

Bulletin of Acts, Orders and Decrees of the State of the Netherlands

2007

469

Decree of 22 November 2007 containing rules with respect to the quality of soil (Soil Quality Decree)

We Beatrix, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau etc. etc.
etc.

At the proposal of Our Minister of Housing, Spatial Planning and the Environment of 2 July 2007, no. DJZ2007057947, Directorate for Legal Affairs, Legislation Section, made jointly on behalf of the State Secretary for Transport, Public Works and Water Management and Our Minister of Agriculture, Nature and Food Quality;

Having regard to Directive no. 89/106/EEC of the Council of the European Communities of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the member states relating to construction products (OJ L 40), as amended by Directive No. 93/68/EEC of the Council of the European Communities of 22 July 1993 (OJ L 220);

Having regard to Directive No. 06/12/EEC of the Council of the European Communities of 5 April 2006 on waste (OJ, L 114), replacing Directive No. 75/442/EEC of the Council of the European Communities of 15 July 1975 on waste (OJ L 194), as last amended by Regulation No. 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ L 284);

Having regard to Sections 1.1, seventh subsection, 8.1, second subsection, 8.5, 8.40, 8.45, 8.49, fifth subsection, 10.2, second subsection, 10.15, first subsection, 10.17, first subsection, 10.52, 11.1, 11.2 and 11.3 of the Environmental Management Act; Sections 6, 7, 8, 12a, 12b, 15, 16a, 17, 36, 38, 39b, 70, 71, 72, 76o and 91 of the Soil Protection Act; Sections 1, third subsection; 2a, first and second subsections, 2b and 2c of the Pollution of Surface Waters Act; Section 24 of the Chemical Substances Act; Section 12, second subsection of the Environmental Taxes Act; and Section 40a of the Housing Act;

Having heard the Council of State (advisory report of 10 September 2007, no. W08.07.0189/IV);

Having read the further report of Our Minister of Housing, Spatial Planning and the Environment of 19 November 2007, no. DJZ2007113029, Directorate for Legal Affairs, Legislation Section, published jointly on behalf on the State Secretary of Transport, Public Works and Water Management and Our Minister of Agriculture, Nature and Food Quality;

Have approved and agreed:

CHAPTER 1. GENERAL PROVISIONS

Section 1

For the purposes of this Decree and the provisions based upon it, the following definitions shall apply:

Background values: concentrations of chemical substances for good soil quality established by decision of Our Ministers, for which there is no pollution from local sources of contamination;

Accreditation: proof by which the Council for Accreditation gives notice that there are legitimate grounds for trusting that the person or institution named therein is competent to carry out the relevant activity for a specific period;

Dredged material: material that has come from the soil via the surface water or the space intended for that water and that consists of mineral parts with a maximum granule size of 2 millimetres and organic substance in a ratio and with a structure that occur naturally in the soil, as well as shells and gravel naturally occurring in the soil with a granule size of 2 to 63 millimetres;

Soil management area: an unbroken, delineated part of the surface area of one or more municipalities or of the management area of one or more water quality control authorities, as defined by the administrative body referred to in section 44, 45 or 46;

Soil functions: a use of the soil, not being the soil under surface water as determined by the municipal council in accordance with a classification established by decision of Our Ministers;

Soil function categories: classification of soil functions into the categories referred to in Section 55, first subsection, as laid down by decision of Our Ministers;

Building material: material that is intended to be used in a work and in which the total concentration of silicon, calcium or aluminium together constitutes more than 10% in weight of that material, with the exception of sheet glass, metallic aluminium, excavated soil or dredged material;

Certificate: declaration by which a certification institution recognised by Our Minister and Our Minister of Transport, Public Works and Water Management gives notice that for a specific period there are legitimate grounds for trusting that the person named therein complies with the applicable normative document for the certification;

Recognised quality statement: a written declaration, issued by an approved institution, declaring that the accompanying batch, produced by a person or institution that is certified to produce it on the basis of a national Assessment Guideline, complies with the criteria laid down in or by virtue of this Decree with respect to the environmental quality if it is used in the manner indicated in the declaration;

Approval: decision by Our Ministers establishing that a person or institution complies with the conditions for an activity laid down in or by virtue of this Decree;

Manufacturer's declaration: written declaration issued by the producer of a building material, excavated soil or dredged material declaring that the accompanying batch complies with the criteria laid down in or by virtue of this Decree with respect to its environmental quality. The declaration must show how it was established that the batch complies with the criteria laid down in or by virtue of this Decree;

Excavated soil: solid material that consists of mineral parts with a maximum granule size of 2 millimetres and organic substance in a ratio and with a structure that occur naturally in the soil, as well as shells and gravel naturally occurring in the soil with a granule size of 2 to 63 millimetres, not being dredged material;

ICM building material: a building material that may only be used if isolation, control and monitoring measures are taken due to the extent of the emissions;

Institution: a certification institution, an inspection institution, a laboratory or other institution with legal personality which determines whether a person, a substance, a product, an installation, a facility or any other object corresponds with a normative document;

Intervention values: national values established by decision of Our Ministers which if exceeded could cause a potentially serious reduction of the functional properties of the soil for humans, fauna and flora as referred to in Section 36 of the Soil Protection Act;

Isolation, control and monitoring measures: measures whereby, in the case of the use of a building material, there is virtually no contact between that building material and rainwater and groundwater;

Quality category: classification of soil, excavated soil and dredged material into categories of quality adopted by decision of Our Ministers;

Agricultural undertaking: a business as referred to in Section 1, first subsection, under i of the Fertiliser Act;

Environmental declaration:

- a. for building materials, excavated soil or dredged material: batch inspection, manufacturer's declaration or recognised quality statement, and
- b. for excavated soil, dredged material or the soil on or in which the excavated soil or dredged material is used: declaration concerning the environmental quality of a specific batch or the soil, which has been issued on the basis of a map as referred to in Section 47, under a or Section 57, second subsection or a normative document or survey protocols designated by decision of Our Ministers;

Normative document: an assessment guideline, protocol or other guideline, code, recommendation or standard designated for an activity on the grounds of Section 25 containing criteria to improve the quality of activities or their execution;

Our Minister: Our Minister of Housing, Spatial Planning and the Environment;

Our Ministers: Our Minister, Our Minister of Transport, Public Works and Water Management and Our Minister of Agriculture, Nature and Food Quality, with the understanding that the provisions of Section 14 apply;

Parameter: chemical substance or a physical property;

Batch: identifiable quantity of building material, excavated soil or dredged material of similar environmental quality, which is intended to be traded or used as a whole;

Batch inspection: written declaration based on a single examination carried out by an approved person or institution, which states whether a batch can be used under the decree's regime and how that was established;

Person: natural person or legal person;

Council for Accreditation: the Council for Accreditation in Utrecht;

Use of building materials: the initial use or retention of building materials in a work, as well as causing them to be used or retained. For the purpose of the rules laid down in or by virtue of this decree, "the use of building materials in surface water" shall also include the use of building materials on or in the soil under surface water;

Use of excavated soil or dredged material: the application, spreading or temporary storage of excavated soil or dredged material as referred to in Section 35, the retention of the applied or temporarily stored excavated soil or dredged material in that use, as well as causing them to be used or stored. For the purpose of the rules laid down in or by virtue of this decree, the use of excavated soil or dredged material shall be understood to include the use of excavated soil or dredged material on or in the soil under surface water;

Place of establishment: address of a person or of the registered office of an institution;

Moulded building material: a building material with a volume per smallest unit of at least 50 cm³, which under normal circumstances has lasting stability of shape;

Water quality control authority: administrative body that is authorised to grant permits under the Pollution of Surface Waters Act;

Work: construction work, road building work or hydraulic engineering work or other functional use of a building material, with the exception of infill of surface water and raising land for housing estates and business parks.

