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**VERSION FOR THE INTERNETCONSULTATION, UNOFFICIAL TRANSLATION**

**Decree of <.....>**

**, laying down rules relating to establishments and activities for the protection of the physical environment in Bonaire, Sint Eustatius and Saba (Establishments and Activity Decree BES)**

To the nomination of our Minister for Infrastructure and Water Management of, No IenW/BSK, Principal Executive Board and Legal Affairs;  
Having regard to Articles 1.2, third paragraph, 5.1, first and second paragraphs, 5.4, first and second paragraphs, 5.6, second and third paragraphs, 5.9, first paragraph, 5.14, fourth paragraph, 5.21, first to third paragraphs, 5.25, sixth paragraph, 5.39, third paragraph, 7.1, first to fourth paragraph, 8.6, first paragraph and second paragraph, under (a) and 10.9, third paragraph, of the Law on public housing, urban planning and environmental management BES;  
Hearing the section's advice from the Council of State (Opinion No/);  
Having regard to the further report of Our Minister for Infrastructure and Water Management of, No. IenW/BSK-, Principal Executive Board of Administrative and Legal Affairs;  
Have accepted and understood:

**Chapter 1 GENERAL PROVISIONS**

**Article 1.1 Definitions**

In this Decree and the provisions thereof, the following definitions shall apply:

*executive council*: executive council of the public entity Bonaire, Sint Eustatius or Saba;

*buffer zone sensitive area*:

- a. zone around a sensitive area designated as a natural park;
- b. 500 m zone around a sensitive area notified as a water area of international importance;

*island council*: island council of the public entity Bonaire, Sint Eustatius or Saba;

*sensitive area*:

- a. area designated as a nature park under Articles 2a or 10 of the Nature Management and Protection Foundations Act;
- b. area covered by the Agreement on Water Areas of international importance, in

particular as a place of residence for waterfowl, of 2 February 1971 (Trb.1975, 84), has been notified as a water area of international significance;

c. area designated as a protected area under the BES Basics and Regional Planning Act;

d. cultural heritage, i.e. the monuments, town and village landscapes and archaeological heritage referred to in Article 1 of the BES Monuments Act;

*unusual occurrence*: unusual occurrence referred to in the first paragraph of Article 8.1 of the Act;

*Act*: Law on public housing, urban planning and environmental management BES.

### **Article 1.2 Categories of establishments**

1. The establishments listed in Annex 1 to this Decree shall be designated as categories of establishments referred to in the third paragraph of Article 1.2 of the Act.

2. For the purposes of this Decree and its provisions:

a. type I establishment: establishment designated as type I in Annex 1;

b. type II establishment: establishment designated as type II in Annex 1;

c. type III establishment: establishment designated as type III in Annex 1;

d. type IV establishment: establishment designated as type IV in Annex 1.

### **Article 1.3 Competent Authority**

1. The Executive Council shall be the competent authority in respect of establishments type I, type II and type III.

2. Our Minister is the competent authority in respect of establishments type IV.

### **Article 1.4 Duty of care**

1. Any person who carries out an activity and knows or could reasonably have known that it may or may cause adverse effects on the environment which cannot or may not be prevented or insufficiently prevented or limited by compliance with the rules laid down by or pursuant to this Decision shall be obliged to take all measures that may reasonably be required of him to prevent such effects.

2. If it is not possible to prevent the adverse effects referred to in paragraph of this Article, the person shall be obliged to limit or reverse them as far as possible.

3. The prevention, limitation or elimination of the occurrence of the adverse effects referred to in paragraphs and shall mean:

a) efficient use of energy and raw materials;

b) preventing or, insofar as this is not possible, limiting as far as possible:

1. soil contamination;

2°. groundwater contamination;

3°. contamination of a surface water body;

4°. air pollution;

5°. noise nuisance;

c. preventing or limiting to an acceptable level:

1°. odour;

2°. nuisance of dust;

4°. vibrational nuisance;

d. preventing or limiting as much as possible the adverse effects on the environment of the movement of persons and goods to and from the establishment;

e. preventing risks to the environment and unusual occurrences, or where this is not possible to minimise risks to the environment and the likelihood of unusual occurrences and their consequences;

f. ensuring a good state of maintenance of the establishment;

g. the efficient operation of waste water management facilities;

- h. the efficient management of waste water, waste and energy;
- i. protecting the darkness and the dark landscape in areas designated by the competent authority.

## **CHAPTER 2 RULES FOR ACTIVITIES AND ESTABLISHMENTS TYPE I AND II**

### **Article 2.1 Quality criteria environmental compartments**

1. The person carrying out an activity shall comply with the quality criteria to be laid down by ministerial arrangement.
2. In any event, the quality criteria to be laid down by ministerial decree concern the following issues:
  - a. efficient management of waste;
  - b. efficient operation of waste water management facilities;
  - c. efficient management of waste water and the reduction of the amount of waste water;
  - d. preventing contamination of a surface water body;
  - e. protection of the coral reef ecosystem;
  - f. protection of the quality of soil and groundwater;
  - g. prevention of soil contamination;
  - h. preventing or reducing, noise nuisance, light nuisance, vibration nuisance and odour nuisance;
  - i. protection of air quality;
  - j. preventing or limiting diffuse emissions into the air;
  - k. ensuring safety;
  - l. health protection;
  - m. the economical use of raw materials;
  - n. efficient use of energy.
3. The Island Council shall lay down detailed rules as referred to in Article 5.1 fourth paragraph of the Act on the quality criteria, referred to in the first paragraph, relating to the subjects, referred to in the second paragraph.

### **Article 2.2 Notification establishment type II**

1. Any person who sets up, changes or alters a type II establishment shall notify the competent authority thereof.
2. The notification shall be made no later than four weeks before the date on which the establishment, change or change of operation will take place.
3. The notification shall not be required if a prior notification has been made in accordance with this Article and there is no discrepancy from the data provided in that notification.
4. A notification shall in any case provide the following information:
  - a. name, address, telephone number and e-mail address of the person setting up, changing or changing the operation of the establishment;
  - b. name, address and cadastral parcel number of the establishment;
  - c. registration number of the establishment with the Chamber of Commerce;
  - d. planned time of establishment or change of establishment;
  - e. nature and extent of the establishment's activities;
  - f. building permit number.

### **Article 2.3 Customised rules for establishments type I and II**

1. The competent authority may, on its own initiative or at the request of a person driving a type I or II establishment, adopt customised rules as referred to in Article 5.4, paragraph 2 of the Act, if those requirements relate to quality criteria to be laid down by

ministerial decree and provide a higher or equivalent level of protection of the environment as provided for in Article 2.1, first and second paragraphs.

2. The competent authority shall:

- a. take into account the business conditions of the establishment; and
- b. lays down in the decision a reasonable period of time for each measure within which that measure must be implemented.

3. The competent authority shall notify publicly of the decision making of a customised rule in one or more local newspapers and in the manner customary for the publication of official communications and shall make it available for inspection.

### **Chapter 3 RULES FOR ACTIVITIES AND ESTABLISHMENTS TYPE III and IV**

#### **Article 3.1 Permit**

Anyone who sets up a type III or IV establishment, has brought into force, changes or alters its operation shall apply in writing to the competent authority for permit as referred to in Article 5.1, paragraph of the Act.

#### **Article 3.2 Permit application establishments type III**

1. The application for permit of an establishment type III shall include the following information:

- a. the name, address, telephone number and e-mail address of the person who establishes, changes or changes the operation of the establishment;
- b. name, address, telephone number and e-mail address of the person who drives or will drive the establishment, if that person is a different from the one referred to in (a);
- c. address, cadastral name and location of the establishment;
- d. a copy of or extract from that establishment may be entered in the Register of trade or, by virtue of its law, to the effect of which the establishment is subject, and the means; and
- e. the nature, layout and execution of the establishment;
- f. the activities and processes taking place in the establishment and the techniques or installations to be used for that purpose, including the means of supply, to the extent that they may reasonably be relevant for the assessment of the adverse effects on the environment that the establishment may cause;
- g. the characteristic data for the activities and processes referred to in (e) relating to raw materials and intermediate, secondary and final products;
- h. the maximum capacity of the device and the total rated motor or thermal input of the installations belonging to the device;
- i. the times and days when, or periods during which the establishment or its components are to be in operation;
- j. a situation sketch, with a scale not exceeding 1:10.000 showing the location of the device in relation to the environment and equipped with a north arrow;
- k. detailed drawings of the installations and locations in which emissions occur;
- l. the nature and extent of the load on the environment which the establishment may cause during regular operation, including an overview of the main adverse effects on the environment which it may cause;
- m. the measures or facilities for:
  - 1°. the prevention or, insofar as this cannot be prevented, the minimisation of the content of waste in the establishment;
  - 2°. recovery, or making it suitable for recovery, or, insofar as this cannot be prevented, to reduce as far as possible the nature of waste arising;
  - 3°. the storage of the waste in the establishment;

4. the disposal of the waste generated in the establishment;
  - n. the nature and content of the other measures or arrangements which have been or are taken to prevent or minimise as far as possible the adverse effects on the environment that the establishment may cause;
  - o. developments reasonably foreseeable for the applicant with regard to the establishment, which may be relevant for the decision on the application;
  - p. an indication of the largest containment system, the maximum amount of substance that may be present therein, an indication of the substance concerned, the location of the containment system in the establishment, the pressure and temperature of the substances and preparations concerned in the containment system;
  - q. the location of pipes in the establishment;
  - r. where applicable, an environmental impact report;
  - s. any other information, provided that the applicant has or reasonably disposes of it and which, in the opinion of the competent authority, is reasonably necessary for the decision to be taken on the application.
2. The application shall be accompanied by a non-technical summary of the information referred to in the first paragraph.
  3. The documents accompanying the application shall be certified by or on behalf of the applicant as belonging to the application.
  4. If, by its nature, the establishment for which permit is requested is temporary, the applicant shall indicate in the application the period during which the establishment is or will be in operation.
  5. The information referred to in paragraphs and need not be disclosed to the extent that the competent authority already has the same information.

### **Article 3.3 Permit application establishments type IV**

1. When applying for a permit for an establishment type IV, the applicant shall provide the information referred to in Article 3.2, first and second paragraphs, and:
  - a. quantitative risk analysis;
  - b. the written information on the manner in which the establishment is in operation, the load on the environment causing the establishment, is recorded and recorded;
  - c. a safety report as referred to in Article 8.6, paragraph of the Act.
2. The application for a permit referred to in paragraph shall also, at the request of the competent authority, provide information relating to:
  - a. unusual occurrences, which are reasonably possible;
  - b. the nature and extent of the different forms of environmental stress to be distinguished in the occurrences referred to in point (a);
  - c. the measures taken to prevent the pollution of the environment which the establishment may not be able to cause as a result of the occurrences referred to in (a);
  - d. the results of an examination of the quality of the soil at the place where the establishment is or will be located.

### **Article 3.4 Best available techniques establishments type III and IV**

1. The competent authority shall take into account, for the purposes of the permit, in determining the best available techniques for establishment type III and IV, at least the following:
  - a. the application of techniques which, compared with other techniques to be used for the purpose concerned, produce little waste;
  - b. the application of techniques using substances which, compared to other substances to be used for the purpose concerned, are least hazardous and least harmful to man and the environment;

- c. the development of techniques for the recovery and reuse of substances and wastes emitted and used in the processes in the establishment;
  - d. similar processes, equipment or modes of operation which have been applied in practice with good results;
  - e. the development of scientific insights and advances of technology relating to the protection of the environment as far as possible;
  - f. the nature, effects and extent of the emissions concerned;
  - g. the dates on which the installations in the establishment are or are put into service;
  - h. the time needed to apply a technique that provides greater protection of the environment than the previous one;
  - i. the consumption and nature of raw materials, including water, and energy efficiency;
  - j. the need to prevent or minimise the overall impact of emissions on and risks to the environment;
  - k. the need to prevent accidents and minimise their impact on the environment;
  - l. information published by international or international organisations in relation to the determination of best available techniques; and
  - m. other information relating to the determination of the best available techniques.
2. In any event, the competent authority shall determine the best available techniques for an establishment on the basis of:
- a. the nature and type of the establishment and the state of the installations and processes present therein;
  - b. agreements on the development of the techniques;
  - c. geographical conditions;
  - d. local environmental conditions.
3. Ministerial decree may lay down detailed rules on the content of the best available techniques and the way in which this article is implemented.

### **Article 3.5 Notification of change establishments type III and IV**

In the case of a notification as referred to in the first paragraph of Article 5.25 of the Act and point (b) of the Act, of the intention to carry out a change of an establishment, the holder shall provide the following information:

- a. his name, address, telephone number and e-mail address;
- b. the permit or permits under which the establishment is established or in operation;
- c. the intended change of the establishment or its operation;
- d. the information showing which parts and the extent to which the permit or permit referred to in subparagraph (b) and the related restrictions and requirements are derogated from;
- e. an outline of situations in which the proposed change is reflected;
- f. the data showing that the intended change of the establishment or its operation does not result in any adverse effects on the environment other than or greater than that which the establishment is authorised to cause following the permit and the restrictions and requirements attached thereto; and
- g. the intended time of implementation of the proposed change.

### **Article 3.6 Public Notice**

1. The declaration referred to in point (c) of the first paragraph of Article 5.25 shall be notified in one or more local newspapers and in the manner customary for publication of official communications and shall make it available for inspection.

