for Housing, Spatial Planning and the Environment (BRZO companies) and the Inspectorate for Public Order and Safety (disaster management and communication plans). See also: Human Environment and Transport Inspectorate (2012), *Onderzoek naleving Brzo: uitvoering motie Van Tongeren – versie 1.7*, The Hague.

⁸ National Supervision of Risk Management programme (LAT RB) (2012). *Monitor naleving en handhaving Brzo-bedrijven 2011*.

Analysis: obstacles within the current situation

In this section, the Council describes its analysis of the incidents and advisory reports cited above. This analysis was based on three themes which will be discussed separately:

1. Fragmentation
2. Information, expertise and capacity
3. Effectiveness

Fragmentation

The regulatory system in the Netherlands is beset by considerable fragmentation due to the sheer number of organisations exercising competent authority. The problem of fragmentation has two aspects which we shall term *vertical/geographic fragmentation* and *horizontal fragmentation*.

Vertical and geographic fragmentation

Responsibility for issuing (environmental) permits to BRZO companies, and for the subsequent supervision of compliance with and enforcement of the requirements of those permits, rests with the provincial and local authorities. Local authorities in particular often lack the scale required to fulfil these responsibilities effectively. They do not have the expertise and capacity to take forceful action in cases of non-compliance. An additional problem is a lack of uniformity in enforcement action: cases of equal gravity are not treated with equal severity. The consequences of an infraction often depend on where the company is located⁹. This is not in keeping with the principle of the 'level playing field' and can distort competition. The creation of the six regional executive agencies (RUDs) is a step towards resolving this issue.

Horizontal fragmentation

Horizontal fragmentation is due to the distinction between 'internal' and 'external safety'. At BRZO locations, one and the same high-risk process or activity can be inspected by both the Major Hazard Control division of the Social Affairs and Employment Inspectorate (MHC/ISZW) and whichever authority is responsible for enforcing environmental legislation. This can give rise to a number of problems:

- Different authorities are looking at precisely the same thing. The inspection methods are coordinated within the inspection teams and a company will receive a single, integrated inspection report. However, if subsequent enforcement action is necessary there will be different legislative regimes for internal and external safety respectively, as well as different authorities to which the company is answerable. Health and safety legislation to protect employees (internal safety) is predicated on general rules and has no permit system. Health and safety legislation has no norms to establish acceptable levels of risk to employees. The legislation is based on the fictional principle of 'zero risk'.

⁹ This matter was also raised at a meeting of experts organised by the Council.

Environmental legislation, on the other hand, does apply set norms whereby a certain level of risk is considered acceptable. This disparity in norms systems means that the various enforcement officers 'tread their own path' and companies do not know exactly where they stand. After all, from their point of view there is only one process which, in theory, either complies or not. Companies do not draw a distinction between internal and external safety.

- Due to the disparity in the norms systems, enforcement officers apply differing definitions of 'acceptable' when a potential risk is noted. This difference in mentality and approach means that the regulation of the very same process (be it a business process or a chemical process) can take place in different ways. In general, MHC/ISZW is quicker to take enforcement action than the authorities which oversee compliance with environmental legislation.
- Expertise with regard to specific high-risk activities is also fragmented between various organisations.

Various coordination initiatives have been introduced to limit the effects of fragmentation. One key objective was to set up a central coordination point for companies through which all existing obstacles can be resolved. This has resulted in the creation of inspection teams in which the various governmental departments coordinate their activities. In practice, however, it would appear that the organisations continue to follow their own remit, which can lead to inconsistent or conflicting working methods. The coordination mechanisms are not effective. If there is a difference of opinion within an inspection team, there is no single party with the authority to make the necessary decisions. This is not a new observation but was noted by the De Grave Commission some time ago.

