

Water system and water chain in Dutch water and environmental legislation

Pieter Jong

Introductory remarks

- General research question
- Dutch situation; historical background of Dutch water law
- European context of Dutch water law reform
- Modernization of Dutch water law

General research question

How logical (rational) is water regulated in water law ?

Different kinds of water > different ways of regulating water?

E.g.: rainwater, surface water, groundwater, storm water, waste water

Dutch situation: two ministers on the field of water policy

- Ministry of Transport, Public Works and Water Management is responsible for: WATER SYSTEM
- Ministry of Housing, Spatial Planning and the Environment is responsible for: WATER CHAIN
- In European Council of Ministers concerning Water, Dutch state is represented by the Minister of Housing, Spatial Planning and Environment

Water boards

- Oldest governmental organization in the Netherlands.
- Functional democracy (only water tasks, including dikes etc.)
- Water boards = regional water system managers
- Water boards can impose their own tax (all watercosts can be covered...)

Various authorities on different levels

- Water system managers:
 - National water system manager
 - Regional water system manager (waterboards)
- Authorities with a specific water task (not part of water system management in the sense of the Water Act). E.g.: municipality, manages collection and transport of waste water.

Modernization of Dutch water law

- 8 existing wateracts (partly since 1900) are being transformed in 1 modern Water Act (2008)
- Water Management Act (1989), Flood Protection Act (1997), Groundwater Act (1981), Surface water pollution Act (1970), Seawater pollution act (1975), Polders and land reclamation Act of 14 July 1904; State Managed Infrastructure Act (1996) and the Water Administration Act (1900).
- Water act > integrated water management

Water system and water chain in Dutch water and environmental legislation

Water legislation	Environmental legislation
Water system	Water chain
Ministry of Transport, Public Works and Water Management	Ministry of Housing, Spatial Planning and the Environment

Questions

- Adequate and practical division between water law and environmental law?
- Adequate and practical division between “water system” and “water chain” ?
- Sufficient guarantees of a good link between water chain and water system?

Watersysteem en waterchain

- **Water system:** in brief, the water system is the totality of surface water and ground water, which belong together to the natural environment (water sources)
- **Water chain:** the water chain lies in the sphere of public utilities, comprising the pathway from drinking-water supply to waste-water treatment. (water services or water infrastructure)

See picture in paper: water chain embedded in water system, etc.

- Water chain embedded in water system
- Water system embedded in the environment
- Water system and the environment thus make certain requirements on the water chain.

Definition of “water system” in Dutch Water Act (draft)

- The object of water management is the water system.
- “Water system” is defined as “a coherent set of one or more bodies of surface water and groundwater, with the associated water retention areas, dams and dikes and auxiliary works.”

National, regional and local level

- National water manager (national waters, e.g. North sea)
- Water board: regional water system manager
- Municipality: according to the Water Act the municipality is not a water system manager (no operational water management); municipality has some tasks of importance for water management

Local government (municipality): tasks of importance for water management

Examples:

- Management of public space (e.g.: use of herbicides)
- Road management: when you break open the road to renew the sewage system (or other underground infrastructure), you have to do it in a efficient way (not to often, as short as possible...).
- Spatial planning: when you make spatial plans, take all the effects for the water system into account...(we call this the "water test");
E.g.: it is not wise to build houses 6 or 7 meters below sea level when you have alternative locations.

New task for local governments:

- The duty of the municipality to deal effectively with “stormwater runoff”. This duty on the part of the municipality only exists “to the extent that the parties disposing of, intending to dispose of or forced to dispose of the stormwater runoff cannot reasonably be expected to bring the stormwater runoff into the ground or into surface water.”
- The duty to care for groundwater: “The municipal council or the mayor and aldermen are responsible for taking measures within the public space of the municipality to prevent or limit structurally adverse consequences of the groundwater level on the use to which municipal land is to be put, insofar as such measures are feasible and do not fall under the responsibility of the water board or the Province.”

Water chain

1. Drinking water supply (production and distribution)
2. Sewage system
3. Waste-water treatment

In practice: since 2005 only one water-chain company is established. This company has the legal form of a foundation in which both the municipality of Amsterdam and the water board participate.

How to link “water system” with “water chain” ?

- Water plans
- Water agreements

Water plans

Water Act:

- National water plan
- Provincial water plan
- Water management plan (operational) = plan of the water system manager

Environmental Management Act:

- Municipal sewage plan (collection and transport of waste water):

Municipal sewage plan transforms into a municipal water plan

A new Bill will cause the municipal sewage plan to be expanded to include:

- not only urban waste water
- but also “the collection and further processing of stormwater runoff”
- and “measures aimed at preventing or limiting as much as possible the structurally adverse consequences of the groundwater level on the use to which municipal land is to be put.”

Water agreements

- The municipality is not mentioned in the Water Act as a possible party to a water agreement.
- The White Paper on the Water Act mentioned the criteria according to which an order in council (AmvB) or provincial ordinance could specify the cases in which a water agreement could be regarded as compulsory. When the water system was under State management, the criterion was: "If international legal obligations or the need for coherent, effect water management on a national scale or per catchment area make this necessary (art. 4.3 subsection 1).

Advice of the Dutch Advisory Commission on Water and Infrastructure Law

The Committee argued that the water agreement deserved more attention in view, among other things, of the importance of wide involvement and participation in water policy (see also article 14 of the EU Water Framework Directive) and the desirability of making this policy both effective and goal-oriented. It also saw the water agreement as an important instrument for reaching the necessary harmonization between water chain and water system and allowing municipalities and water management agencies to lay down agreements giving concrete form to the duties of care formulated in the Water Act.

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