2. Notification by the competent authority shall be carried out by at least:

- a. the business content of the declaration;

- b. the hours at which and the place where the declaration and related documents can be accessed;
  - c. whether a procedure relating to the environmental impact assessment has been or will be involved;
  - d. whether there is or will be potentially significant adverse effects on a sensitive area;
3. In cases where a declaration relates to an establishment type IV, Our Minister may waive all or part of the notification referred to in paragraph in so far as the interest of the security of the State so requires.

#### **Article 3.7 Financial guarantee permit**

1. The competent authority may include in the permit an obligation that the person setting up, altering, changing its operation, has in operation or terminates an establishment type III or type IV:
- a. bears the full financial consequences which may arise from the fulfilment of the obligations imposed by the permit; or
  - b. provides by insurance or otherwise financial guarantee to fully cover liability for possible damage to the environment that may result from the establishment of the establishment, altering or changing its operation, running or terminating the establishment. The financial collateral shall not exceed the reasonably foreseeable costs necessary for the fulfilment of such permit by the obligations or cover of liability for damage resulting from the adverse effects on the environment.
2. The commitments referred to in paragraph (a) and (b) shall be entered into for the period laid down in the relevant permit.

### **CHAPTER 4 ENVIRONMENTAL IMPACT ASSESSMENT**

#### **Article 4.1 Environmental Impact Assessment**

1. Activities referred to in Article 7.1, paragraph (a) of the Act shall be designated as those of a category defined in column 1 of Annex 3 B.
2. Activities referred to in the first paragraph of Article 7.1(b) of the Act are designated:
- a. activities belonging to a category defined in column 1 of Annex 3(C);
  - b. any other activity likely to have significant adverse effects on the nature or natural values of a sensitive area or buffer zone, or which may seriously degrade the landscape of the sensitive zone or buffer zone, or which may have a significant effect on the nature or natural values of a sensitive area or buffer zone, or which may seriously degrade the landscape of the sensitive area or buffer zone, or which may be subject to a permit relating to or to the protection of the environment or part of the environment
3. As categories of acts referred to in the second and third paragraphs of Article 7.1 of the Act, the categories listed in Annex 2 Part B, Column 4, respectively, Part C, column 3 shall be designated.
4. The categories of plans referred to in the fourth paragraph of Article 7.1 of the Act shall be designated as categories identified in column 3 of Annex 3, Part B, in so far as such plans constitute a framework for a decision belonging to a category designated pursuant to Article 7.1, paragraph 5 of the Act and in so far as those plans are not designated as categories of decisions referred to in paragraph
5. By ministerial decree, other activities, decisions and plans referred to in paragraphs to may be designated for each public entity for the purpose of protecting the environment.

### **CHAPTER 5 ENFORCEMENT**

### **Article 5.1 Coordination and enforcement plan**

1. Our Minister makes the necessary arrangements for effective monitoring of compliance with the obligations imposed by or under the Act, after coordination with the Executive Council, as far as its policy areas are concerned. The provisions shall cover the strategic, programmatic and concerted exercise of enforcement powers.

2. Our Minister, in consultation with the Executive Board, draws up an enforcement plan with regard to the strategic, programmatic and concerted exercise of the enforcement competences of the Act.

3. Ministerial decrees may lay down rules on the quality of effective enforcement of the Act.

## **CHAPTER 6 TRANSITIONAL AND FINAL PROVISIONS**

### **Article 6.1 Transitional right**

1. An permit granted on the basis of:

- a. Decree on large facilities environmental management BES;
- b. Bonaire hindrance ordinance;
- c. Sint Eustatius hindrance ordinance 1993;
- d. hindrance ordinance Windward Islands; is considered to be an permit referred to in Article 5.1, second paragraph of the Act.

2. In legal proceedings or litigation in which the Executive Council is no longer the competent authority after the entry into force of Article 7.2, after the entry into force of that article Our Minister shall replace the Executive Council.

3. Appeals before an administrative court or actions relating to decisions taken on the basis of the rules referred to in the previous paragraph shall be dismissed on the basis of the Act applicable before this Decision enters into force.

4. Archival documents and the related obligations relating to the permit referred to in paragraph for which an application has already been submitted and which have not yet been granted at the time of entry into force of that article, or on which a decision granting a permit has already been taken, shall be transferred by the Executive Council to Our Minister, provided that the Minister is the competent authority for those permits and they have not already been transferred to a prescribed archive repository.

### **Article 6.2 Withdrawal Decree on large facilities environmental management BES**

The Decree on large facilities environmental management BES is repealed.

### **Article 6.3 Entry into force**

This Decree shall enter into force at a date to be determined by royal decree, which may be determined differently for the various public entities, articles and categories of establishments of this Decree.

### **Article 6.4 Quotation**

This Decree is quoted as: Establishment and activity Decree BES.

Charges and orders that this Decision, together with the accompanying note of explanatory notes, will be placed in the Official Gazette.



Willem-Alexander

The Minister for Infrastructure and Water Management

Issued the <.....>

Minister for Infrastructure and Water Management, C. van Nieuwenhuizen-Wijbenga

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## **Annex 1. List of categories of establishments referred to in Article 1.2, first paragraph**

### **CHAPTER 1. GENERAL PROVISIONS**

#### **Article 1.1 Definitions**

For the purposes of this Annex:

*ADR*: the European Agreement on the International Carriage of Dangerous Goods by Road (ADR) concluded at Geneva on 30 September 1957 (Trb.1959, 171);

*waste oils*: waste oils referred to in Article 1(b) of the Decree collection of waste;

*car wreck*: vehicle which is a waste within the meaning of the first paragraph of Article 1.2 of the Act;

*industrial waste*: wastes other than hazardous waste and household waste not yet collected or delivered;

*above ground storage tank*: storage tank which is not an underground storage tank;

*category 1*: fireworks presenting very little danger and negligible noise level and intended for use in a confined space, including fireworks intended for indoor use;

*category 2*: fireworks presenting little danger and low noise level and intended for outdoor use in a demarcated location;

*category 3*: fireworks which present a medium hazard and intended for outdoor use in a large open space and whose noise level is not harmful to human health;

*category 4*: high-risk fireworks intended solely for use by persons with specialised knowledge and whose noise level is not harmful to human health;

*consumer fireworks*: fireworks intended for private use, classified in categories 1, 2 and 3 and listed in Annex 1A to this Decree;

*dangerous substances*: substances and articles the transport of which is prohibited by the ADR or is permitted only under conditions laid down therein, or substances, materials and articles listed in IMDG Code International Maritime Dangerous Goods Code (MSC.406(96));

*marina*: provision for the possibility of mooring vessels;

*farm animals*: horses, donkeys, cattle, sheep, goats, pigs, chickens, ducks, fur animals, and rabbits;

*underground storage tank*: storage tank lying entirely in the soil or in terps;

*professional fireworks*: fireworks classified in category 4 and fireworks not complying with the composition requirements set out in Annex 1A to this Decision;

*combustion plant*: technical unit in which fuels are oxidised to use the heat generated in this way;

*packaging group*: group in which a substance is classified according to the ADR;

*fireworks*: item for entertainment containing an explosive substance or explosive mixture and intended to produce heat, light, sound, gas or smoke through self-sustaining exothermic chemical reactions.

### **CHAPTER 2 CATEGORIES OF ESTABLISHMENTS**

#### **Article 2.1 Scope**

1. A type I establishment is an establishment which does not belong to type II, III or IV.
2. A type II establishment is an establishment which does not belong to type I, III or IV.
3. A type III establishment is an establishment which does not belong to type I, II or IV establishments.

### **Article 2.2 Sections**

Without prejudice to Article 2.1, the following parts 1 to 22 shall apply to the establishments listed therein.

#### **Part 1 Equipment, installations and engines**

1.1 The environmentally harmful activity referred to in Article 2.1 shall be designated where:

- a. one or more electric motors are present with an output or combined power exceeding 1,5 kW, provided that an electric motor with an output of 0,25 kW or less is not included in the calculation of the combined power;
- b. one or more combustion engines with an output or combined power of more than 1,5 kW, provided that an internal combustion engine with an output of 0,25 kW or less is present in the calculation of the combined power;
- c. one or more devices or installations for the use of fuels with a thermal power or combined power exceeding 130 kW.

1.2 Part 1.1 does not apply to:

- a. electric motors, internal combustion engines and installations for the use of fuels temporarily present in a given environment;
- b. electric motors used for or intended for residential use in a building or part of a building intended for residential use.

1.3 A type II establishment is an establishment where:

- a. one or more electric motors are present with an output or combined power exceeding 20 kW;
- b. one or more facilities or installations for the use of fuels with a thermal power or combined power exceeding 20 kW and less than 1 MWth.

1.4 A type III establishment is an establishment i where:

1. one or more combustion plants with a rated power exceeding 20 kW are present, in which a substance is used other than:
  - a. propane gas;
  - b. butane gas;
  - c. liquid fuels, including biodiesel, complying with NEN-EN 14214.
2. one or more facilities or installations for using fuels with a thermal or combined capacity exceeding 1 MWth.

#### **Part 2 Gases**

2.1 As environmentally harmful activity referred to in Article 2.1 shall be designated as an establishment for the processing, processing, storage and transfer of gases or gas mixtures, whether or not compressed to liquid or dissolved under pressure in a liquid state.

2.2 A type II establishment is an establishment for:

- a. filling gas bottles with propane or butane with a capacity of less than 12 litres from a gas bottle of up to 150 litres;
- b. filling gas bottles with asphyxiant gases;
- c. filling gas bottles with a maximum capacity of 2 litres with oxygen content from a concentrator;

- d. filling gas cylinders with a capacity of up to 3 litres and at a pressure not exceeding 1,6 bar, with deep cooled liquid oxygen from a gas bottle of up to 60 litres with a pressure not exceeding 1,6 bar;
- e. The filling of breathing air gas cylinders for divers with a capacity of not more than 15 litres;
- f. the storage of propane, propene, oxygen, fermentation gas, carbon dioxide, air, argon, helium or nitrogen in one or more storage tanks.

2.3 A type III establishment is an establishment for:

- a. for the manufacture of gases;
- b. for storage of more than 1,500 litres of ammonia in gas cylinders;
- c. for the storage of more than 1,500 litres of ethylene oxide in gas cylinders;
- d. for the storage of more than 250 litres of dangerous substances or CMR substances in gas cylinders;
- e. For the storage of propane or propene in more than two storage tanks;
- f. for the storage of propane or propene where the gas is not withdrawn from a storage tank only during the gas-phase except for abstracting from the storage tank;
- g. For the storage of gases other than propane, propene, oxygen, fermentation gas, carbon dioxide, air, argon, helium or nitrogen in one or more storage tanks;
- h. for the storage of gases other than propane in underground storage tanks;
- i. for storing gases in a gas bag;
- J. For the storage of gases other than in gas cylinders, gas cartridges, aerosols, gas bags or storage tanks of metal or plastics;
- k. for delivering LPG;
- l. For filling gas cylinders of ADR class 2, excluding subsection 2.2(a) to (f);
- m. for filling aerosols, except for non-automated filling with non-propelled propellants;
- n. where heat pumps, refrigeration or freezing equipment are present, having a capacity per installation exceeding 1,500 kilograms of ammonia or 100 kilograms of propane, butane or a mixture of propane and butane;
- o. for the degassing or degasification of containers.

2.4 A type IV establishment is an establishment of storing gases with a storage capacity exceeding 10 tonnes.

### **Part 3 Explosive substances**

3.1 For the purposes of this section, explosive substances shall mean the substances or preparations referred to in Article 2 of the Decree packaging and designation of substances and preparations dangerous to the environment, or substances, preparations or other products classified in international transport hazard class 1 referred to in Annex 1 to the Land Transport Regulation of Dangerous Substances (VLG) and nitrocellulose.

3.2 An establishment where explosive substances, preparations or products are packaged, repackaged, stored or transhipped shall be designated as an environmentally harmful activity as referred to in Article 2.1.

3.3 For the purposes of part 3.1, storage shall not exceed the following quantities:

- 1°. 10.000 cartridges belonging to hazard group 1.4 of the VLG or parts thereof for firearms of a calibre not exceeding 13,2 mm or for shooting tools;
- 2°. 1 kilograms of black powder belonging to hazard group 1.1 of the VLG;
- 3°. 3 kilograms of low-smoke gunpowder belonging to hazard group 1.3 of the VLG;

- 4°. 10 kilograms of pyrotechnic toys belonging to hazard group 1.4 of the VLG;
- 5°. 25 kilograms of consumer fireworks belonging to hazard group 1.4 of the VLG.

3.4 For the purposes of part 3.2, the editing, processing, packaging or repackaging, storage and transshipment of explosive substances within establishments used by the Dutch or an ally forces shall not be taken into account.

3.5 A Type II establishment is an establishment where consumer fireworks with a combined storage capacity of up to 1100 kilograms are stored.

3.6 A type III establishment is an establishment where:

- a. consumer fireworks are packed, repackaged, stored or transshipped, with a combined storage capacity exceeding 1100 kilograms;
- b. professional fireworks are packed, repackaged, stored or transshipped;
- c. more than 1 kilograms of black powder is stored;
- d. more than 50 kilograms of smokeless powder is stored;
- e. more than 50 kilograms of net explosive mass emergency signal is stored;
- f. more than 250,000 cartridges are stored for the purpose of stud gun.
- g. storage of explosive substances other than those mentioned above and other than pyrotechnic toys.

