

Delivery 1, task 1a

Recommendations on faster and more risk-based permitting in the Netherlands for wind turbines and hydrogen use

1. Introduction

In this short report on ideas to accelerate more risk-based permitting in the Netherlands for wind turbines and hydrogen we differentiate between ‘technical safety’ vs ‘safety assessment in the spatial planning process’. The report takes a green field approach. This report should be read together with the report delivery 1b ‘easy fixes based on the existing regulation’ vs ‘green field regulatory approach’.

The recommendations in this report are not easy. ‘Easy’ means without changing the permitting system, so without changing the need for a permit as such. ‘Easy’ may be difficult thus in terms of development. In the green field approach changes in the law are advocated for that remove need the permit. The green field approach will take time and political courage because of the present political believe in permits.

Before we start with the recommendations, some well-known facts:

At present the ‘mood’ in Dutch politics is not in favor of more wind turbines. i.e. when the neighboring residents will complain during a permitting procedure they have a very good chance of getting political support from the municipal council. The direct implication is that a successful participation process might be more important than the ‘technical aspects’ of the permitting process.

The electrical grid in the Netherlands is ‘full’ that is, new electrical energy sources like wind turbines only can be realized till at least 2030 when the electrical output can be used locally. This is why the use of small electrolyzers in combination with wind turbines is so important and thus also means to transport and use the hydrogen.

There is a safety angle in the problem of network congestion on land and at sea: many resources are spent on occupational health without any integral assessment. On land we see that many resources for example are spent on new electrical safety measures

(cf NEN 3410) for personnel working on existing transformers to further mitigate a risk that no one died from the last two decades. At sea we see for example that many resources (up to 2035 half a billion euro's by TenneT) are spent to further mitigate the theoretical risk of an UXO exploding while laying cables to wind turbines at sea.

This safety angle in itself has nothing to do with the process of permitting for the energy transition, however the resources spent are not available for the energy transition that as a result turns out to be much more costly. The delay of the energy transition is a safety issue that costs many DALY's, much more than are prevented by the occupational health policies implemented. However, occupational health is the policy domain of the ministry of Social Affairs and Labor (SWZ) that does not care about energy transition. So as always, there is a need for a much more risk-based, integral and balanced approach of safety that calls for much better collaboration between the ministries.

A central line of reasoning in this report is that as public administration scientists we know that integral decision making is almost impossible on the level of the national government. So, even with the problems mentioned below, the best way to improve integral decision making that favors the energy transition is to empower municipal authorities.

Furthermore, in our opinion the system of the new Environmental act (Omgevingswet) in principle contains almost all the tools that municipalities need when they want to come up with balanced integral decision making. The 'in principle' does not work out at present 'in practice' because local authorities are obliged to mandate most permitting to the regional environmental services (Omgevingsdiensten) and are obliged to ask the safety regions (veiligheidsregio's, more or less the regional fire service) for advice. Mandate is no delegation so municipalities keep their responsibility for the ultimate decision on permits, however they normally follow the 'decision' of the regional environmental services. This construction hinders integral decision making because of one-sided and anxious experts that prevent local authorities from making an informed and balanced decision. So, a general recommendation is to change the way the 'mandate' of the regional environmental services is executed to empower aldermen by, for example, letting the aldermen sign the permit themselves on base of an advice.

2. Green field permitting for technical safety

As is already the case for transport of dangerous goods and H2-pipes, the green field approach is to remove all technical permits and trust on insured liability.

A rationale for this is that civil servants at large cannot have the same knowledge on technical issues as the employees of specialized companies so permitting is in a sense useless.

As in the case of for example the transport of dangerous goods and in according with the scientific literature one needs to introduce ‘insured risk liability’. That calls for two changes:

- a change in the civil law (Burgerlijke wetboek) as has been done for the transport of dangerous goods: Artikel 1213, lid 1, Burgerlijk wetboek states that those who transport dangerous goods are liable for all damage.
- an obligation to be insured. For the transport of dangerous goods artikel 3a, Wet aansprakelijkheidsverzekering motorrijtuigen states that those who transport dangerous goods must be insured for 10 million euro.

Please note that there already is the specific duty-of-care (‘bijzondere zorgplicht’) in the Bal that obliges every who undertakes an activity to take all necessary measures to prevent harm when no specific measures are prescribed. This specific duty-of-care allows for safety deregulation, at least when the private companies can be trusted, for example when dealing with larger companies that value continuity and thus have a sufficient insurance.

3. Green field permitting for spatial planning

The green field when looking at permitting and spatial planning is having only a series of ‘desired outcome’ safety parameters of a new activity and simply allowing all activities that fit within the local spatial plan (omgevingsplan).

When the outcome of a new activity does not directly fit within the series of desired outcomes parameters a decision of the local authority is necessary. An integral decision here should be based upon a reflection of the ‘total outcome’ of the new activity, i.e. a decision that takes into account on what aspects the new activity performs better than the desired outcomes and on what aspects it performs worse. Ideally, when safety is the focus, all these outcomes can be measured in terms of DALY’s lost or gained so an balanced decision can be made.

It is important that the desired outcomes take into account the present situation. One of the problems of the energy transition is that desired outcomes are only formulated for new activities. So, for example, the desired outcome of the risk of explosion of H₂-use in households is not compared to the existing risk of explosion of natural gas use.

The Omgevingswet already has a system of desired environmental outcomes (omgevingswaarden) that can be a basis for the green field system (we already referred to the noise contours) but at present local authorities are not allowed to accept a lower outcome even if the balance of all outcomes is clearly positive.

Another problem here is that some outcomes are formulated as rules based upon a questionable modeling. For example, the rules (instructieregels in the Bkl) do not permit to accept housing within the IR 10⁻⁶ contour even if measures are taken to protect the inhabitants. The model is based upon staying outside, without taking any evasive measure in case of an emergency.