Information, expertise and capacity

Information

An effective approach to high-risk situation demands knowledge and information. The Mans Commission¹⁰ noted that the sheer number of organisations responsible for supervision and regulation, combined with poor coordination and cooperation, not only resulted in fragmentation of expertise but also seriously detracted from the quality of knowledge management and information processes. Knowledge and information are not being shared between public sector departments to an appropriate degree, nor between the government and the private sector. This is an obstacle to effective supervision and adequate enforcement. The Dutch Safety Board's report on the ChemiePack fire includes a chapter devoted to crisis communication and information processes which arrives at the same conclusion.¹¹

Expertise

Supervision of high-risk activities demands specialist, high-level expertise on the part of inspectors. In general, the necessary knowledge and expertise are indeed available at the national level but rarely at provincial or local authority level. It is not possible to make that knowledge and expertise

¹⁰ Mans Commission (2008), *De tijd is rijp*, The Hague.

¹¹ Dutch Safety Board (2012), *Brand bij ChemiePack te Moerdijk*, The Hague.

available 'on tap', at every location and at any moment. As a result, the quality of supervision is often inadequate, whereupon companies can face conflicting requirements and instructions.

Due to their incomplete knowledge, the supervisory authorities may allow themselves to be led by technical and legal considerations rather than the actual risks. Moreover, administrative authorities lack a proper understanding of the scope of the risks, preventing them from meeting their responsibility for safety in relation to other public interests.¹²

In practice, the same inspectors visit the same companies year after year. This is partly the result of specialisation. There is a risk that too close a relationship will be created between inspectors and 'their' companies, at the expense of the essential professional distance. Supervision becomes friendly consultation. It is possible that not all essential information will be passed to the enforcement agencies. Clearly, this also has an adverse effect on the quality of supervision activities.

Capacity

The number of professional specialists who are able to conduct inspections at the required level at high-risk companies is limited. This capacity shortage has been exacerbated by recent government austerity measures. The Council refers to the Netherlands Court of Audit's report on the reduction in the budgets for the executive agencies.¹³

Effectiveness

Regulators are not adequately vigorous in their enforcement activities. Effectiveness is undermined due to a number of reasons:

- High-risk activities generally take place within a complex setting in which there are various interests at stake: economic, spatial and political. Those interests are taken into account 'beforehand', i.e. during the permit application and issuance procedures further to the Environmental Law (General Provisions) Act (*Wet algemene bepalingen omgevingsrecht, WABO*) and the Major Accidents (Risks) Decree. This may be termed a 'front-end' activity. Supervision and enforcement are 'back-end' activities which take place after the permit has been issued, whereupon the primary focus is on safety. If any safety infraction is noted, the administrative decision should be restricted to the choice of enforcement instrument to be applied. In practice, however, it seems that other area-based interests also affect that decision, leading to hesitancy and delay in taking enforcement action.
- The lack of adequate expertise means that supervision activities are not fully geared to risk management and external safety, but are based on the formal responsibilities of the competent authority. Risk-specific supervision is therefore not adequately developed.

¹² The Hazardous Substances Council (AGS) previously devoted attention to the knowledge infrastructure for chemicals safety in a broader context in its 2009 report *Strategie in de kennisinfrastructuur voor veilige chemie en energie*. AGS, The Hague.

¹³ Netherlands Court of Audit (2013), *Bezuinigingen op uitvoeringsorganisaties*, The Hague.

Analysis: wider discussion points

Alongside the specific obstacles to effective supervision noted above, the Council notes a number of wider discussion points.

System supervision versus physical supervision

Primary responsibility for safety lies with the private sector itself. Companies which fall under the Major Accidents (Risks) Decree are required to have implemented an accredited Safety Management System, and must possess adequate knowledge of both the processes and the current situation within the organisation. This entails 'system supervision', i.e. the company itself must ascertain that all aspects of its operations comply with current legislation, doing so on the basis of its own Safety Management System. The regulatory authorities then check that the Safety Management System is effective by means of a random sample. The opposite extreme is 'physical supervision', whereby equipment and the various component parts of the process are inspected on site, and the company's compliance with the regulations is assessed.¹⁴ System supervision views the process, safety and risks as a 'system' in which there are interdependencies between these aspects. However, this type of supervision calls for effort and expertise on the part of both the companies concerned and the supervisory authority.