Activity: an action designated by decision of Our Minister and Our Minister of Transport, Public Works and Water Management as referred to in Section 11.2, second subsection of the Environmental Management Act, which is carried out with respect to soil, excavated soil, dredged material or building materials.

Section 2

1. For the purposes of Section 5, first and second subsections and Section 6, 7 and 8 of Chapter 3 and the provisions based upon them, subject to the second subsection, the municipal executive of the municipality in which the building materials are used is the competent authority with respect to the person who uses a building material on or in the soil, with the exception of the soil under surface water.

2. If building materials are used on or in the soil, with the exception of the soil under surface water, within an establishment belonging to a category of establishments designated by virtue of Section 1.1, third subsection of the Environmental Management Act, and a body other than the municipal executive is authorised to grant a permit on the grounds of Section 8.2 of that act, or would be authorised to grant a permit for the establishment if there was no exemption from the duty to have a permit, that other body is also the competent authority for the purpose of this decree, except in the case of a use as referred to in Section 1, under a of the Housing Act.

3. The water quality control authority is the competent authority with respect to a person who uses a building material in surface water.

4. Our Minister is the competent authority with respect to a person who performs the actions referred to in Section 28, first subsection, opening lines, with the exception of the use of building materials.

Section 3

1. For the purpose of Section 5, first and second subsections and Sections 6, 7 and 8 of Chapter 4 and the provisions based upon them, subject to the second subsection, the municipal executive of the municipality in which the excavated soil or dredged material is used on or in the soil, except the soil under surface water, is the competent authority.

2. If excavated soil or dredged material is used on or in the soil, except the soil under surface water, within an establishment belonging to a category of establishments designated by virtue of Section 1.1, third subsection of the Environmental Management Act, and a body other than the municipal executive is or would be the competent authority on the grounds of Section 8.2 of that act, that other body shall be the competent authority.

3. The water quality control authority is the competent authority for a person who uses excavated soil or dredged material in surface water.

Section 4

1. Our Minister shall take the measures necessary for effective supervision of compliance with the obligations laid down in or by virtue of this decree, after consultation with the administrative bodies referred to in the second and third subsections, in so far as those administrative bodies are not Our Minister. The measures shall relate to the strategic, programmatic and coordinated exercise of the powers of enforcement.

2. In the case of uses of building materials, excavated soil and dredged material on or in the soil, with the exception of the soil beneath surface water, within one or more soil management areas for which more than one administrative body is the competent authority, the

relevant administrative bodies shall designate a single competent authority to coordinate the supervision of compliance with the obligations laid down in or by virtue of this decree on behalf of the relevant administrative bodies.

3. The municipal executive shall be responsible for enforcing the obligations laid down in or by virtue of this decree in as far as they relate to:

- a. the use of building materials on or in the soil, with the exception of the soil beneath surface water;
- b. the use of excavated soil or dredged material on or in the soil, with the exception of the soil beneath surface water, as referred to in Section 35;
- c. the issuing of an environmental declaration as referred to in Section 28, third subsection;
- d. the notification of a use as referred to in Sections 32 and 42.

4. Our Minister shall be responsible for enforcing the obligations laid down in or by virtue of this decree in as far as they relate to:

- a. the use on the instructions of another person of building materials on or in the soil, with the exception of the soil beneath surface water;
- b. the performance of the actions referred to in Section 35 on or in the soil, with the exception the soil beneath surface water, on the instructions of another person.

5. Sections 28, third subsection, 32, first and second subsections, 42, first, ninth and eleventh subsections and 58, first subsection shall be deemed to have been complied with if any of the persons required to comply with the relevant obligation has done so.

Section 5

1. This decree applies to the use of building materials, excavated soil or dredged material in as far as:

- a. the volume of those building materials, excavated soil and dredged material that is used is not greater than is necessary for the use according to generally accepted standards;
- b. the use is necessary at the location where or in the circumstances under which it takes place according to generally accepted standards; and
- c. in the case of the use of waste, the use involves recovery within the meaning of Section 1.1, first subsection of the Environmental Management Act.

2. The prohibitions referred to in Section 1 of the Pollution of Surface Waters Act do not apply for uses of building materials, excavated soil or dredged material in surface water that comply with the provisions of the first subsection.

3. A permit as referred to in Section 8.1 of the Environmental Management Act is required for a use within the meaning of Chapters 3 and 4 of this decree in which the provisions of this decree are departed from. In derogation from Sections 2 and 3, Our Minister or the Minister of Transport, Public Works and Water Management are the competent authority.

Section 6

The rules referred to in Sections 28, first subsection under b, 30, first and second subsections and 31, second subsection shall be laid down, and the soil use values referred to in Sections 44, first subsection, 45, first subsection, 46, 55, second subsection, 57, first subsection, 60, first subsection, and 63, first subsection, part a under i shall be assessed, having regard to the condition that uses of building materials, excavated soil or dredged material must comply with the conditions referred to in Section 4 of the Framework Directive on Waste.

Section 7

A person who uses building materials, excavated soil or dredged material and who knows or could reasonably have known that his actions or omissions shall or could have negative effects on the surface water, which are not or not adequately prevented or limited by compliance with the rules laid down in or by virtue of this decree, shall prevent those effects or, to the extent that they cannot be prevented, limit them as far as possible and to the extent that this can be reasonably demanded of him.

Section 8

1. A person who, pursuant to the rules laid down in or by virtue of this decree, is required to carry out a survey on or in a part of the soil with respect to which they lack the necessary authority may submit a request as referred to in Section 71 of the Soil Protection Act to the competent authority.

2. The applicant referred to in the first subsection shall provide the following information with the request:

- a. his name and address;
- b. the names and the addresses of the title holders;
- c. the location of the survey;
- d. the nature and scale of the proposed survey and the time it will take place; and
- e. the actions that the title holders must refrain from in the interests of the survey.

CHAPTER 2. QUALITY OF THE EXECUTION OF A WORK

PART 1. APPROVAL OF PERSONS AND INSTITUTIONS

Section 9

1. Our Ministers may on application grant an approval to a person or an institution.

2. The decision shall specify at least the name of the person or institution, the work, the place of establishment and, where applicable, the name of the natural person employed by the approved person or institution who will perform any of the actions designated by a decision of Our Ministers.

3. An approval shall be granted for an indefinite period.

4. Our Ministers shall publish lists of approved persons and institutions on a website to be designated by them. The decision designating the website shall be published in the Government Gazette.