3.7 In any case, a Type IV establishment is an establishment for the manufacture and processing of explosive substances.

#### ***Part 4 Dangerous substances, fuels and flammable liquids***

4.1 An establishment for the following shall be designated as an environmentally harmful activity as referred to in Article 2.1:

- a. The processing, processing, delivery, storage and transshipment of the following dangerous substances, preparations or other products from:
  - 1°. the category of oxidising;
  - 2°. the category very flammable;
  - 3°. the category of highly flammable;
  - 4°. flammable category;
  - 5°. the flammable category;
  - 6°. the category very toxic;
  - 7°. the category of toxic;
  - 8°. the category of harmful;
  - 9°. the category of corrosive;
  - 10°. the category of irritating;
  - 11°. sensitising category;
  - 12°. the category of carcinogenic;
  - 13°. the category of mutagenic;
  - 14°. toxic to reproduction category;
  - 15°. the category of environmental hazard.
- b. products in which substances or preparations referred to in point (a) are incorporated;
- c. cosmetic or pharmaceutical products.

4.2 For the purposes of part 4.1, pharmacies and practices for the practice of medicine as a general practitioner and veterinary medicine are excluded.

4.3 Type II establishment is an establishment for:

- a. storage of liquid fuels, waste oils or substances of Class 5.1 or class 8, packaging groups II and III referred to in Annex A of the ADR with a combined capacity of not more than 150 m<sup>3</sup>;
- b. the delivery of liquid fuels.

4.4 Type III establishment is an establishment:

- a. for the storage of dangerous substances in tanks other than liquid fuels or waste oils in underground storage tanks;
- b. for the storage of dangerous substances other than those specified in 4.3 of this Annex;
- c. for the storage of more than 10,000 kilograms of dangerous substances 4.1 of this Annex in packaging;
- d. where there is a laboratory or practice, where biological agents are used;
- e. storage of liquid fuels or waste oils in storage tanks with a capacity exceeding 150 m<sup>3</sup>;
- f. storage of substances of Class 5.1 or Class 8, packaging groups II and III referred to in Annex A of the European Agreement on the International Carriage of Dangerous Goods by Road (*Trb.* 2011, 174) in tanks with a combined capacity exceeding 150 m<sup>3</sup>.

4.5. An establishment type IV is an establishment for:

- a. the manufacture of substances referred to in section 4.1;
- b. the storage and transshipment of petroleum, petroleum products or hydrocarbons in the liquid state with a capacity for the storage of these substances or products of 2,500 tonnes or more;
- c. the storage and transshipment of petroleum, petroleum products or hydrocarbons in the liquid state with a capacity for the storage of those substances or products of 25,000 tonnes or more, as referred to in Article 8.6, first paragraph, of the Act;
- d. refining oil or petroleum fractions, cracking or gasification.

### ***Part 5 Animals, agriculture and livestock farming***

5.1 An establishment for the following shall be designated as an environmentally harmful activity as referred to in Article 2.1:

- a. breeding, rearing, fattening, keeping, trading, loading or weighing of animals;
- b. the storage and transshipment of hides, fur, leather or leather semi-finished products;
- c. the manufacture, editing or processing of hides, fur, leather or semi-manufactured leather;
- d. the editing, processing, storage or transshipment of products released at the time of slaughter of animals.

5.2 A type II establishment is an establishment for:

- a. The rearing or keeping of more than 100 birds or more than 25 mammals;
- b. the storage or transshipment of hides, fur, leather or leather semi-finished products;
- c. the manufacture, editing or processing of hides, fur, leather or semi-manufactured leather;
- d. the editing, processing, storage and transshipment of products released at the time of slaughter of animals.

5.3 Type III establishment is an establishment for:

- a. keeping more than 300 poultry;

- b. keeping more than 100 farmed animals in the total;
- c. breeding of aquatic animals in one or more tanks with a combined capacity of 10,000 litres or more;
- e. the industrial manufacture, editing or processing of hides, fur, leather or leather semi-finished;
- d. the slaughter of animals.

### **Part 6 Foodstuffs**

6.1 The environmental activity referred to in Article 2.1 is designated as an establishment for:

- a. the manufacture, editing, processing, storage and storage of meat or meat products;
- b. the editing, processing, storage and transshipment of fish, molluscs, crustaceans or products resulting from their editing or processing;
- c. the manufacture of bread, banquet, chocolate products, biscuits, cakes or biscuits;
- d. the manufacture, editing or processing of food, tobacco or raw materials therefor;
- e. the manufacture, editing, processing, storage and storage of foodstuffs for animals or their raw materials;
- f. the cultivation, handling, trading, storage and transshipment of agricultural products.

6.2 For the purposes of Section 6.1, point (e) does not include the storage of baled hay, straw or flax with a dry matter content exceeding 30 %.

6.3 Type I establishment is an establishment for the manufacture of foodstuffs for persons living or working in the accommodation of the establishment.

6.4 A type II establishment is an establishment for:

- a. the manufacture, editing, processing, storage and transshipment of meat or meat products;
- b. the editing, processing, storage and transshipment of fish, molluscs, crustaceans or products resulting from their processing;
- c. the manufacture of bread, banquet, chocolate products, biscuits, biscuits or biscuits;
- d. the manufacture, editing or processing of food, tobacco or raw materials therefor;
- e. the manufacture, editing, processing, storage or transshipment of agricultural products;

6.5 A type III establishment is an establishment for:

- a. the manufacture, editing or processing of foodstuffs, tobacco or raw materials therefor where the combined nominal load at the top value of continuous furnaces exceeds 400 kW;
- b. growing algae.

### **Part 7 Pesticides**

7.1 As an environmentally harmful activity referred to in Article 2.1, is designated an establishment where pesticides referred to in Article 1 of the Pesticides Regulations Act BES are processed, stored or transshipped.

7.2 A type II establishment is an establishment in which more than 10 kilograms of pesticides are processed, stored or transshipped.

7.3 A type III establishment is an establishment for the manufacture of pesticides.

### **Part 8 Building materials**

8.1 An environmental activity referred to in Article 2.1 is designated as an establishment for the extraction, manufacture, processing, processing, storage and tracing of:

- a. ceramic products, bricks, ornamental or paving stones, tiles, porcelain, pottery, limestone, cement, cement mortar, cement products or lime;
- b. concrete mortar or concrete products;
- c. ores, minerals, derivatives of ores or minerals, mineral products or marl;
- d. asbestos or products containing asbestos;
- e. glass or glass objects;
- f. asphalt or asphaltic products;
- g. stone, stone or stone objects other than debris;
- h. sand or gravel;
- i. soil.

8.2 For the purposes of Section 8.1(a) and (e), establishments with one or more furnaces having a thermal output or combined thermal power of 5 kW or less, intended for the manufacture or processing of the said products, shall not be taken into consideration.

8.3 A type II establishment is an establishment for the manufacture, editing, processing, storage and transshipment of:

- a. ceramic products, bricks, ornamental or paving stones, tiles, porcelain, pottery, limestone, cement, cement mortar, cement wares or lime;
- b. concrete mortar or concrete goods;
- c. ores, minerals, mineral derivatives, mineral products or marl;
- d. glass or glass objects;
- e. stone, stone (diabaas) or stone objects other than debris;
- f. sand or gravel;
- g. ground.

8.4 Type III establishment is an establishment for:

- a. manufacturing or processing with appliances with an individual nominal load above 130 kW or a connection value of more than 130 kW of ceramic products, baking, ornamental or paving stones, tiles, porcelain or pottery;
- b. Manufacturing or processing with appliances with an individual rated load above 130 kW or a connection value of more than 130 kW of glass or glass objects;
- c. the extraction of stone or stony materials;
- d. the extraction, breaking, milling, sifting or drying of sand, gravel, lime or other minerals or their derivatives;
- e. the processing or processing of asphalt or asphaltic products.

### **Part 9 Metals**

9.1 The environmental activity referred to in Article 2.1 shall be designated as an establishment for the manufacture, editing, processing, storage and transfer of metals, metal articles or scrap, or for treating the surface of metals or metal articles.



9.2 A Type II establishment is an establishment for the editing, processing, storage and transshipment of metals, metal objects or scrap, or for treating the surface of metal or metal objects.

9.3 A type III establishment is an establishment for:

- a. manufacture of crude iron, crude steel or primary non-ferrous metals;
- b. casting of metals or their alloys;
- c. hardening or incandescent metals or the diffusion of substances in the metal surface, where salts, oils or gases other than inert gases or carbon dioxide are used;
- d. treatment of metal surfaces by clean fires and pyrolysis;
- e. the application of a total of 100 litres containing metal layers.

### **Part 10 Transport**

10.1 An establishment for the following shall be designated as an environmentally harmful activity as referred to in Article 2.1:

- a. the manufacture, maintenance, repair, surface treatment, inspection, cleaning, trading, renting or testing of:
  - 1°. aeroplanes;
  - 2°. engines, motor vehicles or motor crafts;
  - 3°. caravans;
  - 4°. agricultural machinery;
  - 5°. motorcycles;
- b. parking of three or more motor vehicles or road haulage vehicles, articulated motor vehicles, trailers or semi-trailers, the mass of which exceeds 3500 kilograms.

10.2 For the purposes of Section 10.1(b), parking areas which are part of public roads or sections and parking areas open to public traffic are excluded.

10.3 A type I establishment is an establishment:

- a. where sensitive objects are present within a distance of 50 metres from the limit of the establishment and in the period between 19.00 and 07.00 hours, on average four or less transport movements are carried with motor vehicles the mass of the empty vehicle plus the load capacity is more than 3500 kilograms;
- b. where there is no exercise area for motor vehicles in the outdoors;
- c. for parking in a car park for up to 30 passenger cars;
- d. to have a battery charging unit in operation.

10.4 A type II establishment is an establishment for:

- a. maintenance, repair, surface treatment, inspection, cleaning, marketing, hiring or testing of:
  - 1°. engines, motor vehicles or motorcycles;
  - 2°. agricultural machinery;
  - 3°. vessels with a length of not more than 24 metres to be measured along the waterline.
- b. parking of three or more vehicles intended for the carriage of goods by road, articulated motor vehicles, trailers or semi-trailers, the mass of which exceeds 3500 kilograms.

10.5 A type III establishment is an establishment for:

- a. the manufacture, repair, testing or external cleaning of aircraft;

- b. construction or rebuilding of metal vessels;
- c. the manufacture, maintenance, repair or treatment of surface surfaces of more than 24 metres;
- d. mooring of seagoing ferries and cruise ships;
- e. transshipment from ship to ship;
- f. cleaning of tankers;
- g. more than 24 hours of parking of transport units containing dangerous goods;
- h. parking more than three transport units containing dangerous goods.

#### **Part 11 Wood and cork**

11.1 An environmentally harmful activity as referred to in Article 2.1 shall be designated as an establishment for the manufacture, processing, processing, handling, storage and transfer of wood or cork or of wood, corks or wood-like objects.

11.2 A Type II establishment is an establishment for the manufacture, editing, processing, handling, storage and transshipment of wood or cork or of wood, corks or woody objects.

11.3 A type III establishment is an establishment for impregnation of wood by spraying, spraying or applying the vacuum pressure method.

#### **Part 12 Textiles, paper and graphical technique**

12.1 An environmentally harmful activity referred to in Article 2.1 shall be designated an establishment for:

- a. editing, processing, storage, transshipment or cleaning of textiles, home textiles, textile materials or their products;
- b. the editing, processing, storage, transshipment of paper pulp, paper or products thereof;
- c. the use of printing technology.

12.2 For the purposes of Part 12.1, the storage facilities for bundled flax with a dry matter content exceeding 30 % are excluded.

12.3 A type II establishment is an establishment for:

- a. working, processing, storage, transshipment or cleaning of textiles, home textiles, textile materials, textile materials or their products;
- b. the editing, processing, storage or transshipment of paper pulp, paper or products thereof;
- c. the use of printing technology.

12.4 A type III printing technology for:

- a. the manufacture of textiles and home textiles;
- b. the manufacture of paper or products thereof.

#### **Part 14 Weapons**

14.1 As environmental activity referred to in Article 2.1 shall be designated an establishment where firearms are fired or thrown with flammable or explosive objects.

14.2 Part 14.1 does not apply to establishments where the Dutch or an ally armed forces use only non-sharp cartridges.

14.3 A type III establishment is an establishment where firearms are fired or thrown with flammable or explosive objects.

### **Section 15 Hospitality**

15.1 Hotels, restaurants, guesthouses, cafes, snack bars and nightclubs, as well as related establishments where accommodation is provided for a fee, drinks or foods for direct consumption are designated as environmentally harmful activities as referred to in Article 2.1.

15.2 A type I establishment is an establishment in which:

a. on the basis of the nature of the establishment, it is unlikely that in any room of the establishment the equivalent sound level (Leq) caused by the music performed in the representative operating situation exceeds:

1°.70 dB(A), if this room is located in a sensitive building or adjacent to a sensitive building;

2°.80 dB(A), if Part 1° does not apply;

b. music is not performed outdoors or on an open outdoor area of the establishment.

15.3 A type II establishments are establishments intended for hotels, restaurants, guesthouses, cafés, cafeterias, snack bars and nightclubs, as well as related establishments where accommodation is provided for a fee, drinks are served or prepared or supplied for direct consumption.

15.4 A type III establishment is an establishment where:

a. the construction or operation of a golf course and other recreational or tourist facilities with an area of 8 hectares or more;

b. the construction or operation of land and buildings for accommodation for 10 rooms or more in sensitive areas and buffer zones sensitive areas.