A frequent criticism is inspection has become a matter of ticking off items on a list, whereupon the effectiveness of the safety system is assessed elsewhere (at the office) and at a later date. The Council is unable to support this contention, although it does indeed take it seriously. In fact, the Council finds that the joint inspectorates have made significant improvements in their implementation of BRZO supervision over the course of several years. Most notably, they are now working according to the 'New Inspection Method' (NIM), in which the focus is the company's Safety Management System, both as described on paper and its actual operation in practice. This system entails an assessment of the safety of actual real-life situations. Observations made at the location are used to ascertain whether the company's own written description of the Safety Management System is accurate and complete.

Separate permit issuance and enforcement

Effective risk management may be approached from two distinct perspectives:

1. How can one ensure that a high-risk activity is appropriate to the setting in which it is to be conducted? This is a matter to be addressed when considering the permit application.
2. How does one organise the activity and the relevant supervision in such a way as to control the risks in an adequate manner? This is a question of internal and external risk supervision.

In the first perspective, an administrative decision must be made with regard to what can be deemed acceptable at the location concerned. Interests of safety will be weighed against other societal interests, whereby opportunities are set against threats.¹⁵ Economic activity brings certain

¹⁴ Helderma, J.K. and Honingh, M. (2009), *Systeemtoezicht niet voor alle sectoren geschikt*, in: *Handhaving 256* (6), 34-36.

¹⁵ Scientific Council for Government Policy (2011), *Evenwichtskunst*, The Hague.

disadvantages (threats) in terms of safety risks, but it also brings many advantages (opportunities) in the form of employment, revenue, innovation and so forth. When assessing the acceptability of risks in a given situation, it is usual to consider 'calculable' risks. There is always some degree of risk: the notional zero-risk situation does not exist, and neither does a 'risk-free society'. This means that we must all accept that there is always a very small risk of major effects.

In the second perspective, the desire is to render operational processes 'as safe as possible'. Here, it is not only the calculable risks that are taken into account. Uncertainty due to a lack of knowledge of the operational processes may also play a role. The prime factors in this risk management approach are:

- the system safety of the high-risk activity
- the expertise of the company and the inspectors
- the conditions imposed by the environmental permit and BRZO legislation.

Establishing the acceptability of a high-risk activity (the first perspective) requires consideration and decision-making by the relevant public authorities. This process must take regional and local interests into account, which means that democratic legitimacy is essential. The result of the process will be recorded in the form of conditions attaching to the permit issued under the Environmental Law (General Provisions) Act. In many cases, the party responsible for issuing a permit is also the party responsible for supervising compliance with its conditions. There is therefore a risk that enforcement activities will be based on the same consideration of interests which underpinned the permit issuance process. This might lead to situations in which no enforcement action is taken, whereupon non-compliance is allowed to continue.

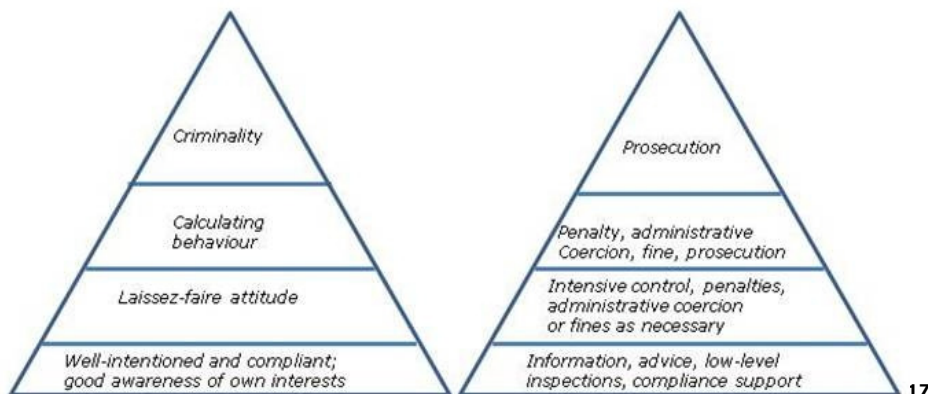
The discussion of whether environmental permit issuance procedures should be separated from supervision and enforcement is one that has re-emerged at regular intervals for several decades. The Council has no desire to rekindle that debate. Instead, it proposes that the directors of the six regional executive agencies (RUDs) should be mandated to take and implement enforcement decisions which affect BRZO companies. Formal responsibility for both permit issuance and enforcement will then remain with a single party. In practice, however, the two processes will be separated, with enforcement at some distance from the administrative decision-making processes. The RUD director will then be able to implement enforcement action, such as closure or financial penalties for non-compliance, on behalf of the competent authority.