5. An approval is non-transferable.

Section 10

1. An application for an approval shall be submitted to Our Ministers by means of a form prescribed by Our Ministers.

2. The application shall be accompanied by at least the following information:

- a. the name and address of the applicant;
- b. the activity to which the application applies;
- c. the certificate or the accreditation for the activity;
- d. the place of establishment of the person or institution;
- e. where applicable, the name and a certificate of good conduct as referred to in Section 28 of the Judicial Data and Criminal Records Act, which is not older than six months, for the natural person referred to in Section 9, second subsection.

3. Our Ministers may lay down further rules with respect to the information referred to in the second subsection.

Section 11

1. Our Ministers shall make a decision within eight weeks of the date of receipt of the application. Our Ministers may extend this period by a single period not exceeding eight weeks.

2. If the decision has not been disclosed within the period specified in the first subsection, the application shall be deemed to have been denied.

3. Our Ministers shall grant the approval, wholly or partially, if the relevant person or institution:

a. has not been declared bankrupt or granted a suspension of payments; and

b. has complied with the provisions of Section 10, second subsection.

4. By decision of Our Ministers, it shall be stated whether an approval for an activity is based on a certificate or an accreditation.

5. An approval may be wholly or partially denied if, in the three years prior to the application, the person or institution concerned or a director of that person or institution has contravened a statutory provision that was laid down in or by virtue of this decree, by or by virtue of any of the laws referred to in Sections 21 or 22 or Section 225 of the Netherlands Criminal Code, in as far as that offence is connected with an activity.

Section 12

1. The approval may be amended at the request of the approved person or institution. Section 9, fourth subsection applies *mutatis mutandis*.

2. The request shall be submitted to Our Ministers by means of a form prescribed by Our Ministers. Section 10, second and third subsections apply *mutatis mutandis*.

3. Our Ministers shall make a decision within four weeks of the date of receipt of the request. Our Ministers may extend this period by a period not exceeding four weeks. Section 11, second and third subsections apply *mutatis mutandis*.

Section 13

1. In derogation from Section 10, second subsection, under e, an applicant whose country of origin is a member state of the European Union other than the Netherlands or another state which is party to the Agreement creating the European Economic Area shall provide an equivalent certificate of good conduct which is not older than six months.

2. A certificate or an accreditation issued by a competent certification institution or accreditation institution in another member state of the European Union or in a state, not being a member state of the European Union, which is party to the Agreement creating the European Economic Area, shall be regarded as equivalent to a certificate or an accreditation if that certificate or accreditation is issued on the basis of investigations or documents that afford a level of protection that is at least equal to the level guaranteed by the national surveys or normative documents.

3. An approval or similar decision issued by a competent authority in a member state of the European Union other than the Netherlands or in another state that is party to the Agreement creating the European Economic Area shall be regarded as equivalent to an approval if it is issued on the basis of conditions that provide a level of protection that is at least equal to the level guaranteed by the conditions in Section 10, second subsection. Section 9, fourth subsection and Section 24 apply *mutatis mutandis*.

Section 14

For the purpose of the sections in Chapter 2, “Our Ministers” shall be understood to mean: Our Minister and Our Minister of Transport, Public Works and Water Management

PART 2. PROHIBITIONS AND OBLIGATIONS

Section 15

1. It is prohibited to carry out an activity without approval.
2. The actions referred to in Section 9, second subsection may only be carried out by a natural person who is named in the approval.
3. The provisions of the first and second subsections shall not apply to that extent that the activity is carried out for the purpose of acquiring a certificate or an accreditation.

Section 16

A person or institution is prohibited from using or making available to another party the results of an activity if they know or could reasonably have suspected that these results, given the purpose for which they are used, do not give a reliable impression of the properties, nature, capacity or composition of the soil, excavated soil, dredged material or building material.

Section 17

1. An institution or person designated by decision of Our Ministers shall not perform an action designated by ministerial decision with respect to soil, excavated soil, dredged material or building material to which that institution or person has a personal right or a right *in rem*.
2. An institution or person designated by decision of Our Ministers shall not perform an action designated by ministerial order with respect to a person, a substance, a building material, a product, an installation, a facility or other object with which that institution or person has an organisational, financial or legal connection, unless this connection arises solely from the agreement to carry out the activity.
3. The first subsection shall not apply for a person who has taken organisational measures to ensure, in a demonstrable, transparent and verifiable manner, that the work shall only be performed by a part of the organisation that or a person who:
 - a. has no financial interest in the outcome of the activity;
 - b. falls under different managerial responsibility than the person who has a personal right or right *in rem* to the soil, excavated soil, dredged material or building material; and
 - c. falls under the direct control of a manager other than the person who has a personal right or right *in rem* to the soil, excavated soil, dredged material or building material.
4. If a normative document contains requirements with respect to organisational measures as referred to in the third subsection, the person or institution that is approved for the relevant activity shall be in compliance with the third subsection if he or it complies with the normative document.

Section 18

1. It is prohibited to carry out an activity in violation of the applicable normative document.
2. The prohibition in the first subsection shall not apply in as far as departure from the normative document is permitted by statutory provision.

Section 19

The holder of an approval shall immediately notify an agency designated by Our Ministers if it is declared bankrupt or granted a suspension of payments by a court. The notification shall be made by means of a form stipulated by Our Ministers.

Section 20

A certification institution or the Council for Accreditation shall immediately notify an agency designated by Our Ministers of the suspension or revocation of a certificate or an accreditation for an activity. The notification shall be made by means of a form stipulated by Our Ministers.

Section 21

1. An administrative body shall not handle an application for a decision which is laid down in or by virtue of statutory provisions if it includes information from a person or institution that has acted in violation of the first or second subsections of Section 15 in acquiring that information.

2. The statutory provisions referred to in the first subsection are Sections 8.1, 8.4 and 8.49 of the Environmental Management Act and Sections 29, first subsection and 39, second subsection, 39b, 39c, second subsection, 39d, third subsection and 40, second subsection of the Soil Protection Act.

Section 22

1. It is prohibited for anyone to provide information to an administrative body, for the purpose of complying with rules laid down in or by virtue of statutory provisions, if he knows or could reasonably have suspected that this information came from a person or institution that acted in violation of the first or section subsections of Section 15 in acquiring that information.

2. The statutory provisions referred to in the first subsection are Section 8.40, first subsection of the Environmental Management Act, Sections 2a to 2d inclusive of the Pollution of Surface Waters Act and Sections 6 to 12, 27, first subsection, 39, first and fourth subsections, 39b, second subsection, under b and c, 70 and 72 of the Soil Protection Act.

PART 3. SANCTIONS

Section 23

1. Our Ministers may wholly or partially withdraw an approval:

- a. at the request of the approved person or institution;
- b. if incorrect or incomplete information was provided at the time of the application and knowledge of the correct and complete information would have led to a different decision;
- c. if the proof of certification or accreditation for the relevant activity is withdrawn or is no longer valid;
- d. if the approved person or institution is bankrupt or has been granted a suspension of payments;

or

- e. if the approved person or institution or the natural person referred to in Section 9, second subsection has violated a statutory provision laid down in or by virtue of this decree, in or by virtue of the laws referred to in Section 21 or 22 or Section 225 of the Criminal Code, in as far as the offence is connected with an activity.