### **Part 16 Sport and recreation**

16.1 An environmental activity referred to in Article 2.1 shall be designated an establishment where:

a. three or more slot machines are present for use by other than the owner or the holder;

b. are present one or more facilities for dancing, as well as dance schools;

c. one or more facilities or installations are present for the practice of sports vessels, as well as sports schools and sports halls;

d. one or more facilities are in place for the practice of music, music schools and music practice rooms;

e. one or more facilities are available for recreational purposes and where a sound installation has been installed, as well as sports grounds and outdoor theatres;

f. access is offered for swimming;

g. access is offered to use:

1°. motorised model aeroplanes, craft or vehicles;

2°. motorcycles, motor vehicles or other motorised vehicles or vessels in competitions, in preparation for competitions or for recreational purposes;

- h. or more berths for vessels are present in a marina;
- i. with bows or arcs or weapons, operating with air pressure or gas pressure, shall be shot.

16.2 A type II establishment is an establishment where:

- a. one or more facilities or installations for the exercise of sports, gyms and sports halls;
- b. are present one or more facilities for the practice of music, music schools and music practice rooms;
- c. one or more facilities are provided for recreational purposes and where a sound system is set up, as well as sports grounds and open-air theatres;
- d. access is offered for swimming;
- e. opportunity to use:
  - 1°. motorised model aeroplanes, motorised model craft or motorised model vehicles;
  - 2°. motorcycles, motor vehicles or other motorised vehicles or vessels in competitions, in preparation for competitions or for recreational purposes;
- f. ten or more berths for vessels are present in a marina;
- g. with bows or arcs or weapons, operating with air pressure or gas pressure, shall be shot.

16.3 An establishment type III is:

- a. an establishment allowing the use of motorcycles, motor vehicles or other motorised vehicles or vessels in competitions, in preparation for competitions or for recreational purposes, in so far as they are not public roads, intended or equipped for competitions or for recreational purposes, driving with motorised vehicles and which are open eight hours a week or more;
  - 1°. use of motorcycles, motor vehicles or other motorised vehicles or vessels in competition or outdoor recreational purposes;
  - 2°. giving outdoor musical performances where more than 5,000 visitors will be present at the same time;
  - 3°. shooting in the open air with weapons operating with air pressure or gas pressure.

### ***Part 17 Drinking water treatment***

17.1 An establishment for drinking water preparation shall be designated as an environmentally harmful activity as referred to in Article 2.1.

17.2 A type III establishment is an establishment for:

- a. desalination of seawater for drinking water preparation;
- b. infiltration and abstraction of water for drinking water preparation.

### ***Part 18 Energy conversion***

18.1 The following shall be designated as environmentally harmful activities as referred to in Article 2.1:

- a. an establishment for converting:
  - 1°. wind power in mechanical, electrical or thermal energy;
  - 2°. hydrostatic energy in electrical or thermal energy;
  - 3°. electric energy in radiation energy;
  - 4°. thermal energy in electrical energy;

b. transformer stations, having transformers not housed in a closed building, having a maximum electrical power to be switched on simultaneously of 200 MVA or more.

18.2 A type I establishment is an establishment for:

- a. the presence of an emergency power generator not operating more than 50 hours per year;
- b. the operation of combustion plants with a rated thermal input of up to 1 MWth for heating buildings or heating of tap water.

18.3 A type II establishment is an establishment:

- a. for converting wind energy into mechanical, electrical or thermal energy with wind turbines or wind turbines having a rotor diameter exceeding 2 m;
- b. for converting thermal energy into electrical energy having an output or combined power exceeding 1,5 kW;
- c. which can be classified as transformer stations, with transformers not housed in a closed building, having a maximum electrical power to be switched on simultaneously of 200 MVA or more.

18.4 A type III establishment is an establishment for converting:

- a. hydrostatic energy into electrical or thermal energy;
- b. electrical energy in radiation energy of an output or combined power for the conversion of more than 4 kW;
- c. wind power into mechanical, electrical or thermal energy with more than 5 wind turbines or wind turbines with a rotor diameter greater than 2 m or a combined power of 5 megawatts.

### **Part 19 Storage of other goods**

19.1 As environmentally harmful activity as referred to in Article 2.1 shall be designated an establishment for the storage and transshipment of bulk or bulk goods other than the substances, preparations or products listed in another part listed in this Annex, with an area for storage of 2,000 m<sup>2</sup> or more.

19.2 A type I establishment is an establishment for the storage and transshipment of inert goods that are not polluted.

19.3 A type II establishment is an establishment for the storage or transshipment of bulk or bulk goods other than the substances, preparations or products listed in another category listed in this Annex, with an area of 2,000 m<sup>2</sup> or more.

### **Section 20 Hospitals**

20.1 As environmentally harmful activities as referred to in Article 2.1 are designated establishments as:

- a. general, academic or categorical hospitals;
- b. establishments for providing medical treatment, nursing or housing together with care.

20.2 For the purposes of Part 20.1, the practice of medical practice as a general practitioner and of veterinary medicine is excluded.

20.3 Type II establishments are facilities for providing medical treatment, nursing or housing together with care.

20.4 Type III establishments are general, academic or categorical hospitals.

### **Part 21 Waste**

21.1 As an environmentally harmful activity as referred to in Article 2.1 is designated an establishment for:

a. storage of:

1°. household waste;

2°. industrial waste;

3°. end-of-life vehicles and other motor vehicle wrecks;

4°. hazardous waste;

5°. waste from human healthcare and animal healthcare and from outside the establishment:

— infectious waste,

— parts of the body and organs, and

— wastes of cytotoxic and cytostatic medicinal products;

b. the processing, destruction or transshipment of waste;

c. landfilling of waste;

d. placing waste on or into the soil;

e. recovery or disposal of waste.

21.2 A type I establishment is an establishment in which no activities are carried out with waste from outside the establishment.

21.3 A type II establishment is an establishment for:

a. storage of industrial waste, having a capacity of up to 5 m<sup>3</sup>, not counting the separate storage of paper, aluminium, cardboard and glass;

b. storage of end-of-life vehicles and other motor vehicle wrecks;

c. the recovery or disposal of waste.

21.4 A type III establishment is an establishment for:

a. the processing, destruction or transshipment of waste;

b. the landfill of waste;

c. the placing of waste otherwise on or into the soil;

d. the storage and storage of the following wastes:

1°. waste collected or delivered outside the establishment;

2°. waste collected or delivered outside the establishment;

3°. contaminated soil from outside the establishment;

4°. hazardous waste originating from outside the establishment;

e. the processing or destruction – other than incineration – of hazardous waste originating from outside the establishment;

f. the processing or destruction of end-of-life vehicles;

g. the incineration of:

1°. household waste from outside the establishment;

2°. industrial waste from outside the establishment;

3°. hazardous waste from outside the establishment;

h. the placing on or in the ground of household waste, industrial waste or hazardous waste in order to leave them there;

- i. the compacting, tearing, cutting or breaking of scrap of ferrous or non-ferrous metals by mechanical tools of a power or combined power of 25 kW or more;
- j. the storage, processing and destruction of the following wastes from health care in humans and animals:
  - 1°. infectious waste;
  - 2°. body parts and organs;
  - 3. wastes of cytotoxic and cytostatic medicinal products.

**Part 22 Wastewater**

22.1 As an environmentally harmful activity as referred to in Article 2.1 is designated an establishment for storage, treatment or purification of waste water.

22.2 A type I establishment is an establishment for:

- a. discharging domestic waste water;
- b. the discharge of run-off rainwater which does not originate from a soil protection device.

22.3 A type III establishment is an establishment for the storage, treatment and purification of waste water with a capacity of more than 500 inhabitants equivalents per year.

UNOFFICIAL TRANSLATION

**Annex 1A. Related to Article 1.1 of Annex 1 to the Establishment-and activities Decree BES**

Dutch name	English name	Effect	category	maximum authorised weight of pyrotechnic substances or preparations
Knalvuurwerk	Bangers	Bang	2	2.5 grams of black gunpowder
Knalvuurwerk	flash banners	Bang	3	not more than 2 grams perchlorate/metal bangladin
Knalstrengen	banger batteries	repeating bang	2	100 grams of black gunpowder in total;per compartment up to 0,5 grams of black gunpowder
			3	1.000 grams of black powder in total;per compartment up to 0,5 grams black gunpowder or flash banners with a max of 250 grams perchlorate/metal mixture blast charge with a max of 1 grams per compartment
Batterij enkelschotsbuizen	shot tube batteries	effects as of single-shot tubes	2	500 grams of pyrotechnic substances or preparations in total;a maximum of 15 grams per compartment of pyrotechnic substances or preparations;per compartment as a burst charge or not more than 10 grams of black gunpowder or not more than 4 grams of nitrate/metal or not more than 2 grams perchlorate/metal;blasting charge is not allowed
Batterij enkelschotsbuizen	shot tube	effects as of single-shot tubes	3	1,000 grams of pyrotechnic substances or preparations in total;a maximum of 15 grams



				per compartment of pyrotechnic substances or preparations; per compartment as a burst charge or not more than 10 grams of black gunpowder or not more than 4 grams of nitrate/metal or not more than 2 grams perchlorate/metal; blasting charge is not allowed
Batterij fonteinen of mijnen of Romeinse kaarsen	batteries	Effects of multiple fountains or mines or Roman candles	2	200 grams of pyrotechnic substances or preparations; only batteries allowed from fountains or mines or Roman candles, each type operating separately and meeting the individual requirements set out in this table for the above components
Combinaties van fonteinen, mijnen, Romeinse kaarsen en enkelschotsbuizen	combinations	Combined effects of fountains, mines, Roman candles and single shot tubes	2	500 grams of pyrotechnic substances or preparations; only combinations of fountains, mines, Roman candles and single-shot tubes in which each type operates separately and meets the individual requirements set out in this table for the above components
Flitstabletten	flash pellets	multiple flashes of light	2	30 grams of pyrotechnic substances or preparations
Fonteinen	Fountains	emissions of sparks or flames with sound effect other than a bang or no sound effect	2	100 grams of pyrotechnic substances or preparations; blasting charge is not allowed
Grondmobielen	ground movers	movement over the ground with sparks or	2	25 grams of pyrotechnic substances or preparations; each pyrotechnic unit contains

		flame emissions with sound effect other than a bang or no sound effect		up to 3 grams of pyrotechnic substances or preparations; blasting charge is not allowed
Grondtollen	ground spinners	rotating motion on the ground with sparks or flame emissions with sound effect other than a bang or no sound effect	2	15 grams of pyrotechnic substances or preparations; each pyrotechnic unit contains up to 8 grams of pyrotechnic substances or preparations; blasting charge is not allowed
Springtollen	jumping groundspinners	rotating motion on the ground, often interrupted by a jumping motion, with emission of sparks or flames with sound effect other than a bang or no sound effect	2	5 grams of pyrotechnic substances or preparations; blasting charge is not allowed
Mijnen	mines	one-off emissions of the whole content	2	50 grams of pyrotechnic substances or preparations; not more than 5 pyrotechnic units with burst charge with each or not more than 5 grams of black gunpowder, or not more than 2 grams of nitrate/metal or not more than 1 grams perchlorate/metal; blasting charge is not permitted; if non-pyrotechnic articles are also present, the maximum authorised weight of the propulsion charge shall be 8 grams

					of nitrocellulose with a fraction by mass of nitrate not exceeding 12,6 %
Minivuurpijlen	mini rockets	take-off with or without light or sound effect whether or not followed by sound effect in ambient air	2		1,5 grams of pyrotechnic substances or preparations; blasting charge of more than 0,13 grams is not permitted
vuurpijlen	rockets	take-off with or without light or sound effect whether or not followed by light or sound effect in the air	2		75 grams of pyrotechnic substances or preparations in total; the burst load contains either 10 grams of black gunpowder or not more than 4 grams of nitrate/metal or not more than 2 grams perchlorate/metal; blasting charge is not allowed
Romeinse kaarsen	Roman candles	successive releases of pyrotechnic units, resulting in a series of light or sound effects in the air	2		two or more pyrotechnic units up to a combined weight of pyrotechnic substances or preparations not exceeding 50 grams in which the weight of pyrotechnic substances or preparations does not exceed 10 grams per pyrotechnic unit; not more than 5 pyrotechnic units with burst charge, each containing or not more than 10 grams of black gunpowder or not more than 4 grams of nitrate/metal or not more than 2 grams of perchlorate/metal; blasting charge is not allowed
Enkelschotsbuizen	shot tubes	emissions of the pyrotechnic unit, resulting in a light or	2		25 grams of pyrotechnic substances or preparations in total: the burst charge of the pyrotechnic unit contains

			sound effect in the air		either 10 grams of black gunpowder or not more than 4 grams of nitrate/metal or not more than 2 grams of perchlorate/metal; blasting charge is not allowed
				3	40 grams of pyrotechnic substances or preparations in total: the burst charge of the pyrotechnic unit contains either 10 grams of black gunpowder or not more than 4 grams of nitrate/metal or not more than 2 grams of perchlorate/metal; blasting charge is not allowed
Stijgtollen	spinners		combined rotating and rising motion, with emissions of sparks or flames with sound effect other than a bang or no sound effect	2	5 grams of black gunpowder; blasting charge is not allowed
Draaizonnen	wheels		rotating motion around a fixed point, with emissions of sparks or flames with sound effect other than a bang or no sound effect	2	40 grams of pyrotechnic substances or preparations; the weight of pyrotechnic substances of any effect charge with flute effect per compartment not exceeding 5 grams; blasting charge is not allowed
Bengaals vuur	Bengal Names		emissions of coloured flames	1	20 grams of pyrotechnic substances or preparations
Bengaalse lucifers	Bengal matches		emissions of coloured flames and sparks	1	3,0 grams of pyrotechnic substances or preparations

