

A large industrial fire with thick smoke rising into the sky. The fire is intense, with bright orange and yellow flames visible at the base of the smoke plume. The smoke is thick and billowing, filling much of the upper half of the frame. In the foreground, there are dark, silhouetted structures, possibly parts of a factory or industrial facility, with some fire visible on the right side. The overall scene is one of a major industrial accident.

“Expenses to be paid by the taxpayer”

A case of liability of the authorities for the damage caused by a large fire at a private company

Workshop Cost-effectiveness for Major Accident Prevention

12 October 2011, Warsaw

A photograph of a large industrial fire. Thick, billowing white and grey smoke rises from a building that is engulfed in flames. The fire is intense, with bright orange and yellow flames visible. The scene is set in an industrial area with other buildings and structures visible in the background. The overall atmosphere is hazy and smoky.

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28 February 1996

- Massive fire at CMI, a storage and transshipment company for hazardous substances in Rotterdam.
- Pallet boards fall over, a barrel falls onto a bucket, the bucket tears open, its contents oxidize very rapidly with liquid on the floor, a flash.
- Two warehouses of CMI and a warehouse of the neighbouring company with goods of third parties are lost.

History :

On 12 November 1993 the city of Rotterdam grants an environmental permit.

Contains provisions on

- Fire prevention and fighting incidents
- Way of storing hazardous substances
- Maximum quantities
- Prohibition on storage of pesticides.

The joint environmental service Rijnmond DCMR is in charge of supervision.

Shortly before the fire :

11 May 1995 check by DCMR : “Warehouses are on the verge of collapsing. Many provisions are violated.”

Between May 1995 and February 1996 correspondence and talks between DCMR and CMI. CMI wants to move and does not do any investments. DCMR orders improvement. The situation remains unsafe.

28 February 1996 fire.

What could the authorities have done ?

- High periodic penalty payment to enforce immediate compliance
- Closing down the company

The company can contest these measures before the Administrative Court.

Criminal liability after the fire

CMI and the managing director are sentenced by the criminal court

- Infringement of the provisions of the permit
- Fire due to negligence

Authorities have criminal immunity and cannot be prosecuted.

Civil claim by insurers of the goods stored with CMI and with the neighbouring company, against the city of Rotterdam and DCMR to indemnify the damage.

This claim is granted in two instances.

Reasoning of the Court of Appeal : step 1

Causal relation between CMI's violations and the fire

- CMI did not have a safety expert available
- 1,100,000 kilos of oxidizing substances whereas a maximum of 200,000 kilos had been authorized
- Pesticides were stored
- Too little space in between
- No fire-hoses

Therefore : the fire was caused and greatly increased because CMI had violated the provisions in the permit.

Reasoning of the Court of Appeal : step 2

The authorities have unlawfully failed to act.

There were immediate and serious dangers and a considerable risk of serious damage.

Energetic and forceful acting by the authorities could be expected.

This was not the case.

Reasoning of the Court of Appeal : step 3

The Environmental Management Act serves to protect the environment, viz. to prevent danger, damages or nuisance by industrial enterprises.

This covers protection of goods outside the premises by fire within the premises.

This act does not purport to protect the premises themselves and the goods inside.

Reasoning of the Court of Appeal : step 4

Liability for goods within the industrial premises, so with CMI itself.

The municipality has a preventive responsibility on the basis of the Fire Services Act.

This extends to the interests of the companies that have stored their goods with CMI themselves.

The authorities have also acted unlawfully with respect to this.

Conclusion of the Court of Appeal :

The municipality and DCMR are liable for damages.

NB : Very likely the case will be submitted to the Dutch Supreme Court.

Position of the supervising authorities:

1. Enforcement can be submitted to the administrative court by the party that is being supervised and by third parties that have an interest.
2. If anything goes wrong with a company under supervision, the authorities are, in serious cases, liable for damages.
3. The authorities have immunity from criminal prosecution.

Thank you for your attention