2. Our Ministers may wholly or partially suspend an approval for a period of up to two years if:

- a. the proof of certification or accreditation for the relevant activity is suspended, or
- b. there has been an offence as referred to in the first subsection under e.

3. If a decision to withdraw or suspend an approval relates to a certification institution, the certificates issued by that institution shall remain valid for six months.

4. In the event of evidence that there has been offence as referred to in the first subsection under e, Our Ministers may request the person or institution concerned to submit a certificate of good conduct as referred to in Section 28 of the Judicial Data and Criminal Records Act, which is not older than two months, within a reasonable period. If the relevant person or institution fails or is unable to comply with this request within the stipulated period, Our Ministers may wholly or partially suspend the approval for a period of up to two years.

Section 24

Our Ministers shall include notice of the suspension and withdrawal of the approval in the lists referred to in Section 9, fourth subsection.

Section 25

Our Ministers may designate normative documents to the extent that they:

- a. do not conflict with a statutory provision;
- b. are adopted by bodies in which all the parties concerned could have been represented;
- c. are sufficiently clear in terms of both content and purpose; and
- d. enjoy sufficient support among the parties concerned.

CHAPTER 3. BUILDING MATERIALS

Section 26

1. Our Ministers shall draw up rules with respect to the method by which the percentage of the total amounts of silicon, calcium or aluminium in a material shall be established.

2. Our Ministers shall draw up rules with respect to the method by which the volume per smallest unit of a material and the lasting stability of the shape thereof shall be established.

3. For the purpose of this decree, a building material shall also include a building material that is mixed with a maximum of 20% in weight of excavated soil or dredged material, in as far as this excavated soil or dredged material does not constitute a functional element of that building material.

Section 27

1. This chapter does not apply to:

- a. building materials that are used in a building as referred to in Section 1, first subsection, under c of the Housing Act;
- b. building materials that fall under a customs regime and are intended for release for free circulation, customs warehousing or temporary admission within the meaning of Article 4, section 16 of Regulation (EEC) No. 2913/92 of the Council of the European Communities of 12 October 1992 establishing the Community Customs Code (OJ L 302).

2. The temporary movement or removal from a work of building materials is permitted without observance of Sections 28 to 32 if, without being worked, they are used again in that work in or close to the same place and under the same conditions.

Section 28

1. The manufacture, import, possession for use in the Netherlands or for trade purposes for the Dutch market, transport, provision to another person or use of building materials is prohibited, unless:

- a. the composition values and emission values of the building material have been determined on the basis of the parameters specified in appendix 1 of this decree and have been designated by decision of Our Ministers in accordance with the methods laid down in decision of Our Ministers by or under the supervision of an approved person or institution;
 - b. a person or institution designated by decision of Our Ministers has established in a manner prescribed by decision of Our Ministers that the values referred to under a do not exceed the maximum composition and emission values established by decision of Our Ministers;
 - c. an environmental declaration issued subject to conditions laid down in decision of Our Ministers shows that the provisions under a and b are complied with; and
 - d. the relevant batch is accompanied by a delivery note containing the information prescribed by decision of Our Ministers.
2. By decision of Our Ministers, rules shall be laid down prescribing the cases in which a delivery note as referred to in the first subsection under d is not required.
3. A person who uses the building materials shall retain the accompanying environmental declaration and the delivery note for a period of five years from the time when the building materials are used and shall on request surrender that declaration or delivery note to the competent authority.
4. By decision of Our Ministers, rules shall be laid down with respect to the combining and splitting of batches of building materials.
5. The use of building materials in contravention of Section 5, first and seventh subsections, of this decree is prohibited.

Section 29

1. In derogation from Section 28, first subsection under a and c, the composition and emission values of the building materials to be used shall not be determined and no environmental declaration shall be required in the case of the following actions:
- a. the use of mortar or natural stone products, with the exception of broken stone and rubble;
 - b. the reuse under the same conditions, without working, of moulded building materials of concrete, ceramics, natural stone and brick;
 - c. the reuse under the same conditions, without working, of building materials, the ownership of which is not transferred;
 - d. the reuse of non-tarry asphalt or asphalt concrete in road pavement if it is demonstrated, in accordance with the CROW publication 210 «Guideline on handling released asphalt», that the material does not contain tar;
 - e. the use of building materials by natural persons otherwise than in the carrying on of a profession or business.
2. The provisions of the first subsection do not apply if, on the grounds of knowledge of organoleptic observation, the person who uses the building material may assume or should reasonably have assumed that the provisions of Section 28, first subsection under b were not complied with.

Section 30

1. A building material that exceeds the maximum emission values referred to in Section 28, first subsection under b may be used as an ICM building material if:
- a. the building material complies with the maximum emission values for ICM building materials laid down by decision of Our Ministers;
 - b. the building material has at least the volume prescribed by decision of Our Ministers and is used continuously in a work;

c. isolation, control and monitoring measures are taken, which comply with the criteria laid down for them by decision of Our Ministers and have been approved by a person or institution designated by decision of Our Ministers.

2. The use of ICM building materials in surface water is prohibited

Section 31

1. Our Minister may on request grant dispensation from the requirement laid down in Section 30 under c to the extent that the degree of protection afforded for the soil otherwise than by application of that rule is at least the same as that envisaged by that requirement.

2. By decision of Our Minister rules shall be laid down concerning:

a. the assessment of the equivalence; and

b. the information to be provided with the application, which shall, among other things, show that the protection referred to in the first subsection is afforded.

3. An application shall be submitted to Our Minister by means of a form prescribed by Our Minister.

Section 32

1. A person who intends using a building material as referred to in Section 29, first subsection under c shall notify Our Minister of this intention at least five working days prior to the use.

2. A person who intends using an ICM building material as referred to in Section 30 shall notify Our Minister of that intention at least four weeks prior to that use.

3. At least the following information shall be provided with a notification as referred to in the first and second subsections:

a. the name and the address of the user;

b. the date on which the use is to take place;

c. the location of the use;

d. the intended use;

e. the type and quantity of building material to be used.

A notification as referred to in the first subsection shall also specify:

f. the work, and

g. the place of origin of the building material to be used.

A notification as referred to in the second subsection shall also be accompanied by:

h. an environmental declaration; and

i. a description of the isolation, control and monitoring measures and the name of the person or institution that approved these measures.

4. Our Ministers may lay down further rules with respect to the information referred to in the third subsection.

5. If the environmental declaration is not yet available for an intended use of an ICM building material at the time of the notification, it must be provided to Our Minister not later than five working days prior to the use of the relevant ICM building material.

6. The notification shall be made electronically or in writing by means of a form based on a model to be prescribed by Our Ministers. Our Ministers may lay down further rules with respect to the method of notification.

7. Our Minister shall immediately forward the notification and the accompanying information electronically to the competent authority.

Section 33

A person who uses a building material shall ensure that this building material:

- a. is not mixed with the soil;
- b. can be removed; and
- c. is removed if the work or that part of the work of which the building material forms a part can no longer be regarded as a functional use, unless removing it will lead to greater damage to the soil or the surface water than not removing it.