Bengaalse fakkels	Bengal sticks	emissions of coloured flames and sparks	1	7,5 grams of pyrotechnic substances or preparations
			2	25 grams of pyrotechnic substances or preparations
Kerstcrackers	Christmas crackers	blast due to dismantling of the article and emissions of non-pyrotechnic articles	1	16 milligrams pyrotechnic substances or preparations based on potassium chlorate and red phosphorus or 1.6 milligrams of silver fulminate
Knetter pellets	crackling granules	crackling sound	1	3,0 grams of pyrotechnic substances or preparations
Flitstabletten	flash pellets	multiple flashes of light	1	2,0 grams of pyrotechnic substances or preparations
Fonteinen voor gebruik binnenshuis	fountains for indoor use	emissions of sparks or flames with sound effect other than a bang or no sound effect	1	7,5 grams of pyrotechnic substances or preparations with a basis of nitrocellulose, with nitrate by mass not exceeding 12,6 %, without additional oxidising substances
Fonteinen voor gebruik buitenshuis	fountains for outdoor use	emissions of sparks or flames with sound effect other than a bang or no sound effect	1	7,5 grams of pyrotechnic substances or preparations
Grondtollen	groundspinners	rotating motion on the ground with sparks or flame emissions with sound effect other than a bang or no sound effect	1	5,0 grams of pyrotechnic substances or preparations
Schertslucifers	novelty matches	bang or light effect	1	50 milligrams, 1 blast charge of up to 2.5

Confetti bombs	party poppers	blasting and emission of non-pyrotechnic articles	1	milligrams of silver fulminate allowed 16 milligrams pyrotechnic substances or preparations based on potassium chlorate and red phosphorus
Snakes	Serpents	expansive solid combustion residues in a predetermined form	1	3,0 grams of pyrotechnic substances or preparations
Pull ropes	snakes	blast as a result of tearing the article apart	1	16 milligrams pyrotechnic substances or preparations based on potassium chlorate and red phosphorus or 1.6 milligrams of silver fulminate
Asterisks	sparklers	emissions of sparks with sound effect other than a bang or no sound effect	1	7,5 grams of pyrotechnic substances or preparations
			2	30 grams of pyrotechnic substances or preparations
Table bombs, bonbons or cotillon fruit	table bombs	blasting and emission of non-pyrotechnic articles	1	2,0 grams of pyrotechnic substances or preparations with a basis of nitrocellulose, with an assa fraction nitrate not exceeding 12,6 %
Bang peas	throwdowns	bang as a result of throwing the article on the floor	1	2.5 milligrams of silver fulminate

**Annex 2. Related to Article 4.1  
EIA obligation or EIA assessment obligation**

**Part A Provisions**

1. For the purposes of this Annex:

*land-surface minerals*: minerals found in the soil, which can be extracted without underground mining;

*R.O. plan*: decision establishing or amending a development plan as referred to in Article 7 and Article 13, paragraph (b) of the Law on Regional Development Planning (BES);

*capacity*: reasonably within foreseeable future foreseeable extension of the capacity;

2. For the purposes of this Annex this also includes:

*surface area*: reasonably within foreseeable future foreseeable extension of the surface area;

*formation of an establishment*: extension of an establishment through the formation of a new installation or the construction of a new installation;

*extension*: re-opening of newly built construction works, equipped areas or existing establishments;

*modification*: reconstruction or alteration otherwise of constructed works, equipped areas or existing establishments.

**Section B Activities, plans and decisions referred to in Chapter 7 of the Act, in respect of which the preparation of an environmental impact assessment is mandatory**

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
No. Nos.	Activities	Cases	Plans	Decisions
1	Construction of a new aerodrome		R.O. plan	Article 30 Aviation Act BES
2	The construction of a seaport		R.O. plan	Article 20 Maritime Management Act BES
3	Construction of land-connected pier outside a port	For piers used for unloading and loading ships exceeding 500 gross tons (GT)	R.O. plan	Article 20 Maritime Management Act BES
4	Construction of an artificial beach		R.O. plan	Article 20 Maritime Management Act BES
5	The construction of a marina		R.O. plan	Article 20 Maritime Management Act BES
6	The construction of a drainage at sea		R.O. plan	Article 20 Maritime Management Act BES

7	Formation of an establishment for desalination of seawater or for the extraction of heat or cold from seawater	For activities treating a quantity of water of 70 m <sup>3</sup> per day or more	R.O. plan	Article 5.1 of the Act
8	The infiltration of water into the soil or the abstraction of groundwater from the soil as well as the modification or extension of existing infiltrations and extractions	100 m <sup>3</sup> per day	R.O. plan	Article 5.1 of the Act
9	The extraction of land-surface minerals, the increase or other use of the seabed	For use of the seabed over an area of 0,50 hectares or more	R.O. plan	Article 20 Maritime Management Act BES
10	The establishment of an aquaculture establishment		R.O. plan	Article 5.1 of the Law and Article 20 Maritime Management Act BES
11	Extraction of petroleum, natural gas or other minerals		R.O. plan	Article 1a Mining Act BES
12	The formation of an establishment for the storage of petroleum, natural gas, petrochemical or chemical products	In cases where the activity relates to a storage capacity of 2,500 tonnes or more	R.O. plan	Article 5.1 of the Act
13	The formation of an oil refining facility		R.O. plan	Article 5.1 of the Act
14	The formation of an establishment for the manufacture of chemical products and the construction of the associated infrastructure		R.O. plan	Article 5.1 of the Act
15	Construction of a pipeline for the transport of gas, oil or chemicals	In cases where the activity relates to a tube pipe of more than 20 centimetres in diameter and a length of more than 500 metres	R.O. plan	R.O. plan



16	The formation of a facility for the production of electricity, steam or heat of an output of 5 megawatts or more		R.O. plan	Article 5.1 of the Act
17	The formation of one or more interrelated installations for the generation of electricity by wind power	where the activity relates to a combined power of 10 megawatts or more or 10 wind turbines or more	R.O. plan	Article 5.1 of the Act
18	The construction of the route of a high-voltage overhead line	with a voltage of 30 kilovolts or more and over a length of 3 kilometres or more		R.O. plan
19	The formation of an establishment for the processing, disposal or deep subsurface of non-hazardous waste	with a capacity of 2,000 tonnes per year or more	R.O. plan	Article 5.1 of the Act
20	formation of an establishment for the incineration, processing, landfill or deep subsurface of hazardous waste		R.O. plan	Article 5.1 of the Act
21	The formation of a waste water treatment facility	of a capacity of 1,000 inhabitants equivalents or more	R.O. plan	Article 5.1 of the Act
22	An earth removal	over an area of 1 hectares or more	R.O. plan	Article 6.12 of the Act
23	Mining of land-surface minerals	on a winning site of 5 hectares or more or in a number of places close to each other with a combined area of 5 hectares or more	R.O. plan	Article 6.12 of the Act
24	The construction, modification or extension of a golf course and other recreational or tourist facilities	with an area of 8 hectares or more	R.O. plan	Article 5.1 of the Act

25	The construction of land and buildings for accommodation	10 rooms or more in sensitive areas and buffer zones sensitive area	R.O. plan	Article 5.1 of the Act
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**Section C Activities, plans and decisions referred to in Chapter 7 of the Law in respect of which the competent authority must assess whether, due to the particular circumstances in which they are carried out, they may have significant adverse effects on the environment**

	Column 1	Column 2	Column 3
No.	Activities	Cases	Decisions
1	Extension of use or modification of the location of a runway or extension or extension of a runway		Article 30 Aviation Act BES
2	Modification or extension of a seaport		Article 20 Maritime Management Act BES
3	The construction, modification or extension of land-connected pier outside a port	For piers used for unloading and loading ships exceeding 300 gross tons (GT)	Article 20 Maritime Management Act BES
4	Modification or extension of an artificial beach		Article 20 Maritime Management Act BES
5	Modification or extension of a marina		Article 20 Maritime Management Act BES
6	Modification or extension of a drainage at sea		Article 20 Maritime Management Act BES
7	The construction, modification or extension of groundwater abstraction or artificial replenishment works	50 m <sup>3</sup> per day	Article 5.1 of the Act
8	The formation, modification or extension of an establishment intended for desalination of seawater or for the	For activities treating a quantity of water of 25 m <sup>3</sup> per day or more	Article 5.1 of the Act

	extraction of heat or cold from seawater		
9	The formation, modification or extension of surface mineral extraction, increase or other use of the seabed	For use of the seabed over an area of 0,25 hectares or more	Article 20 Maritime Management Act BES
10	Modification or extension of an aquaculture establishment		Article 5.1 of the Law and Article 20 Maritime Management Act BES
11	The formation, modification or extension of an establishment intended for the storage of petroleum, natural gas, petrochemical or chemical products	In cases where the activity relates to a storage capacity of 500 tonnes or more	Article 5.1 of the Act
12	Modification or extension of an oil refining facility		Article 5.1 of the Act
13	Modification or extension of an establishment intended for the manufacture of chemical products and the construction of the associated infrastructure		Article 5.1 of the Act
14	Construction, modification or extension of a pipeline for the transport of gas, oil or chemicals	In cases where the activity relates to a tube pipe of more than 20 centimetres in diameter and a length of more than 250 metres	R.O. plan
15	Modification or extension of a device intended for the production of electricity, steam or heat with an output of 5 megawatts or more		Article 5.1 of the Act
16	The formation, modification or	where the activity relates to a	Article 5.1 of the Act

	extension of one or more interrelated installations for the generation of electricity by wind energy	combined power of 5 megawatts or more or 5 wind turbines or more	
17	The construction, modification or extension of the route of an above-ground high-voltage line	with a voltage of 30 kilovolts or more and over a length of 1 kilometres or more	R.O. plan
18	The formation, modification or extension of an establishment intended for the processing, disposal or deep subsurface of non-hazardous waste	with a capacity of 1,000 tonnes per year or more	Article 5.1 of the Act
19	Modification or extension of an incineration facility for the processing, landfill or deep subsurface of hazardous waste		Article 5.1 of the Act
20	The formation, modification or extension of a waste water treatment facility	of a capacity of 500 inhabitants equivalents or more	Article 5.1 of the Act
21	The earth-removal, modification or extension of an earth-removal	over an area of 0,5 hectares or more	Article 6.12 of the Act
22	The formation, modification or extension of surface quarrying	on a winning site of 1 hectares or more or in a number of places close to each other with a combined area of 1 hectares or more	Article 6.12 of the Act
23	Modification or extension of a golf course and other recreational or tourist facilities	with an area of up to 8 hectares	Article 5.1 of the Act
24	Modification or extension of land and residence accommodation buildings	10 rooms or more in sensitive areas and buffer zones sensitive area	Article 5.1 of the Act

UNOFFICIAL TRANSLATION

## **NOTE OF EXPLANATORY MEMORANDUM**

### **GENERAL PART**

#### **§ 1. Introduction**

##### *Legal basis and objective of the decree*

The Law on public housing, urban planning and environmental management BES (hereinafter referred to as: the Act) provides the basis for this Decree, the Establishment and activity Decree BES (hereinafter: the decree). This law contains an obligation to lay down, in or under general administrative measures, rules necessary to protect the environment from the adverse effects that establishments in the public entities Bonaire, Sint Eustatius and Saba may cause.

This Decree fulfils this obligation and lays down the detailed rules for the protection of the environment in the Caribbean Netherlands. This decree incorporates, on the one hand, the development of ministerial responsibility and, on the other hand, allows island administrations to develop local environmental regulations.

The islands have a rich biodiversity and a unique coral reef ecosystem. Given the growth of tourism and the increase in island population, it is important to invest in environmental policy and regulation through an effective and enforceable set of rules. The environmental protection rules set out in this Decree form the basis for this and have been further elaborated by the island authorities.

The decree is a new step in the joint efforts of the European and Caribbean Netherlands to establish environmental regulations that take into account the specific aspects of environmental protection and in particular the fragile ecosystem of the islands.

#### **§ 2. Motivation and background**

##### *Creation*

In drawing up this Decree, there has been a careful coordination between the Ministry of Infrastructure and Water Management (hereinafter referred to as: Ministry of IenW) and the island administrations. In the Caribbean Netherlands week of March 2013 it was agreed to<sup>1</sup> implement an IAB BES Implementation Plan in which an earlier concept of the decree (version 2013) was assessed on feasibility and tested for the effects of the implementation. This implementation plan IAB BES was carried out by Rijkswaterstaat on behalf of the Ministry of IenW and in close cooperation with the public entities and some environmental authorities. During the implementation process, various activities were carried out on Bonaire, including a legal assessment, capacity building (training), investments in necessary facilities such as an ICT system and manuals designed to enable the regulatory tasks to be carried out efficiently. An institutional assessment has also been carried out.

In November 2017, a letter of intent was signed by the Secretary of State for Infrastructure and Water Management and the Executive Council of Bonaire to promote the development of regulations and policies for a sustainable and safe living environment. In this context, there has been close cooperation between the Ministry of

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<sup>1</sup>Chambers I 2011/12, 32473, No 15, p. 1.

IenW and Bonaire to establish general binding rules for environmentally harmful business activities that are tailored to the local situation and provide scope for sustainable economic growth.