Safety culture at companies and differentiated enforcement

In both the political and societal discussion, the focus has been on the government's tasks and responsibilities in the sphere of supervision and enforcement. This does not do justice to all the other mechanisms and motives which play a part in BRZO companies' approach to safety. These include the corporate culture, economic considerations, the risk of being held liable for damages, implications in terms of insurance, and the possibility of prosecution.

Government supervision and enforcement at BRZO companies is important, but supervision can never be complete. Primary responsibility for safety rests with the companies themselves. They must have an irreproachable safety culture. The Council notes with satisfaction that many BRZO

companies are willing to accept and act upon this responsibility, with some exceptions. The Mans Commission report¹⁶ presents an adapted version of the Ayres-Braithwaite enforcement and compliance pyramids. The fact that companies can occupy different positions on the pyramid – from well-intentioned and compliant to criminal – establishes the importance of a differentiated approach not only in terms of supervision and enforcement, but also in the more general sense of liability awareness and the corporate culture. Based on the pyramid, national government can attempt to influence the motivation of companies at various levels and through various avenues, thus encouraging them to increase and maintain safety at the highest possible level at all times.



Certification (accreditation) of management systems can be an important driver of the safety culture and of the system supervision approach. In practice, however, this system is rarely watertight, as illustrated by the company which had been awarded several accreditations only just before its enforced closure due to serious safety infringements. It would seem that the certification bodies attach far too much weight to the internal audits conducted by the companies themselves, confining their own activities to the administrative aspects of inspection. A more thorough approach, such as provided by the New Inspection Method (NIM), results in higher costs for the certification bodies. As commercial enterprises, they are not highly motivated to take corrective action against their clients.

Recent developments

The government proposed a number of measures based on the recommendations of the Mans Commission.¹⁸ Following consultation with the Association of Provincial Authorities (IPO) and the Association of Netherlands Municipalities (VNG), these measures were then adopted as the basis of a 'package deal' in which the introduction of the RUD executive agencies is the primary component. Permit issuance, supervision and enforcement for the BRZO sector will henceforth be undertaken by

¹⁶ Mans Commission (2008), *De tijd is rijp*, The Hague.

¹⁷ Adapted from Ayres, I. & J. Braithwaite, (1995), *Responsive regulation: transcending the deregulation debate*. New York: B. van Stokkom.

¹⁸ Mans Commission (2008), *De tijd is rijp*, The Hague.

six specialised RUDs which, alongside their regular tasks, will also undertake inspections of their companies in their respective regions further to environmental legislation. The clustering of permit issuance, supervision and enforcement activities within these six organisations will do much to resolve vertical and geographic fragmentation. The required level of knowledge and expertise can be maintained, and it will become easier to attain uniform practice nationwide.

The implementation of BRZO legislation was subject to evaluation in 2003 and 2004,¹⁹ the findings of which prompted authorities to introduce the BeterRZO programme with a view to improving regulation of BRZO companies. This programme has since evolved to become the LAT RB programme, which focuses on improving supervision of the 'major risk' companies. A new, joint inspection method is now under development, together with a set of quality criteria. The partners have also made investments in training. The joint approach enhances knowledge, quality and the uniformity of inspections.

Solution directions: public sector and legislation

In this section, the Council presents a number of directions in which solutions can be sought, whereby government intervention is required. They concern the structuring of supervision and enforcement activities, as well as a number of administrative and legislative aspects.

