

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 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 St. Eustatius (OLE). The project team formed by ILT and LNV visited St. Eustatius twice for the purposes of the investigation. In addition, interviews were conducted and documents and reports were studied. OLE 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 related to construction, the environment and nature on St. Eustatius does not comply with legal requirements and local regulations. This conclusion is based on the following observations.

General

- The Executive Council has adopted the Implementation Programme for Supervision and Enforcement (Uitvoeringsprogramma Toezicht en Handhaving), however the Policy Document for Supervision and Enforcement (Beleidsdocument Toezicht en Handhaving) has not been adopted.
- The separation between permit issue and supervision was achieved by assigning these areas of focus to different employees. 'Checks and balances' such as documented work processes and peer review are lacking.
- The OLE does not use digital systems for verifiable permit issue and implementation of supervision and enforcement. Document registration is done uniformly but is incomplete.
- The OLE does not formally manage execution of the VTH tasks.
- Permit issue officers and supervisors organise the activities based on mutual agreement; an integrated approach to complex cases is lacking.

Permits

- Building permits are issued according to a draft flow chart. A single nuisance permit was issued in 2020, by an externally hired permit issue officer. Ecological permits are granted for scientific research.
- The OLE does not have an up-to-date list of businesses that are currently required to have permits and must have an environmental permit after the BES Environmental Management (Establishment and Activities) Decree (Inrichtingen- en Activiteitenbesluit BES), hereinafter IAB BES, comes into effect.

Example:

When the Golden Rock Resort was built, building permits were issued for each phase of construction. Ecological permits should also have been applied for and issued for several activities. This did not happen.

Supervision

- No inspector has been appointed to monitor compliance with nuisance permits.

- There is 1 building inspector who supervises building permits 2 days a week.
- No inspector has been appointed to monitor compliance with ecological permits.

Example:

According to the OLE, one of the operators employed by the waste processing plant also monitors compliance with the requirements of the nuisance permit. The operator reports that supervision should be performed by the VTH unit. In practice, the VTH unit and operator do not monitor compliance with permit requirements.

Enforcement

- Infringements that have been observed continue, the OLE does not act to enforce the law and regulations.

Underlying causes

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

Staff and organisation

- The VTH unit has not had a manager for an extended period of time, so this unit operates without management control. Employees do not work to an established schedule and respond only to requests, reports or complaints.
- All preliminary decisions that are submitted to the government must be accompanied by an opinion from the Legal Affairs Department. This department consists of 1 employee, resulting in high working pressure and backlogs.

Resources and processes

- The VTH unit does not have any supporting digital systems for VTH and registering and archiving documents. There is a corresponding lack of transparency and overview as a result.

Culture and managerial influence

- Employees in the VTH unit do not feel that they have the government's support in performing their supervision and enforcement tasks. As a result, they adopt a cautious approach to supervision and enforcement.

Involvement of the Kingdom of the Netherlands (Dutch government)

- The Kingdom of the Netherlands intervened in 2018, temporarily removing the local governing council from office. Despite this intervention, the OLE does not adequately perform the VTH tasks relating to construction, the environment and nature.
- The date of entry into force of the IAB BES has been postponed repeatedly. This has led to a wait-and-see attitude on the part of business owners and the OLE regarding applications for and the issue of nuisance permits. The OLE has explicitly stated that it will wait for the IAB BES to come into force and not issue nuisance permits until then.

Conclusion

The OLE'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, but the tasks are executed by the environment agency. The public entity 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 OLE, under the management and with the support of the environment agency. In doing so, ensure timely involvement of the local nature management organisation and consultants in the VTH process.
- Due to the significant physical distance to St. Eustatius, special attention is needed for the practical aspects of executing the VTH tasks. This can be achieved by closely involving the current OLE permit issue officers and supervisors in the environment agency's execution of the tasks.

Recommendation 2 (OLE)

Address the identified bottlenecks within the administrative organisation of the OLE 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 OLE despite recommendation 1.

- Staff and organisation: Prioritise the recruitment of a VTH unit manager.
- Management: Set priorities on an annual basis. Link these priorities 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 OLE)

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

- Specifically for construction: Use the BES code to implement the functional requirements of the Buildings Decree (OLE) and anchor this code by means of a Ministerial Decree (Kingdom of the Netherlands).
- Specifically for the environment: Ensure rapid entry into force of the IAB BES to regulate the businesses with the greatest potential environmental impact.
- Specifically for nature: Assess whether sensitive areas and buffer zones should be designated (Kingdom of the Netherlands).

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.