CHAPTER 4. EXCAVATED SOIL AND DREDGED MATERIAL

PART 1. GENERAL PROVISIONS

§ 1. General

Section 34

1. The method of establishing whether a material is to be regarded as excavated soil or dredged material shall be determined by decision of Our Ministers.

2. For the purposes of this decree, excavated soil or dredged material shall also include excavated soil or dredged material that is mixed with not more than 20 percent in weight of non-soil material.

3. For considerations of environmental protection, Our Ministers may establish a lower percentage in weight of non-soil material than referred to in the second subsection for a use of excavated soil or dredged material and may lay down further rules thereon and on permitted types of non-soil material.

Section 35

This chapter applies to the following actions:

- a. the use of excavated soil or dredged material in building constructions and road constructions, including roads, railways and noise barriers;
- b. the use of excavated soil or dredged material on or in the soil, with the exception of the soil under surface water, in raising land for business parks, housing estates, agricultural land and nature areas, with a view to improving the condition of the soil;
- c. the use of excavated soil or dredged material to cover a location that is being remediated within the meaning of Chapter IV, § 3 of the Soil Protection Act, as a cap for a landfill site as referred to in Section 8.47 first or third subsection of the Environmental Management Act or as a cap for a former landfill site with a view to the prevention of detrimental effects for the functional properties that the soil possesses for people, flora or fauna as a result of contact with the underlying material;
- d. the use of excavated soil or dredged material in raising land in hydraulic engineering constructions and for the infill of surface water with a view to flood protection, the objectives of Article 4 of the Water Framework Directive, the protection of the quality of nature and the smooth and safe movement of shipping;
- e. the use of excavated soil or dredged material in infills, including the redevelopment and stabilisation of former quarries and mines, or with a view to the maintenance and restoration of the uses referred to in subsections a to d;
- f. the spreading of dredged material from a waterway over the parcels of land adjacent to the waterway, with a view to restoring or improving the parcels adjacent to the waterway;
- g. the spreading of dredged material in surface water, with a view to the permanent fulfilment of the ecological and morphological functions of the sediment, except on or in water meadows, salt

marshes, mud flats, beaches and sand banks, with the exception of the parcels of land adjacent to waterways situated within them, with a view to restoring or improving those parcels;

h. the temporary storage of excavated soil or dredged material intended for the uses referred to in subsections a to e for a maximum of three years on or in the soil, with the exception of the soil under surface water, or for a maximum of 10 years in surface water;

i. the temporary storage of dredged material, intended for any of the uses referred to in subsections a to f for a maximum of three years on parcels of land adjacent to the waterway from which the dredged material originates.

Section 36

1. The use of excavated soil or dredged material which constitutes a hazardous substance is prohibited.
2. This chapter does not apply to the following actions:
 - a. the use of excavated soil or dredged material whose composition exceeds the intervention value, unless Section 44, second subsection or Section 45, second subsection applies;
 - b. the use on or in the soil of products which may be sold as fertilisers in accordance with rules laid down by virtue of Section 4 of the Fertiliser Act;
 - c. actions to which the Decree on Soil Remediation in Standard Situations applies, unless otherwise provided for in or by virtue of that decree.
3. The temporary relocation or removal of excavated soil or dredged material from its use is permitted without having regard to Sections 38 to 64 if it is then, without being worked, reused in that application in or close to the same place and under the same conditions.

Section 37

1. The use of excavated soil or dredged material in contravention of Sections 5, first subsection, 7, 38, 42, 44, 45, 46, 52, 59, 60, 63 and 64 of this decree is prohibited.
2. By decision of Our Ministers, rules shall be laid down regarding the method by which it shall be established that values laid down in or by virtue of the sections referred to in the first subsection have been exceeded.

§ 2. General rules for the person who uses excavated soil or dredged material

Section 38

1. A person who intends to use excavated soil or dredged material shall have the quality of the excavated soil or dredged material determined by an approved person or institution in accordance with methods laid down by decision of Our Ministers, including the emission values to the extent required on the grounds of Section 63.
2. Evidence of the quality of the excavated soil or dredged material and of compliance with the provisions of the first subsection shall be provided by an environmental declaration accompanying the relevant batch.
3. The conditions under which the environmental declaration referred to in the second subsection may be issued shall be determined by decision of Our Ministers,.
4. The excavated soil or dredged material to be used may be divided into quality categories to be determined by decision of Our Ministers.
5. By decision of Our Ministers, rules shall be laid down rules relating to the combination and splitting of batches of excavated soil or dredged material.
6. Subsections one to five shall not apply for:
 - a. natural persons, other than in the carrying on of a profession or business; and

b. persons who intend to use the excavated soil or dredged material in an agricultural undertaking, if the excavated soil or dredged material originates from a parcel of land belonging to that agricultural undertaking on which a similar crop is grown as on the parcel where the excavated soil or dredged material is to be used.

Section 39

Section 40 and § 2 of this chapter do not apply to the use of excavated soil or dredged material whose quality does not exceed background values laid down by decision of Our Ministers.

Section 40

1. The quality of the soil on or in which the excavated soil or dredged material is used shall be determined in accordance with methods laid down by decision of Our Ministers by a person or institution that has been approved by virtue of Section 9, subsection 1.

2. Evidence of the quality of the soil and that the provisions of the first subsection have been complied with shall be provided by an environmental declaration.

Section 41

By decision of Our Ministers, it shall be determined which of the parameters referred to in appendix 1 of this decree shall be measured for the application of this chapter and the provisions based upon it for the purposes of:

- a. determining the quality of excavated soil or dredged material, including the emission values for uses in as far as is required on the grounds of Section 63, and
- b. determining the quality of the soil on or in which excavated soil or dredged material is used.

Section 42

1. A person who intends using excavated soil or dredged material as referred to in Section 35 under a to i, with the exception of f, shall notify Our Minister of that intention at least five working days in advance.

2. At least the following information shall be provided with the notification of a use as referred to in Section 35 under a to e and g:

- a. the name and address of the person who intends using excavated soil or dredged material;
- b. the hazard ranking system within which it will be used;
- c. the environmental declaration for the excavated soil or dredged material to be used;
- d. the place of origin of the excavated soil or dredged material to be used;
- e. the volume of excavated soil or dredged material to be used;
- f. the location where it is to be used;
- g. in as far as it is a use by virtue of Part 2, § 2, the soil quality category;
- h. in as far as it is a use on or in the soil, with the exception of the soil under surface water, by virtue of Part 2, § 2, the soil function category.

3. The second subsection under a and c to f apply *mutatis mutandis* to the notification of the use referred to in Section 35 under h and i and the second subsection under g applies to notifications referred to in Section 35 under h. Notifications of a use referred to in Section 35 under h and i shall also state the anticipated duration of the use.

4. If the envisaged duration of the use as referred to in Section 35 under h and i is longer than six months, the final destination of the excavated soil or dredged material shall be notified within that period.

5. Our Ministers may lay down further rules with respect to the information referred to in the second subsection.

6. The notification shall be made electronically or in writing by means of a form based on a model designated by decision of Our Ministers. Our Ministers may lay down further rules with respect to the method of notification.

7. Our Minister shall immediately forward the notification and the accompanying information electronically to the competent authority.