Use the creation of the RUDs as an opportunity to resolve current obstacles

The new structure offers opportunities to resolve three obstacles:

1. Fragmentation

The creation of the RUDs follows many years of discussion. The process must be given a chance to succeed. The six new executive agencies represent a step towards reducing or resolving fragmentation in permit issuance and enforcement activities in the BRZO sector. The joint enforcement strategy²⁰ and the common enforcement protocol will both make major inroads in this respect. Coordination between the RUDs themselves, and between the RUDs and other regulatory bodies such as MHC/ISZW, will also be facilitated.

2. Bringing together information, knowledge and expertise

The specialist knowledge of the various BRZO RUDs, combined with effective cooperation and coordination, offers opportunities for further professionalisation of the permit issuance and enforcement processes. Exchange of both knowledge and staff must become a matter of routine. Rotation of inspectors is desirable. Expertise can be further strengthened by allowing other agencies, such as the fire service, to play a more prominent role in supervision and

¹⁹ Inspectorate for Housing, Spatial Planning and the Environment (2004), *Uitvoering besluit risico's zware ongevallen 1999*. Cap Gemini Ernst & Young (2004), *Werk aan uitvoering: interdepartementale evaluatie BRZO '99*, Utrecht.

²⁰ Programma Uitvoering met ambitie.nl (PUmA) (2012), *Het landelijk stelsel: werk in uitvoering*, The Hague.

enforcement. This will also establish a clearer relationship between risk management and disaster response.

3. *Separation of permit issuance and supervision*

The administrative authorities must have the opportunity to take various societal interests into account at the 'front end' of the permit issuance procedures for which they are responsible. Risk management is one of those interests. The RUDs have an advisory role at this stage. In the actual supervision and enforcement activities (the 'back end'), the most important interest is that of safety. There is therefore an obligation to proceed to enforcement action whenever any shortcoming is observed.

Accordingly, both supervision and enforcement must be carried out in an independent and impartial manner. This can be achieved within the RUD structure if the competent authorities (in practice the provincial and local authorities) formally delegate supervision and enforcement responsibility to the six RUD directors by means of a mandate. The directors must be entitled to take action against any infringement, applying due differentiation at their own discretion. If such a system is adopted, attention must be devoted to:

- Expertise and clarity. The expertise of the RUDs must be evident and unquestionable, established by a formal enforcement protocol.
- Disclosure and transparency. The motives which underpin a decision to take enforcement action must be fully transparent, and hence controllable.
- Accountability. Administrative authorities and lawmakers must be able to assess and review all mandated decisions. In the most extreme case, it must also be possible to withdraw the mandate. This calls for public accountability.

The Council believes that the current structure of six RUDs, in combination with a strong mandate, will greatly enhance effectiveness and will ensure the required degree of separation between permit issuance and enforcement. If a subsequent evaluation reveals that effectiveness has not been increased in line with expectations, further centralisation at the national level should be considered.

A national enforcement protocol could include standard procedures and time limits for the implementation of measures. It would also allow a system of differentiated supervision and enforcement to be defined, with the intensity of inspections based on a company's past performance. Ideally, such a system would be embedded in a public covenant.

Remove the legislative distinction between 'internal' and 'external' safety

Integrated assessment and standardisation of safety calls for the distinction between 'internal' and 'external' safety to be abandoned. That distinction has developed for historic reasons but is now outdated and has not been observed by the BRZO companies themselves for quite some time. There are various other countries in which the distinction is not made. The new Environment and Planning Act (*Omgevingswet*) offers excellent opportunities in this respect, not least because the interrelationship between safety and other environmental aspects is now assured. An alternative would be the introduction of new legislation, such as a Physical Safety Act (*Wet op de fysieke veiligheid*).

Encourage knowledge-sharing and use of the existing knowledge infrastructure

If supervision and enforcement are to be fully effective, the knowledge of the various inspectorates must be up to date. Operational processes are constantly in development, and knowledge must keep pace. This calls for ongoing knowledge-sharing between the inspectorates, continuous training for inspectors, research and innovation. The Council therefore recommends taking steps to ensure that the inspectorates have adequate capacity for knowledge development and knowledge sharing. Further study should be undertaken to determine how the proposed system can best be incorporated within the existing knowledge infrastructure.