Finally, the IAB BES implementation plan and the Memorandum of Understanding have led to a hybrid set of rules in which the general binding rules of the Decree have been elaborated in island regulations. This has done justice both to ministerial responsibility and to the development of local regulations by the island administrations.

In April 2020 the Minister of Agriculture, Nature and Food Quality and also on behalf of the State Secretary for Infrastructure and Water Management and the State Secretary for the Interior and Kingdom Relations, the Nature and Environmental Policy Plan Caribbean Netherlands 2020-2030 was presented to the Chamber.<sup>2</sup> The Nature and Environmental Policy Plan (hereinafter referred to as: NEPP) is aimed at improving the environmental quality of the islands, with particular attention being paid to preserving healthy coral. The objectives for improving environmental quality include efficient waste management and effective waste water treatment. This (partially) implements the environmental plan referred to in Article 1.4 of the Act in respect of the issues mentioned. In the implementation agendas drawn up by the island councils, the objectives of the NEPP have been translated into activities and projects, such as the regulation of waste separation from companies, the discharge of waste water into an adequate treatment facilities and the setting of standards for environmentally harmful activities by businesses. This Decree also implements the plan and provides a legislative framework for business activities. In doing so, it contributes significantly to achieving these objectives from NEPP.

### **§ 3. Legal basis**

Article 5.1 of the Act states that rules are laid down by or under general administrative measures which are necessary to protect the environment from the adverse effects that establishments may cause for them. This decree has given effect to this obligation laid down in the law. This Decree lays down the rules for the protection of the environment in the public entities Bonaire, Sint Eustatius and Saba. Since 1993 and 1995, Sint Eustatius and Bonaire had a hindrance ordinance covering environmentally harmful activities carried out by businesses and designated as subject to permit. The island Executive Council of Saba had declared the Hinder Ordinance of the Windward Islands applicable. With the entry into force of the Act, environmental activities are regulated. At the time, the legislator, in Article 5.1 of the Act, made mandatory rules to be laid down by or under general administrative measures which are necessary to protect the environment from the adverse effects that establishments may cause for them. It was announced that this general administrative measure would be drawn up in cooperation with the islands. In addition, a permit requirement has been introduced for the large categories of establishments. With the Decree on large facilities environmental management BES (hereinafter referred to as: Bgim BES) in 2015 an oil terminal on Sint Eustatius and Bonaire and two facilities for fuel storage in Bonaire were made subject to permit with the Minister as competent authority.

In view of the Minister's responsibility for the environment in the islands, it is desirable to be able, as a minister, to be able to refer to the content of the island instruments

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<sup>2</sup>Items II 2019/20, 33576, No 190, p. 1.

within the specified legal frameworks. This Decree defines the subjects for which quality criteria are further developed by ministerial decree. In the case of island regulation, these quality criteria are subsequently elaborated. The quality criteria set out in the Decree form the framework within which the island administrations have laid down further rules. The law indicates that local regulation can only take place at the level of a regulation. The decree provides for the possibility of introducing tailor-made rules, in accordance with Article 5.4 of the Law, which may derogate in individual cases from what is provided for in ministerial decrees. These are standards which guarantee the same or higher level of protection.

#### **§ 4. Outlines of the Decree**

Chapter I contains the general provisions, such as the provisions, the duty of care, the competent authorities and the types of establishment. Under the law, this Decree designates categories of establishments which may cause adverse effects on the environment. As in the Activity Decree on Environmental Management applicable to the European part of the Netherlands, four types of establishment are identified. The establishments covered by Type I and Type II shall comply with the general rules laid down in this Decree. Type III and Type IV establishments are subject to permit, where type III falls under the competent authority of the Executive Council and Type IV is the Minister's competent authority. An important aspect is the delimitation of powers of the Minister in relation to that of the island Executive Council. Given the relatively limited size of the islands and the associated size of the administrative and administrative apparatus, the total investment of the implementation of the detailed rules in the local authorities would be too much for the use of officials and administration. For this reason and in view of the complexity of the environmental aspects concerned, the Minister was identified in the decree as the competent authority for large, complex establishments (type IV establishments). Until the entry into force of this Decree, this was regulated in Bgim BES. The contents of the Bgim BES are included in this Decree. For the other, i.e. the majority (type III establishments) of the establishments subject to permit and for all establishments not subject to permit in the BES Islands, the Executive Council shall be the competent authority. For each type of establishment, the person driving the establishment has a duty of care. It must ensure that, as far as possible, any adverse effects on the environment are avoided or, if this is not possible, minimised.

The second chapter sets out the rules for environmentally harmful activities and establishments Type I and II. In the interests of environmental protection, it is indicated that the island administration complies with the quality criteria for a number of environmental compartments. These quality criteria are included in a ministerial decree under this Decree whereby tailor-made work may be made by the island administration.

The third chapter sets out the rules for establishments subject to authorization. For example, it sets out, among other things, the application requirements of the establishments, types III and IV, and the aspects to be taken into account by the competent authority when determining the best available techniques.

In the fourth chapter, activities and plans are identified for the purposes of Chapter 7 of the Act.

The fifth chapter deals with the establishment of the necessary arrangements for effective monitoring of compliance with the obligations imposed by or under the law. 40



The last chapter includes, among other things, transitional legislation. Permits granted before the date of entry into force of this Decree on the basis of Bgim BES or the Island Hindrance Ordinances shall be subject to this Decree. This chapter also provides for the entry into force of St. Eustatius and Saba public entities.

## **§ 5. Relation to existing regulations**

With the entry into force of this Decree, the Hindrance Ordinances and the regulatory decisions based on them have repealed in so far as they concern the issues covered by this Decree (Article 11.23 of the Act).

In the European part of the Netherlands there is a development within environmental law for businesses where the permit requirement is replaced as far as possible by general binding rules. This has been chosen to prevent small administrative bodies in small municipalities from being entrusted with drawing up permits, for which the necessary legal and environmental knowledge is not always available. With the new general binding rules and their wider scope, improved implementation and enforcement are expected and therefore more effective protection of the environment is expected. Since the public sector bodies are in a sense comparable to small municipalities in the European part of the Netherlands, it has been chosen to follow the same line in the present decision.

In setting the new general binding rules and standards for the drawing up of environmental permits, the aim has been to achieve as much as possible an equal level of environmental protection as in the European part of the Netherlands. Because of the difference, compared to the European part of the Netherlands, in the number and size of the companies, the natural conditions, and state of regulations, a relatively limited number of general rules have been incorporated from the Activity Decree in close consultation with environmental advisers in the European and Caribbean parts of the Netherlands. These are those rules which are most necessary and considered feasible and affordable for the prevention or minimisation of environmental problems, given the categories of establishments currently present in public sector bodies.

The new standards and rules are also based on recent and generally accepted environmental insights in the European part of the Netherlands.

With the entry into force of this Decision, Bgim BES is repealed. The provisions of the Bgim BES have been incorporated in full in this Decree, correcting incorrect units from the Bgim.

## **§ 6. Enforceability**

Based on Article 10.2 of the Law, the Minister and the Executive Councils, each in so far as they are competent, shall ensure the administrative enforcement of what is provided by or under the law. For the implementation of administrative enforcement, part of the Dutch system is affiliated. For the purposes of this administrative enforcement, Article 10.3 of the Law declares Titles 5.1 to 5.3 of the General Administrative Law Act applicable. These titles monitor compliance and recovery sanctions, including administrative action or the periodic penalty payments. The power to impose these sanctions is then conferred on the Minister and the Executive Council in Article 10.4 of the Act, each in so far as they are competent in respect of the establishments concerned. Under that article, as in Article 70 of the Maritime Management Act BES,

there is the possibility to attach an enforceable order for the recovery of the penalty payment (Article 10.5a).

On the basis of the first paragraph, the Minister of IenW has the task of organising and facilitating enforcement and in its application in such a way that it can be effective in areas such as construction, spatial planning and environmental rules. Specialist knowledge of establishments is difficult to maintain. The Minister supports the islands in terms of knowledge and expertise and the preparation of an integrated enforcement policy plan. This plan is binding on implementation when it comes to the implementation of enforcement. Of course, there will first be coordination with the islands responsible for the types of establishments I to III. The draft plan will be submitted to the Executive Council for approval. Coordinated monitoring can take place by organising a consultative structure to ensure a uniform approach to the monitoring of the islands concerned (Article 10.10 of the Act). The Minister who deals with enforcement policy chooses whether derogation is possible and can give an instruction in line with Article 10.11 of the Act. In the case of ministerial decree, rules can be set for effective enforcement, such as setting minimum criteria for carrying out environmental inspections.

## **§ 7 Effects on the environment, business and public authorities and points of interest**

The administrative burden on establishments resulting from this Decree relates to compliance with the rules contained therein. This decree has been submitted to the Dutch Advisory Board on Regulatory Burden (ATR). The College shall review proposed legislation and regulations for regulatory pressure effects.

PM [in an opinion related to this scheme, ATR indicates that <.....>]. The consequences of this decree for the environment, industry and government are reflected in the advice of the Directorates for Monitoring and Enforcement, Space and Development and Rijkswaterstaat of the Ministry of Infrastructure and Water Management of 13 September 2019. It reflects the level of ambition of the Establishment and Activities Decree (IAB) BES.

Environmental protection is expected to be more effective with the entry into force of this Decree.

### *Impact on the environment*

Previously, the rules governing protection of the environment were applied to a limited number of businesses. The continuation of this situation would mean a deterioration in the quality of the environment, which allowed citizens to experience more nuisance. The aim of this Decree is to limit these effects so that irreversible damage to soil and groundwater is not caused by contamination of soil by carrying out, or limiting or preventing as far as possible, operating activities that threaten soil. In addition, the waste problem is countered by the correct storage and separation of waste and the proper treatment of waste water. Safety must be ensured in this respect so as not to adversely affect the environment in the event of calamities.

### *Impact on business*

In drawing up this Decree, the number and types of businesses and the financial impact on business has been taken into account. Investment is required in order to effectively protect the environment and reduce the negative consequences. Investment for

business is twofold. These include investments in facilities, including: replacement of cess pits for septic tanks, facilities for safe storage of hazardous substances and separation of waste. In order to diversify investments, this Decree shall enter into force in phases. It is also necessary to invest in business operations so that the facilities already in place and still to be realised are (sufficiently) used. This will have an impact on internal management and will not entail any additional costs. These investments will have the effect of reducing the environmental impact of these activities.

The introduction of the general binding rules in this Decree will mean that many businesses will no longer need an permit. This will lead to burden reduction.

#### *Impact on the government*

The impact on the government is focused on knowledge and capacity. Knowledge shall consist of raising the knowledge necessary for the implementation, monitoring and enforcement of this Decree. In addition, capacity is needed.

More businesses than now will be subject to the general binding rules and will therefore not need an permit. This means a lower administrative commitment to the granting of permit. Additional capacity is required for the reporting obligation. Notifications should be recorded and checked.

With the entry into force of this Decree, more businesses will be subject to environmental rules. This means that additional capacity is needed for monitoring and enforcement.

In addition, capacity is needed to provide information on the implementation of this Decision. An environmental information point that is being realized for this purpose.

### **§ 8. Consultation**

As has already been pointed out, there have been several consultations with the public sector bodies on the content of this decree in the form of official consultation. In <PM.....> the arrangement with annexes has been submitted to the island Executive Council for consultation. In response to this, the island Executive Council indicated that <PM.....>. In the period of <...PM.....> everyone, through publication of a draft of this scheme on internet consultation.nl, has been given the opportunity to respond to this arrangement. PM <...number of responses and short representation of its contents and of what happened to the reactions.....>. <PM SMEs.....>

### **§ 9. Preliminary scrutiny procedure**

In article 5.41 of the Law on public housing, urban planning and environmental management BES Parliament's involvement in this decree by means of the preliminary scrutiny procedure is regulated. <PM content to be added after the preliminary scrutiny procedure>.

## **EXPLANATION BY ARTICLE**

### **Article 1.1 Provisions**

Article 1.2 of the law defines a number of provisions. These definitions shall also apply to this Decree. Provisions from this Decree which are not defined by law are included in this Article.

### **Article 1.2 Categories of establishments**

Article 1.2, third paragraph of the Act states that categories of establishments likely to cause adverse effects on the environment must be designated by general administrative measure. This is elaborated in Article 1.2, which identifies four types of establishment. Annex 1 to this Decision sets out the types of establishments covered by the different types of establishments.

#### *First paragraph*

In order to be able to define an establishment within the meaning of the law, two requirements must be met: the activity is covered by the definition of 'establishment' and the activity must be designated in this Decree (Article 1.2, third paragraph of the Act).

Whether it is an establishment is determined on the basis of the general definition in Article 1.2, paragraph of the Act. The following definition of the term 'establishment' is given in this Article: 'any activity undertaken by man commercially or at a size as if it were business activity undertaken within a certain limit'.

This definition corresponds to the definition used in the European part of the Netherlands of the provision of 'establishment' in the Environmental Management Act. If there is ambiguity as to whether there is an establishment, the rules and case law of the European part of the Netherlands can be consulted for information.

