

Summary

Assignment and investigation

On the 4th of October 2022, the State Secretary of Infrastructure and Water Management (Infrastructuur en Waterstaat, IenW) requested the Human Environment and Transport Inspectorate (Inspectie Leefomgeving en Transport), hereinafter ILT, to conduct an investigation into permits, supervision and enforcement (VTH) on Bonaire, St. Eustatius and Saba. The State Secretary also requested recommendations for improving the VTH system and introducing 'checks and balances'. The investigation was conducted in coordination with the Minister for Nature and Nitrogen of the Ministry of Agriculture, Nature and Food Quality (Ministerie van Landbouw, Natuur en Voedselkwaliteit) hereinafter LNV.

This report presents the outcome of that investigation and focuses specifically on the execution of the VTH tasks relating to construction, the environment and nature by the Public Entity Saba (OLS). The project team formed by ILT and LNV visited Saba twice for the purposes of the investigation. In addition, interviews were conducted and documents and reports were studied. OLS employees cooperated fully in providing information for the investigation and ensured that the project team could interview the desired individuals.

Results

The ILT concludes that the execution of VTH tasks relating to construction, the environment and nature on Saba does not comply with legal requirements and local regulations. This conclusion is based on the following observations.

Permits

- There is a Nuisance Ordinance in effect, but no businesses have been identified that require a permit under this ordinance.
- The OLS does not have an up-to-date list of businesses that are required to have an environment permit, or are subject to a reporting obligation, after the BES Environmental Management (Establishment and Activities) Decree (Inrichtingen- en Activiteitenbesluit BES), hereinafter IAB BES, comes into effect.
- Virtually no permits are issued.

Example:

Saba's waste processing company collects household and commercial waste, separates it into waste streams and exports much of the waste. In the past, several waste streams were incinerated. Only timber and medical waste are incinerated now. This company does not have to have a permit and no requirements have been set in relation to waste acceptance, emissions to the air from the incinerator or storage of the incineration ash.

Supervision

- The OLS does not engage in supervision relating to construction, the environment/nuisance or nature.

Example:

A business consists of several facilities that are close to each other: a quarry, a gas bottle filling station, a petrol station and a liquid fuel storage area. This company is not regulated by a permit; the OLS does not conduct supervision.

Enforcement

- Due to the lack of supervision, no enforcement takes place.

Underlying causes

The OLS faces several bottlenecks that prevent adequate execution of VTH. The ILT has identified a number of causes in this regard.

Staff and organisation

- A permit issue officer has been appointed for construction, but there is no permit issue officer for nuisance or ecological permits.
- There are no supervisors for the nuisance and building permits. The open position for a building inspector has not been filled.

Resources and processes

- No schedule has been set for ecological supervision.
- No support systems are in place for VTH and document registration and archiving. There is a lack of overview as a result.

Culture and managerial influence

- The employees of OLS are managed ad hoc based on prior consent from the Executive Council (bestuurscollege, BC). Consequently, daily operations are under direct management control.

Involvement of the Kingdom of the Netherlands (Dutch government)

- The Kingdom of the Netherlands has limited involvement in supporting the VTH process for construction, the environment or nature.
- Despite the fact that the OLS does not execute VTH tasks for construction and nature, the Kingdom Representative (Rijksvertegenwoordiger), hereinafter RV, has not carried out further investigation in the context of intergovernmental supervision (interbestuurlijk toezicht), hereinafter IBT. Nuisance is not currently included in the scope of IBT.
- The RV's application of IBT is complicated by the fact that the latter has powers but no supervisors have been designated to support his tasks.

Conclusion

The OLS's execution of the VTH tasks is not in order. In addition, checks and balances are lacking within the organisation. The interests that laws relating to construction, the environment and nature are intended to protect are either not being protected at all, or not being protected adequately. Due to many, sometimes strongly interdependent causes, a fundamental change in the execution of VTH tasks is needed in order to improve the situation.

Recommendations

The ILT recommends the following action to improve execution of the VTH tasks relating to construction, the environment and nature.

Recommendation 1 (Kingdom of the Netherlands)

Rapidly transfer the execution of the entire VTH task package relating to construction, the environment and nature to a single existing environment agency in the Netherlands in Europe. This ensures retention of knowledge and experience, and guarantees continuity, while at the same time distancing the activities from the government.

- In line with the situation in the Netherlands in Europe, the public entity retains its powers and continues to have final responsibility. The tasks are executed by the environment agency. The OLS gives the director of this environment agency a mandate to sign permits and enforcement orders.
- Immediately start to identify and eliminate permit issue backlogs within the OLS, under the management and with the support of the environment agency.
- Due to the significant physical distance to Saba, special attention is needed for the daily operational aspects of executing the VTH tasks. This can be achieved by closely involving the current OLS permit issue officers and supervisors in the environment agency's execution of the tasks.

Recommendation 2 (OLS)

Address the identified bottlenecks within the administrative organisation of the OLS quickly and in a focused manner, in close cooperation with the environment agency. Part of the VTH process will continue to be executed by the OLS despite recommendation 1.

- Staff and organisation: Prioritise recruitment to fill vacancies within the VTH process.
- Management: Set priorities on an annual basis and link them to a concrete schedule of work. Perform the work and monitor progress.
- Use of ICT: Make an unequivocal choice for support systems. Arrange training for the employees and focus management attention on consistent use of these systems.

Recommendation 3 (Kingdom of the Netherlands and OLS)

In close coordination with the OLS, ensure up-to-date and adequate laws and regulations for construction, the environment and nature.

- Specifically for construction: Evaluate the 'Building and Housing Ordinance' (OLS and Kingdom of the Netherlands). Use the BES code to implement the functional requirements of the Buildings Decree and anchor this code by means of a Ministerial Decree.
- Specifically for the environment: Ensure rapid entry into force of the IAB BES to regulate the businesses with the greatest potential environmental impact. The IAB BES sets out the required current and clear framework for programming and execution of the permit issue and supervision activities. The phased entry into force, as currently agreed for Saba, has led to a wait-and-see attitude on the part of the OLS and business owners. The environmental impacts of business activities cannot be regulated until the IAB BES comes into force.

Recommendation 4 (Kingdom of the Netherlands)

Strengthen the position of the Kingdom Representative to achieve effective intergovernmental supervision.

- Establish a policy framework for the use of intergovernmental supervision instruments. Provide administrative support for the Kingdom Representative in fulfilling his/her intergovernmental supervision duties by appointing supervisors.