8. The first subsection does not apply for:

- a. natural persons, other than in the performance of profession or business;
- b. a person who intends using excavated soil or dredged material in an agricultural undertaking, if the excavated soil or dredged material originates from a parcel of land belonging to that agricultural undertaking on which a similar crop is grown as on the parcel where the excavated soil or dredged material shall be used.
- c. persons intending to use excavated soil or dredged material as referred to in Section 39 in a volume of less than 50 m³.

9. A person intending to use excavated soil or dredged material as referred to in Section 39 in a volume of at least 50 m³, in derogation from the second and third subsections, need only notify the information referred to in the second subsection under a and f once.

10. The eighth subsection under c and the ninth subsection do not apply to the use of excavated soil or dredged material in the Dutch territorial sea.

11. The following users of excavated soil or dredged material shall retain the information referred to in the second subsection under a and c to f for a period of at least five years:

- a. persons who intend using excavated soil or dredged material as referred to in Section 39, with the exception of those persons referred to in the eighth subsection under a and b;
- b. persons who spread dredged material from a waterway over the parcels of land adjacent to the waterway.

Section 43

1. For the use of dredged material referred to in Section 35 under g the water quality control authority may designate spreading ‘cells’ for the surface waters under its management and determine the maximum amount of dredged material that may be spread.

2. The use of dredged material outside a spreading cell designated by virtue of the previous subsection and in excess of the specified maximum volume is prohibited.

PART 2. HAZARD RANKING SYSTEMS FOR THE USE OF EXCAVATED SOIL AND DREDGED MATERIAL

§ 1. Area-specific hazard ranking system for general application

Section 44

1. The municipal council may establish local soil use values for the use of excavated soil or dredged material on or in the soil as referred to in Section 35, under a to e and h, with the exception of the soil under surface water for a soil management area designated by it, for the soil on or in which the excavated soil or dredged material is used, as well as a percentage of non-soil material that differs from the percentage referred to in Section 34, second and third subsections up to maximum of 20 percent in weight.

2. The local soil use values may be established above the soil use values for the soil function category for industry as referred to in Section 55, second subsection and the alternative percentage of non-soil materials may be established if:

- a. the quality of the soil is determined by substances that occur throughout that soil management area as a result of diffuse contamination;
- b. those values and that percentage correspond with the quality of the soil in the soil management area; and
- c. those values do not exceed the values that are established on the basis of the hazard ranking system adopted for the purpose of establishing the need for urgent remediation as referred to in Section 37, first subsection of the Soil Protection Act.

Section 45

1. Our Minister of Transport, Public Works and Water Management or the general management of the water quality control authority may establish local soil use values for the soil under surface water on or in which the excavated soil or dredged material is used with respect to surface waters referred to in Section 3, first subsection of the Pollution of Surface Waters Act or other surface waters for the use of excavated soil or dredged material in surface water as referred to in Section 35 under a, c to e and h for a soil management area designated by him, and a percentage of non-soil material that differs from the percentage referred to in Section 34, second and third subsections, up to a maximum of 20% in weight.

2. The local soil use values may not exceed the intervention values for the use of dredged material and may not exceed the soil use values for the soil function category for industry for the use of excavated soil and the alternative percentage of non-soil materials may be adopted if the conditions referred to in Section 44, second subsection are met.

Section 46

1. Our Minister of Transport, Public Works and Water Management or the general management of the water quality control authority may establish soil use values for the quality of dredged material to be used for a soil management area designated by him, with respect to surface waters as referred to in Section 3 subsection 1 of the Pollution of Surface Waters Act or other surface waters for uses as referred to in Section 35 under g, which differ from the values that have been established for that use by virtue of Section 60, first subsection and a percentage of non-soil material that differs from the percentage referred to in Section 34, second and third subsections, up to a maximum of 20% in weight.

2. By decision of Our Ministers, it may be determined that the administrative body referred to in the first subsection may not establish higher soil use values for specified parameters than the values established by virtue of Section 60, first subsection.

3. For uses as referred to in the first subsection in the Dutch territorial sea, the administrative body referred to in the first subsection may not establish higher soil use values than the values established by virtue of Section 60, first subsection.

Section 47

A decision on the grounds of Sections 44, first subsection and 45, first subsection shall contain:

- a. one or more maps produced in accordance with protocols laid down by decision of Our Ministers and showing the boundaries of the soil management area, the quality of the soil and, for uses on or in the soil, with the exception of soil under surface water, the soil functions;
- b. the local soil use values referred to in Sections 44, first subsection and 45, first subsection;
- c. where applicable, the percentage by weight of non-soil material referred to in Section 34, third and fourth subsections;
- d. the reasons for the decision on the basis of the local soil use values and, where applicable, the percentage by weight of non-soil material in relation to the quality of the soil, the social necessity of those values and the percentage by weight of non-soil material, and a description of the

consequences of the implementation of the decision for the quality of the soil in the soil management area as determined in accordance with methods laid down by decision of Our Ministers.

Section 48

A decision on the grounds of Section 46, first subsection shall contain:

- a. one or more maps showing the boundaries of that soil management area;
- b. the soil use values and the percentage of non-soil material as referred to in Section 46, first subsection;
- c. the reasons for the decision on the basis of the soil use values and the percentage of non-soil material in relation to the consequences for the quality of the surface water and the social necessity of those values.

Section 49

Part 3.4 of the General Administrative Law Act shall apply to the preparation of the decision referred to in Sections 44, 45 and 46.

Section 50

An appeal may be made against a decision as referred to in Sections 44, 45 and 46 to the Administrative Law Division of the Council of State.

Section 51

Sections 47 to 50 shall apply *mutatis mutandis* to a decision to amend a decision as referred to in Sections 44, 45 and 46.

Section 52

1. In the case of use in a soil management area, the quality of the excavated soil or dredged material to be used shall not exceed the local soil use values referred to in Sections 44 and 45 and the soil use values referred to in Section 46.

2. Excavated soil or dredged material that complies with the local soil use values referred to in Sections 44, second subsection and 45, second subsection, may only be used in the soil management area they originate from.

3. If the excavated soil or dredged material referred to in the previous subsection exceeds the quality of the soil on or in which the excavated soil or dredged material is used, this excavated soil or dredged material may only be used in the soil management area it originates from.

4. The first to third subsections do not apply for:
- a. the use of excavated soil or dredged material by natural persons, other than in the carrying on of a profession or business;
 - b. the use of excavated soil or dredged material in an agricultural undertaking, if the excavated soil or dredged material comes from a parcel of land belonging to that agricultural undertaking on which a similar crop is grown as on the parcel where the excavated soil or dredged material is used.

Section 53

The administrative body referred to in Sections 44 to 46 shall review whether a decision referred to therein needs to be revised at least once every ten years.

§ 2. General hazard ranking system for a standard use

Section 54

This paragraph only applies if no decision as referred to in Sections 44, 45 or 46 has been taken.

Section 55

1. The municipal executive shall produce a map not later than six months after the entry into force of this Decree showing the soil function categories, these being for industry or housing, for the area within their municipality on or in which the excavated soil or dredged material shall be used.