Aim for harmonisation of norms

The Environment and Planning Act assumes that there is an 'acceptable' level of risk to the general public, in contrast to the Working Conditions Act. The latter is based on a desire to remove all risks to the employee. The two approaches are irreconcilable. Given that a 'zero-risk' situation simply does not exist, the Council believes that the two norms systems should be brought closer together. In real terms, this means that there should be an acceptable level of risk for workers, formally established by the Working Conditions Act. This will in no way detract from companies' responsibilities or their obligation to do everything possible to minimise risk.

Make the work of the inspectorates fully transparent and public

Companies can be encouraged to improve their safety culture and raise their level of safety by communicating openly about the relevant aspects with the general public. Publicising good practice examples places external pressure on companies to devote attention to safety. Further to this aim, the inspectorates should produce their inspection reports in language which is more accessible to a general readership, and should be more proactive in their communication with the public, particularly those living in the immediate vicinity of companies engaged in high-risk activities.

Solution directions: private sector

In addition to the proposed solutions which are largely concerned with government action, the Council believes that safety should be seen as a shared responsibility of both the public and private sectors. In fact, safety is primarily the responsibility of the companies themselves. There are various ways in which they can be encouraged to achieve the highest possible safety levels, as described below.

Investigate opportunities for insurance premium differentiation

Insurance companies have a clear interest in insuring that their policy-holders maintain a good safety culture. The Council therefore advises the State Secretary to enter into consultations with the insurance companies, requesting them to investigate whether insurance premiums can be made proportionate to the quality of a company's safety culture, or certain aspects of that culture.

Investigate the possibility of mandatory liability insurance

The Council is of the opinion that the companies with the highest level of risk, specifically those in the chemicals industry, should have full insurance cover to pay the costs of any damage caused by an incident. A system of (mandatory) liability insurance would ensure that the insurance companies

also take an active role in monitoring safety performance at companies that have taken out insurance.

Investigate possibilities for extending civil and criminal liability

If a serious incident occurs at a company which is based in the Netherlands but which forms part of an international concern, it is by no means certain that the overseas parent company can be held liable. Accordingly, the Council recommends investigating the possibility of extending civil and criminal liability within the concern structure. It will also be appropriate to examine extending possibilities for criminal prosecution of a company's directors. Once again, the aim is to encourage companies to devote greater attention to safety.

Encourage certification bodies to go beyond 'paper inspections'

At present, the organisations which certify safety management systems often limit themselves to a 'paper' inspection. Certification bodies should be encouraged also to conduct full physical on-site inspections, in keeping with the principles of the New Inspection Method approach. The Dutch Accreditation Council (RvA) is the appropriate body to promote this shift in focus.

Chain responsibility

A company's clients and suppliers can also play a role in promoting safety in the context of chain responsibility and Corporate Social Responsibility. Benchmarks established by sector organisations may prove a useful tool.

Investigate whether certification bodies can be held jointly liable

The Council is of the opinion that a certification body which erroneously or fraudulently issues certificates to a high-risk company should be held jointly liable in the event of an incident. The possibility of civil action in such cases should be examined, as is currently already possible in the accountancy sector.

Conclusion

Given the topical nature of the subject matter, at this stage the Council wishes to confine its remarks to this advisory letter. We are of course willing to provide further advice on this topic on request, and will be pleased to elaborate on any or all of the above recommendations by means of a more comprehensive report.

Yours sincerely,

The Council for the Environment and Infrastructure,



H.M. Meijdam
Chairman

Dr R. Hillebrand
General Secretary

ANNEX 1: PARTICIPANTS

About the Council for the Environment and Infrastructure

The Council for the Environment and Infrastructure (*Raad voor de Leefomgeving en Infrastructuur, Rli*) advises the Dutch Government and Parliament on strategic issues concerning the living and working environment. The Council is independent and offers solicited and unsolicited advice on long-term issues of strategic importance to the Netherlands. Through its integrated approach and strategic advice, the Council strives to provide greater depth and breadth to the political and social debate, and to improve the quality of decision-making processes.

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