The definition shows that an establishment involves stationary activities of some size, duration and regularity. In general, it seems relatively easy to establish whether an activity is of an business nature. It is more difficult to determine whether another criterion in the definition is met, namely that it must be an activity 'to a size as if it were business'. Although activities in the private sphere do not in principle fall within the scope of chapter 5 of the law, hobby activities such as keeping larger numbers of horses, dogs, cats, parrots, donkeys and having a music room at home may fall within the scope of the concept of establishment. It is clear from the case-law that account must be taken of profit or non-profit making<sup>3</sup>, advertising, marketing, having staff, number and type of means of production (e.g. animals), storage of raw materials and goods, having a market (customer circle) and suppliers, etc. Even if such activities are not aimed at profit, their size may be such that an establishment must be referred to. The fact that there is a registration in the Chamber of Commerce's Trade Register is not relevant for the question of whether an establishment is involved.

The interpretation of the criterion 'within certain limits' is widely explained in the caselaw. It does not have to be a boundary within a building or a fenced property. Any activity of some duration, a certain regularity, continuity and locality may be covered by the concept of establishment. It is always determined whether the activity is regular

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<sup>3</sup>It is not about making a real profit, but whether it is aimed at making profits (profit-making).

(e.g. several hours a day, once a year or a few days a month) and takes place within a certain delimitation.

Mobile installations are not, in principle, covered by the provision of establishment, unless a mobile installation is parked at a single fixed location (e.g. a truck í pan<sup>4</sup>), anchored (e.g. ships with fixed unloading) or moored (e.g. floating sand dredger). An additional criterion for carrying out an activity on 'public waters' or 'public land' is – as is apparent from the case-law – subject to an additional criterion: an exclusive claim to or reservation of a demarcated part of the waterway or land.

#### *Second paragraph*

Paragraph distinguishes the four types of establishment. These establishments and activities are listed in Annex 1 to the Decree.

Establishments Type I shall not require permit and no obligation to notify the competent authority in the event of formation or modification.

An establishment type II does not have an permit requirement, but must report the formation or change to the board of directors. Type II establishments shall, in principle, apply the entire act with the exception of Chapter 3 (type III and IV establishments). The explanatory notes to Article 2.2 refer to this notification.

Establishments listed in Annex 1 as Type III shall be subject to permit and must apply for permit to the island Executive Council as competent authority for these establishments. These establishments shall be subject to the entire Decree, with the exception of Chapter 2 ('Type I and II Rules') and Article 3.3 ('Type IV application').

Type IV establishments designated as such in Annex 1 shall be subject to permit, as are Type III. These are the establishments to which the Bgim BES applied until the date of entry into force of this Decree. In addition, a Category IV establishment has been added for the storage of gases with a storage capacity exceeding 10 tonnes. This is in line with the category classification of the Decree Risks Major Accidents (Brzo) as it is in force in the European Netherlands. The Minister grants the permit to a Type IV establishment.

#### **Article 1.3 Competent Authority**

Article 5.6, first paragraph, of the Act provides that the island Executive Council is the competent authority to decide on an application for a permit. However, the second paragraph of Article 5.6 of the Act provides for the possibility to include in a general administrative measure that the Minister is competent to grant permit to a particular category of establishments. On the basis of this article, the Minister was designated in Bgim BES as the competent authority for a category, namely an establishment type IV. This is continued in this Decree: Article 1.2, first and second paragraphs, introductory words and (d) of the Decision provides that the Minister shall be the competent authority for establishments Type IV. The exact establishments and activities concerned are listed in Annex 1.

#### **Article 1.4 Duty of care**

This article imposes a duty of care on the person who sets up, changes, or terminates an

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<sup>4</sup>This is the local name on, among other things, Bonaire of a mobile stall on a fixed pitch from which hot food and beverages are often sold.

establishment. The law contains in Article 1.3 a general duty of care, imposed on 'everyone'. The duty of care in this Decree acts as a safety net for activities in respect of which the tasks, powers or obligations contained in this Decree cannot or may not be sufficiently (exhaustive) but which activities may cause adverse effects on the environment. This will prevent the situation in which damage to the environment arises or threatens to occur, but which cannot be maintained because this decision does not provide for it.

In order to be able to act as competent authority, it must be a situation in which the person setting up the establishment changes, alters or terminates its operation, knows or could reasonably have known that adverse effects on the environment occur when such effects may or will occur. In cases where the operator of the establishment could not reasonably have known that his actions would harm the importance of protecting the environment, direct enforcement action is not at issue. That situation falls outside the scope of this provision. This may be the case, for example, when waste water is discharged into a public sewer, which exceeds the capacity of that sewer by the amount of waste water discharged. As a result, the efficient operation of that sewer may be compromised. As this depends on the characteristics of the sewage system and on the extent of other discharges, the person driving the establishment will often not be able to see for themselves that his actions have or could have led to disturbances in the efficient treatment of the sewer. In the case of efficient use of energy, it is important that the energy saving technique is not only present, but also efficiently managed and maintained in order to achieve the greatest possible energy savings. Efficient management and maintenance means well installed, well regulated and well maintained. Effective use of raw materials means taking action against the waste of these raw materials and taking measures to save water.

#### **Article 2.1 Quality criteria environmental compartments**

This article sets out quality criteria to which the person setting up or adapting an establishment changes, alters or terminates its operation must comply with activities which cause adverse effects on the environment. The quality criteria will be further elaborated under ministerial decree. Under Article 5.1, paragraph of the Act, the Island Executive Council has to specify in an island regulation the issues on which quality criteria are set out in more detail in a ministerial decree. In order to meet the local conditions and wishes for further regulation of quality criteria, the instrument of the ministerial decree has been chosen. This can be adjusted more quickly every year in consultation with the island. The quality criteria indicate a lower limit. This will allow the islands to make the criteria more concrete and adapt to the local situation and the specific environmental ambitions of the islands. In addition, it offers scope for further refinement of regulations and to establish a higher ambition where appropriate.

#### **Article 2.2 Notification type II establishment**

As explained above, this Decree imposes a notification obligation for establishments not classified under Type I, III or IV. The purpose of the notification is mainly to inform the administrative entity of the fact that an activity which is notifiable is carried out. Customised rules may be imposed on the basis of a notification within the meaning of this Article (see Article 2.3).

In accordance with the first paragraph of Article 2.2, changes to an establishment or its operation shall also be notified. This notification is not necessary if a prior notification has been made and there is no deviation from the data provided in that notification. The

information to be provided under paragraph is directly linked to the notification of Article 2.2. If the change in the establishment or its operation leads to the need to provide additional data under paragraph, there is a deviation from the data provided in the previous notification. The exception provided for in Article 2.2, paragraph is therefore not complied with.

### **Article 2.3 Customised rules Type I and II s**

In most cases where environmentally harmful activities are carried out, the general binding rules will be sufficient. However, in the few cases where the general binding rules are not appropriate, there will have to be the possibility of setting customised rules. Customised rules within the meaning of this Decree are those which aim at the same level of environmental protection as or above the quality criteria set out in this Decree and their implementation in the Island Ordinance. The setting of additional requirements may also imply that a quality criterion is specified in a customised rules. This criterion will also have to provide an equal or higher level of environmental protection. The reason for the competent authority to impose such a requirement may, for example, lie in specific geographical or environmental aspects of the activities of the establishment. The decision setting out the customised rules contains an explanatory statement setting out the justification for the customised rules.

### **Article 3.1 Permit**

This Article regulates only the obligation for the establishment of a type III and IV establishment to change or alter its operation to submit an application for permit. The obligation to have an permit already follows from the second paragraph of Article 5.1 of the Act.

The establishment, operation, modification or change of operation of an establishment as referred to above is prohibited by Article 5.1, paragraph of the Act. Violation of that prohibition is a criminal offence under Article 10.13, paragraph of the Act.

### **Article 3.2 The application for permit of establishment type III**

#### *First paragraph*

#### Part b

The cadastral description of the establishment is important for an exact designation and identification of the establishment. Such a fact is indispensable for monitoring compliance and any criminal enforcement actions based on Article 10.13 of the Act. Information on the location of the establishment will often be provided by means of one or more floor plans.

#### Part d

For the information on the nature of the establishment, the applicant shall indicate the main core elements of the establishment that characterise the establishment. The information on the layout of the establishment shall be provided to the applicant by submitting one or more floor plans, for example:

- the boundaries of the site of the establishment;
- the location and layout of the buildings;
- the destination of the separate (working) spaces.

The application may also include information on the specifications of the equipment and installations used in the establishment. This could include a description of the main characteristics of the main equipment or installations present in the establishment and 47

any special materials or special types or designs of such equipment or installations. In addition, information may be relevant to the codes, standards, guidelines or standards applied or to be applied in the design or realisation of such equipment or installations.

#### Part e

The data on the activities or processes must be such that the competent authority and all other persons involved in the application (advisers, residents, etc.) have a clear understanding of the activities to be carried out in the establishment.

It is essential to outline those activities and processes and their interdependence which are relevant for an assessment of the potential adverse effects on the environment. The description of the activities of interest to the environment is the basis for the environmental assessment of the establishment.

The provision of information on the techniques or installations to be used is primarily based on structural, technical and procedurally ordered units or means within or on the basis of which the activities or processes take place. This could be the environmental assessment of, for example, storage tanks, tank wells, pressure containers and silos, etc. The term installations may include machinery, tools, tanks, reactors, heat exchangers, compressors and the like, as well as their interdependence.

In so far as it is necessary for a proper assessment of the environmental aspects, the data shall include information on the function of the equipment techniques or installations and whether special materials, executions, processes or substances are involved. It may also be relevant for the assessment of the environmental impact by the competent authority to indicate the location of the installations in the application.

This obligation is limited in two ways. The first restriction is indicated by the words 'data characteristic of the activities and processes'. It concerns the information on the basis of which the competent authority can properly assess the activities or processes taking place in the establishment.

A second limitation lies in the words used in section e, "which may reasonably be relevant to adverse effects on the environment". This means that irrelevant dust or product data need not be included in the application for the assessment of the environmental load.

#### Part g

A description of the maximum capacity of the establishment or of the different components or production units may be necessary in order to better understand the possible environmental impact of the device.

Establishment may consist of components or compartments, each having a different maximum capacity. In such cases, the capacity of such a component or department will sometimes depend on the maximum capacity of another department. For the purposes of assessing the application, it is important that in those cases the capacity of those components is also indicated.

#### Part h

For the decision on the application and the requirements to be imposed on the permit, the times of the day on which the establishment is in operation or the periods in which the establishment operates are important. Partly on this basis, the more 'classical'



environmental aspects of the establishment can be assessed, such as general nuisance, noise nuisance caused by activities within the establishment, by supplying and discharging goods, by movement of people, by vibrations or nuisances by light radiation.

#### Part k

The application will have to systematically contain information on the impact of the environment that the establishment may cause in normal operation. In any case, this refers to the provision of data relating to emissions to atmosphere, water and soil. For example, it may also be relevant for the assessment of the environmental impact by the competent authority to provide data on the location of the emissions.

For the sake of completeness, it is noted that the second paragraph (b) of Article 1.2 of the Act provides that the effects on the environment shall include those related to: the efficient management of waste, the consumption of energy and raw materials and the movement of persons or goods to and from the establishment.

#### Part l Permit

applications for establishments shall contain a so-called waste paragraph. Part of this obligation is already fulfilled by section k, which obliges the applicant to include in his application data on the nature and extent of environmental pollution. This should include the nature and size of the waste generated in the establishment.

For the rest, this section contains a guideline on the content of the waste paragraph, namely by requiring the applicant to provide information on the measures that have been or will be taken in the establishment with regard to preventing or limiting the generation of waste in the establishment. And if they arise, measures will have to be taken to ensure their useful use. Wastes should also explicitly include waste arising from cleaning and purification processes for the prevention of environmental pollution (such as cleaning by filters, flue gas cleaning system, oil and fat collectors and water treatment).

#### Part n

Pursuant to Article 5.2(c) of the Act, the decision on the application must in any event involve developments which are reasonably foreseeable in relation to the establishment and the area where the establishment is or will be located.

The person who is best placed to indicate what the expected developments will be in relation to the establishment is the applicant himself. Therefore, the obligation for the applicant to provide this information is imposed here. Where it is reasonably foreseeable that techniques or materials will also become available in the short or medium term, which can prevent or further reduce the environmental impact of the establishment, this is also relevant information for the assessment of the application.

#### *Second paragraph*

This obligation ensures that the application can provide everyone with sufficient insight into the application for permit and the impact that the establishment may have on the environment.

#### *Third paragraph*

The second, third and fourth paragraphs of Article 3.2 are listed separately as applicable to an application for approval type IV. They have not been added to paragraph. The reason is that the first paragraph concerns the written, substantive information to be provided. This third paragraph does not cover information to be provided. This concerns

the certification of documents and the need not to provide information already available to the competent authority.

*Fourth paragraph*

Article 5.23 of the Act regulates the cases where the permit is granted for a period to be determined by the permit. Paragraph (a) of that Article provides that the competent authority may provide that the permit shall be valid only for a period of up to five years to be fixed if the establishment is of its nature temporary; for that purpose, that article provides that the applicant shall indicate in his application or that the establishment is a temporary establishment in the present case.

*Fifth paragraph*

The fifth paragraph states that the information already available to the competent authority does not need to be (re) disclosed. The data must be exactly the same.