2. Soil use values for the soil function categories referred to in the first subsection shall be established by decision of Our Ministers.

3. The criteria to be met by the map referred to in the first subsection shall be laid down by decision of Our Ministers.

4. If no map as referred to in the first subsection is produced, only excavated soil or dredged material that does not exceed the background values may be used.

5. This section does not apply to the use of excavated soil or dredged material in surface water.

Section 56

1. If the quality of the soil on or in which the excavated soil or dredged material is used complies with the background values or the soil function categories for housing or industry do not apply for this soil, only excavated soil or dredged material whose quality does not exceed the background values may be used.

2. The first subsection does not apply for:

- a. the use of excavated soil or dredged material by natural persons, otherwise than in the carrying on of a profession or business;
- b. the use of excavated soil or dredged material in an agricultural undertaking if the excavated soil or dredged material comes from a parcel of land belonging to that agricultural undertaking on which a similar crop is grown as on the parcel where the excavated soil or dredged material is to be used;
- c. the use of dredged material as referred to in Section 35 under f and i;
- d. the use of dredged material in surface water as referred to in Section 35 under g.

Section 57

1. By decision of Our Ministers, the soil shall be divided into soil quality categories and soil use values shall be established for the soil quality categories.

2. The competent authority may produce a map showing the soil quality categories referred to in the first subsection.

Section 58

1. If the competent authority has not produced a map showing the soil quality categories, a person intending to use excavated soil or dredged material shall determine the soil quality category in the manner prescribed by decision of Our Ministers. They shall use data provided by an approved person or institution.

2. The first subsection does not apply for:

- a. natural persons, otherwise than in the carrying on of a profession or business;
- b. persons who intend using excavated soil or dredged material in an agricultural undertaking if the excavated soil or dredged material comes from a parcel of land belonging to that agricultural

undertaking on which a similar crop is grown as on the parcel where the excavated soil or dredged material is to be used;

c. a person who intends using dredged material as referred to in Section 35 under f, g and i.

3. The first subsection does not apply to the use of excavated soil or dredged material as referred to in Section 35, first subsection under h for a period of less than six months.

Section 59

1. For the use of excavated soil or dredged material as referred to in Section 35 under a to e or on or in the soil, with the exception of the soil under surface water, the quality of the excavated soil or dredged material shall not exceed:

a. the soil use values for the soil function category for housing or industry; and

b. the soil use values for the soil quality categories.

2. For the use of excavated soil or dredged material on or in the soil under surface water as referred to in Section 35 under a and c to e and the use of excavated soil and dredged material on or in the soil as referred to in Section 35 under h, the quality of the excavated soil or dredged material shall not exceed the values referred to in the first subsection under b.

3. Without prejudice to the provisions of the second subsection, the quality of the excavated soil when used in surface water shall not exceed the soil use values for the soil function category for industry.

Section 60

1. For uses of dredged material as referred to in Section 35 under f, g and i, the quality of the dredged material shall not exceed the relevant soil use values laid down by decision of Our Ministers.

2. For the purpose of the first subsection, properties and lands that are separated from the waterway by a road, footpath or other construction or by a strip of land too narrow to take the dredged material shall be regarded as parcels of land adjacent to the waterway.

Section 61

Our Ministers shall review whether the values referred to in Sections 55, first subsection and 57, third subsection need to be revised and shall inform the States General of its findings at least once every ten years.

§ 3. Hazard ranking system for large-scale soil works

Section 62

This paragraph does not apply to the use of excavated soil or dredged material in the Dutch territorial sea.

Section 63

1. A use of excavated soil or dredged material as referred to in Section 35 under a and c to e with a thickness of at least 2 metres and a minimum volume of 5000 m³ does not have to comply with the requirements laid down for that use in Chapter 2, § 1 and 2 as long as:

a. the quality of the excavated soil or dredged material complies with:

i. the maximum emission values laid down by decision of Our Ministers, and

ii. in the case of use on or in the soil, with the exception of the soil under surface water, the soil use values for the soil function category for industry as referred to in Section 55, second subsection;

iii. in the case of use in surface water, the soil use values for the soil function category for industry as referred to in Section 55, second subsection or the intervention values; and
b. the relevant excavated soil or dredged material is covered by a surface layer or a layer of building materials.

2. In derogation from the provisions of the first subsection, under a, under i, in those cases specified by decision of Our Ministers the quality of the excavated soil or dredged material shall not be assessed against the maximum emission values.

3. The minimum thickness of the surface layer referred to in the first subsection under b shall be half a metre. For considerations of environmental protection, by decision of Our Ministers further rules may be laid down with respect to the thickness of the surface layer or the layer of building materials.

4. The criteria laid down in Part 2, § 1 and 2 for the use of excavated soil or dredged material shall apply *mutatis mutandis* to the application of a surface layer.

5. In derogation from the first subsection, opening lines, a layer of at least half a metre thick shall apply for the uses referred to in Section 35 under a if:

a. the use involves the construction of or changes to national, provincial and municipal roads and railways; and

b. contrary to the first subsection under b, a continuous layer of building materials is used on the excavated soil or dredged material in question, with the exception of the associated verges and banks.

6. In the case referred to in the fifth subsection, the quality of the excavated soil or dredged material in the verges or banks of national and provincial roads or railways up to a physical partition not more than 10 metres from the edge of the paved surface or the ballast bed shall comply with the soil values of the soil function category for industry.

Section 64

1. Further rules may be laid down by decision of Our Ministers for the use of excavated soil or dredged material referred to in Section 63, first and fifth subsections, to protect the quality of the surrounding soil and the groundwater or surface water.

2. Rules may be laid down by decision of Our Ministers with respect to control measures to be taken with a view to the preservation of the use as referred to in Section 63, first and fifth subsections.

CHAPTER 5. CONCLUDING AND TRANSITIONAL PROVISIONS

Section 65

1. The Building Materials (Soil and Surface Waters Protection) Decree is revoked, on the understanding that different parts of that Decree may be revoked at different times, which times shall be determined in the Decree on the entry into force of the Soil Quality Decree as referred to in Section 83, first subsection.

2. The Building Materials (Soil and Surface Water Protection) Decree shall remain applicable to an application as referred to in Section 12, second subsection of the Temporary Incentive Scheme for the Processing of Dredged Material.

Section 66

1. The Soil Management (Quality of Implementation) Decree is revoked, with the exception of Section 21, on the understanding that in that section Soil Management (Quality of Implementation) Decree shall now read: Soil Quality Decree.

2. Chapter 2 of this Decree does not apply to:
- a. an activity that commenced before the entry into force of the Soil Management (Quality of Implementation) Decree;
 - b. an activity that is carried out in the performance of a statutory duty by or on behalf of an administrative body, or
 - c. the investigation and prosecution of criminal offences.

Section 67

The Applications for Building Permits (Submission Criteria) Decree is amended as follows:

A

Section 1.2.5, subsection e of the appendix to the Applications for Building Permits (Submission Criteria) Decree shall read:

- e. a report of a survey into the condition of the soil that is based on an investigation carried out by a person or an institution authorised to do so on the basis of the Soil Quality Decree.