**Article 3.3 Application for permit establishments type IV**

*First paragraph*

The first paragraph of this Article provides that in the case of an application for permit for an establishment type IV, all the information referred to in Article 3.2, first and second paragraphs shall be provided. In addition to this information, the applicant for permit of an establishment type IV shall also provide the information referred to in points (a), (b) and (c) of this Article. In other words: an application for a type IV permit is subject to additional requirements in relation to an application type III

*Part a*

In part a requires that a so-called quantitative risk analysis be carried out and the results be provided to the competent authority. In view of the major environmental impacts which may result from type IV activities of an establishment, the requirement to carry out such an analysis is justified. A quantitative risk analysis shall provide a statistical assessment of the risks to environments and stakeholders resulting from business activities. These are the possible consequences of accidents resulting from the storage, transport and processing of dangerous substances, such as toxic emissions, fire or explosion, and air, water or soil pollution. Accident scenarios shall be developed of the relevant risks. Computer models are used to create simulations for the theoretical development of a particular risk to accident scenario. A risk analysis can then be done. The findings resulting from this analysis shall be made available to the Minister as the competent authority when applying for permit.

*Part*

The decision on the application shall in any case take into account the effects that the establishment may have on the environment (first paragraph, part (b)). In addition, the permit will have to specify the objectives to be achieved by the holder of the permit in the interests of environmental protection. To this end, it is also important for the applicant to indicate the manner in which he determines and registers the load on the environment which the establishment causes. The applicant shall be the first person to indicate how the environmental impact of the establishment can be most adequately determined and monitored.

Part c

The application for the permit requires a safety report in the case of an activity of a type 4 establishment listed in Annex 1.

*Second paragraph*

Article 3.2, first paragraph, part k, of this Decree obliges the applicant to provide information on the environmental impact that the establishment may cause in normal operation. Unusual occurrences, such as failures in the production process or in environmental equipment used, can cause clear changes in emissions from the regular pattern in the establishments. It is therefore important that there should be an understanding in advance of any unusual occurrences that may reasonably occur in the production process and the environmental impact that the establishment may cause.

What is to be understood by 'possibly unusual occurrences, which may reasonably occur', cannot be indicated in a general sense and depends inter alia on the nature of the equipment and the specific operating and environmental conditions. In general, this concept should be interpreted broadly. The consequences of such an incident can be significant for people and the environment. For example, fire and storm damage are at least an unusual occurrence which can reasonably occur. It may also include flooding in places where it may reasonably occur, given the height of the area in which the establishment is situated. The said information shall be submitted where necessary for the assessment of the application.

Moreover, these are not only unusual occurrences which the applicant can reasonably prevent by taking measures. It is also necessary to provide information on any unusual occurrences which cannot or are hardly rectifiable by measures and the potential risks involved. An understanding of this is necessary in order, for example, to assess the acceptability of the establishment as such or that of a specific location of an establishment.

**Article 3.4 Best available techniques**

Article 3.4 lays down rules on the determination of best available techniques in sections a to m (hereafter: BAT). These rules shall be used as criteria or rules for the implementation and elaboration of BAT for establishments Type III and IV. The specific implementation and elaboration of BAT shall be regulated at the level of the permit requirements based on the emission limit values set by the competent authority and the associated maximum achievable limit of emissions or pollution from the establishment after assessment of their effects on the environment.

*Second paragraph*

The competent authority has a certain discretion when applying BAT in the permit. In determining the desired level of protection and techniques based on them, the competent authority shall take into account the physical state, the nature and type of the establishment and the installations or processes present therein, as well as its geographical location and local environmental conditions. It is also possible to take into account, in the context of possible transitional conditions, the existing rules on BAT, the investments programmed and necessary on this basis and the time limits for the phasing-in and implementation of these investments.

*Third paragraph*

This Decree allows for detailed rules on how to determine or determine BAT or the application of BAT in the type III and IV permit of establishments. These rules may

concern the designation of certain national or international BAT information documents which the competent authority must take into account when granting or modifying an permit (first paragraph, parts l and m). The designation of documents must also be assessed in the light of the other rules of the game (first paragraph, sections a to k). These rules include the use of effective techniques to minimise adverse effects on the environment, taking into account their feasibility, taking into account the industry to which the establishment belongs. Pursuant to the Regulation for the designation of BAT Documents Bgim BES, which applies to this Decree, the following are designated:

- Reference Document on Best Available Techniques Emission from Storage, July 2006 (BREF bulk goods handling and storage);
- Reference Document on Best Available Techniques Large Combustion Plants, July 2006 (BREF Large Combustion Plants);
- Reference Document on Best Available Techniques in Common Waste Water and Waste Gas Treatment, February 2003 (BREF Waste and Waste Treatment);
- Dutch Soil Protection Directive (NRB) of April 2012;
- Dutch Air Emissions Directive (NeR) of July 2012;
- Publication series Dangerous Substances 15 'Safety of Packed Hazardous Substances' of December 2012 (PGS 15);
- Publication series Dangerous Substances 29 'Directive for above-ground storage of flammable liquids in vertical cylindrical tanks' of October 2008 (PGS 29);
- Publication series Dangerous Substances 30 'Liquid fuels: overhead tank and delivery installations' of December 2011 (PGS 30);
- CIW document on unforeseen discharges that indicate MRA and the use of Proteus as a state of the art.

Where such information documents are not available for, or applicable to, certain installations or processes, the rules of the game referred to in paragraph shall also be taken into account when determining BAT for an establishment. For example, certain documents for handling and handling of bulk silage mothers may not address the specific requirements for the storage of hazardous substances as an activity within an establishment. In the absence of information documents, BAT shall remain the standard, whether or not based on expert information other than those referred to. In this case, techniques shall be chosen which, in the opinion of the competent authority, ensure a comparable level of protection of the environment that may be proven in practice in relation to the installations and processes concerned.

### **Article 3.5 Notification modification of establishments type III and IV**

In Article 5.25, paragraph 5(a) of the Act, it is stated that rules must be laid down in or under a general administrative measure concerning the data to be submitted when a change of establishment or its operation is notified, as referred to in Article 5.25, first paragraph, point (b) of the Act. It refers to a change which does not lead to any adverse effects on the environment other than or greater than that which the establishment may cause on the basis of the permit granted. Under Article 5.25, third and fourth paragraphs of the Act, the competent authority shall issue a declaration in response to the notification no later than six weeks after receipt of the notification. It must then be made public not later than two weeks after publication of the declaration. In addition to a free inspection of the documents relating to the notification and the provision of a copy of the documents against payment of the costs, the competent authority shall publish the notification. If the competent authority considers that the change does have different and greater adverse effects on the environment than the permit permits, it may decide, pursuant to Articles 5.28, second paragraph, 5.29 and 5.31 of the Act, to adjust the

permit accordingly.

### **Article 3.6 Public notice**

Under Article 5.26, paragraph 3(b) of the Act, rules are to be laid down in or under general administrative measure on the public notification of the statement given in response to a notification of a change (see Article 3.5 and its explanatory memorandum). This obligation is fulfilled in this Article.

### **Article 3.7 Financial guarantee in case of permit**

Article 5.21, paragraph of the Act provides that the permit of the establishments designated in this Decision may include rules for the provision of financial security. These are establishments likely to cause serious adverse effects on the environment and which have been designated as Type III and IV establishments in this Decree. The financial consequences referred to in point (a) arise from compliance with the requirements of the permit. This could include the removal of an underground tank. These are costs which it is certain that they will be incurred. Therefore, the holder of the permit cannot insure against this. Section b deals with liability for environmental damage. Environmental damage may include damage caused by business activities to the physical environment, such as soil damage and groundwater pollution, as well as damage to the coral reef ecosystem.

#### *Second paragraph*

The second paragraph of Article 5.21 of the Act allows detailed rules to be laid down in a general administrative measure as regards the amount and the term of the security. The second paragraph of Article 3.7 of this Decree is the elaboration of the second paragraph of Article 5.21 of the Act. The second paragraph states that in the case of a rule requiring insurance, the duration of such insurance shall be included in the permit.

### **Article 4.1 Environmental impact assessment**

The designation of mandatory environmental impact assessment activities is in line with the Island Ordinance Nature Management Bonaire (A.B. 2010, no. 15). There was no intention to include all the activities listed in the Environmental Impact Assessment Decision, which applies in the European part of the Netherlands. Most of these activities do not occur on the BES islands. The advantage of joining the Island Ordinance of Bonaire is that the island administration is already familiar with the environmental impact assessment scheme. All activities included are also considered relevant for the islands of Sint Eustatius and Saba.

The thresholds listed in column 2 are also linked to the Island Ordinance Nature Management Bonaire. These thresholds are generally lower than the thresholds set out in the Environmental Impact Assessment Decision. This can be justified in view of the more small-scale nature of the islands. The re-establishment or start-up of the activities or establishments listed in column 1 shall be compulsory. The modification or extension of an establishment or activity shall be subject to assessment. In this way, the island administration will be able, for example, to allow limited modifications to an establishment without carrying out an environmental impact assessment. In a number of cases, an environmental impact assessment on the spatial development plan will be sufficient to include the potential impacts on the environment in decision-making on plans and projects.

For all activities taking place in sensitive areas or buffer zones, which may lead to significant adverse effects on the landscape or landscape values or nature or nature values, an EIA assessment obligation is imposed on the basis of Article 7.1, paragraph (b) of the Act. The EIA assessment obligation is laid down in Article 4.1 of the Decree. Article 5.1 of the Act also provides that an environmental permit is required for the categories of activities listed in Annex 1 to this Decree.

For a number of categories of activities set out in the Decree, a threshold is set out in column 2 of Part C of the Annex expressed in a capacity or area unit. Where necessary, a distinction has been made between processing capacity (input) and production capacity (output). In the notion of capacity, it is important that capacity should relate to a proposed activity. This is particularly important in the case of changes in establishments carrying out various mandatory activities. The following example may illustrate this. An establishment for the manufacture of chemical products, which incinerates own (non-hazardous) industrial waste, aims to increase the capacity of the incinerator. In determining the EIA-obligation of this proposed change, the threshold of category 18 (waste) of Part C and not that of Category 13 (the modification or extension of an establishment intended for the manufacture of chemical products and the construction of the associated infrastructure) of Part D. In determining the capacity of an installation, the design capacity shall be used as the basis for the obligation to comply with the design capacity. This premise is based on the idea that design capacity will determine the environmental impact and usually correspond to the capacity included in the permit application, including foreseeable developments.

When applying a threshold value set out in column 2, account shall also be taken of the reasonably foreseeable increase in capacity or area within the foreseeable future. In cases where, for example, a permit is requested to set up a household waste treatment facility with a processing capacity of 75 tonnes per day, where it is already known when the application for permit is submitted that a permit will be requested for a doubling of capacity in the foreseeable future, the existence of an obligation is determined not only by the capacity referred to in the application but also by the foreseeable extension thereof. What is to be described as "reasonably foreseeable extension in the foreseeable future" will have to be assessed on a case-by-case basis. Compliance with the five-year limit seems to be realistic.

The provision of modification of an establishment involves a change in the establishment. In the application of the EIA assessment obligation, it is important whether the modification leads to an increase in the environmental burden which is contrary to environmental policy or leads to concerns of local residents. If a change to an establishment is subject to notification rather than an permit requirement, there is no obligation to EIA (assessment). There are only minor or favourable environmental impacts which, in accordance with the existing rules of the law, can suffice with notification.

The term "extension" shall also mean the re-opening of a previously constructed work, area or existing establishment. These are situations where a new decision is needed by the competent authority in order to be able to use the work again.

The provision of setting up an establishment should include an extension of this by the creation of a new installation. The term 'installation' does not in all cases mean the same as the term 'installation'. A establishment may consist of several installations. An EIA

(assessment) obligation shall apply if the extension as such complies with the description in columns 1, 2 and 3 or 4 of Parts B or C of the Annex.

#### **Article 5.1 Enforcement**

See paragraph 5 of the general part of this Explanatory Memorandum.

#### **Article 6.1 Transitional right**

##### *First paragraph*

Under this Article, current permits issued under the Bgim BES or the island ordinances referred to in the Article shall be brought under the regime of the Act: they are regarded as an permit within the meaning of Article 5.1, paragraph of the Act. This Decree also applies to these permits.

##### *Second paragraph*

The second paragraph deals with transitional law relating to appeals and claims relating to decisions taken pursuant to Bgim BES or the aforementioned Hindrance Ordinances. This shall be governed by the law in force at the time of the appeal or the time at which that decision was taken.

##### *Third paragraph*

Applications submitted before the entry into force of this Decision but which have not yet been dealt with at the time of entry into force of this Decision shall be (co-) dealt with on the basis of this Decision.

Pursuant to Article 11.23 of the Act, island ordinances shall expire on the date of entry into force of this Decision in respect of matters covered by this Decision.

#### **Article 6.2 Repeal regulations**

Bgim BES is hereby repealed. Bgim BES is fully incorporated into this Decree. The BAT document designation scheme BES environmental management is based on Article 11 of the Bgim BES. The withdrawal of Bgim BES would also remove the BAT document designation scheme for large establishments BES environmental management. This is not considered desirable. For that reason, this scheme has been made applicable to this Decree.

#### **Article 6.3 Entry into force**

The date of entry into force of this Decree shall be determined by Royal Decree. This Article makes it possible for royal decree to be determined by public entity when the entire act or which articles or parts of the act enter into force. With the entry into force of this Decree, Bgim BES is hereby repealed. In order to ensure that the Minister can exercise its powers in all three public entities in respect of Type IV establishments, it will in any event be provided by royal decree that the articles of this Decree relating to those Type IV establishments shall enter into force immediately for all public sector bodies.

Charges and orders that this Decree, together with the accompanying note of explanatory notes, will be placed in the Official Gazette.

THE MINISTER FOR INFRASTRUCTURE AND WATER MANAGEMENT,

UNOFFICIAL TRANSLATION