B

Section 3.2.6, subsection e of the appendix to the Applications for Building Permits (Submission Criteria) Decree shall read:

- e. Section 8, second subsection, under c of the Housing Act obliges municipalities to include rules in their building ordinance concerning the prevention of building on contaminated soil. Pursuant to Section 8, fourth subsection of the Housing Act these rules relate, among other things, to the carrying out of a survey into the nature and degree of contamination of the soil, the nature and scope of the survey and the structure of the survey report. The main points of the obligation were fleshed out as follows by the Association of Netherlands Municipalities in Articles 2.1.5 and 2.4.1 of the Model Building Ordinance (Mbv). The survey must consist of the results of an exploratory survey, carried out in accordance with NEN 5740, appendix B (1999 edition), which provides that for a suspect site the survey report must also contain the results of a survey carried out according to the combined Soil Survey for Environmental Permits protocol and BSB (SDU, October 1993 edition). It follows from the NEN 5740 system that prior to the exploratory study, a preliminary survey must first be carried out according to NVN 5725 (also known as the historical survey) for the purposes of the survey hypothesis and in case the site has to be subdivided. The presence of asbestos in the soil may also be investigated by linking a survey according to NEN 5707 (if the soil and excavated soil contain less than 20% rubble) or NEN 5897 (if the soil and excavated soil contain 20% or more rubble) to the preliminary survey according to NEN 5740. If the preliminary survey shows that the location is not suspect, the municipal executive may decide to grant dispensation from the requirement to carry out the exploratory survey. If the results of the exploratory survey indicate that there is soil contamination and a further survey is required for the assessment of the seriousness of the contamination, a further survey must be carried out in accordance with the Further Survey Protocol, Part 1 (SDU, 1994 edition) or the Further Survey Guidelines (SDU, 1995 edition).

The applicant for a building permit does not always have to submit a soil survey report. On the grounds of Section 8, third subsection of the Housing Act, a soil survey report is only prescribed for building works for the construction of which a regular building permit is required, with the exception of building works that by their nature and size are equivalent to a building work for the building for which no building permit is required on the grounds of Section 43 of the Housing

Act, or a case as referred to in Section 44, second subsection of that Act, and in which people are constantly or almost constantly present, so long as that building is in contact with the ground or there is a change of non-illegal use. But even then a soil survey report is not always required, since the municipal executive can still grant dispensation from it on the grounds of Article 2.1.5 of the Mbv.

If a soil survey report is required, on the grounds of paragraph 1.2.5, subsection e of this appendix the report must be based on the investigation that is carried out by a person or institution authorised to do so on the grounds of the Soil Quality Decree. This decree contains criteria with respect to the performance of activities relating to soil management. Persons and institutions that carry out activities designated by ministerial decision, including the performance of soil surveys, must be approved by the Ministers of the Environment and of Transport, Public Works and Water Management. One of the conditions for approval is possession of a certificate or accreditation. In performing the soil survey, these persons and institutions must also comply with the requirements laid down in, among other things, assessment guidelines and protocols.

If a soil survey report must be surrendered but the construction can only take place when the existing buildings have been demolished, Article 2.1.5 of the Mbv contains the rule that the soil survey must take place after demolition and before construction begins. This means that the results of a soil survey cannot always be submitted with the application for a building permit. This survey report is therefore one of the documents which, on the basis of part 3 of paragraph 1.5 of this appendix, may be surrendered after submission of the application for a building permit but not later than three weeks before commencement of the relevant construction work. The municipal executive must give their consent for this later submission. On the basis of Section 56 of the Housing Act, they may if necessary specify the later time by which the report must be submitted as a condition in the building permit.

Section 68

A

Category 28.3, section c of appendix I to the Environmental Management (Establishments and Permits) Decree shall read:

c. establishments, in as far as it involves uses of building materials, excavated soil or dredged material to which the Soil Quality Decree applies and which operate in compliance with the provisions of that decree;

Subsection f lapses, with subsection g being renumbered as f.

B

Category 28.4 of appendix I of the Environmental Management (Establishments and Permits) Decree, subsection a, under 3° shall read:

3°. Contaminated excavated soil from outside the establishment, including contaminated dredged material, with a capacity with respect to it of 10.10 m³ or more.

Section 69

The Prohibition of Landfill outside Establishments (Exemptions) Decree is amended as follows:

A

in Section 1, the designations of
national assessment guideline
maintenance material category 0
maintenance material category 1
maintenance material category 2
spreading and associated definitions
lapse.

B

Section 2 is amended as follows:

1. In the first subsection, part (b) shall read:

b. there is a use of building materials, excavated soil or dredged material as referred to in the Soil Quality Decree;

2. Subsections c, d and e lapse.

3. Subsection f shall read:

f. this shall be done in accordance with the Soil Quality Decree in a work in which MSWI bottom ash is used as a building material if it:

1. contains not more than 5.5% non-combusted fly ash,
2. is not mixed with MSWI fly ash, and
3. is stored for at least six weeks prior to use in a work, unless the MSWI bottom ash was used previously in a work as referred to in Section 1, first subsection under a of the Building Materials (Protection of Soil and Surface Waters) Decree or in a work as referred to in Section 1, first subsection of the Soil Quality Decree;

4. The second subsection shall read:

2. The first subsection, under a does not apply to the actions referred to in that subsection with hazardous substances.

5. The third subsection shall read:

3. The first subsection, under a, also does not apply to the actions with waste referred to in that subsection belonging to a category for which the prohibition in Section 1 of the Waste (Landfill Sites and Landfill Ban) Decree applies.

6. The fourth subsection lapses.

7. The fifth subsection shall read:

5. The first subsection, under b does not apply to the actions with waste referred to in that subsection belonging to a category for which the prohibition in the Waste (Landfill Sites and Landfill Ban) Decree applies, with the exception of:

- a. category 19, in as far as it concerns granulate, and the categories 20, 21 and 24;

- b. the categories 19 and 22, in as far as they constitute part of excavated soil or dredged material.

C

Section 3 lapses.

D

Section 4a lapses.

Section 70

The Waste (Landfill Sites and Landfill Ban) Decree is amended as follows:

A

Section 3 subsection 2 shall read;

- 2. The first subsection does not apply to waste in as far as it is used as a building material, excavated soil or dredged material in accordance with the Soil Quality Decree, belonging to:
 - a. category 19, in as far as it is granulate, the categories 20, 21 and 24;
 - b. the categories 19 and 22, in as far as they constitute part of excavated soil or dredged material.

B

A sentence is added to Section 11e reading:

- 3. The competent authority may, in derogation from the first and second subsections, attach the rule to a permit as referred to in Section 8.1 of the Environmental Management Act for an establishment for the storage in surface water of dredged material, not being a hazardous substance as referred to in the Environmental Management Act, that the storage is permitted for a period of not more than ten years.

Section 71

The Soil Remediation (Financial Provisions) Decree is amended as follows:

After Section 7, a section is inserted in Chapter 2 reading:

Section 7a

- 1. The amount referred to in Section 76o, first subsection, under a of the Act is € 0.45.
- 2. The maximum amount referred to in Section 76o, second subsection of the Act is € 226,890.11.
- 3. The first and second subsections have retrospective effect to 1 January 2006.

Section 72

The Environmental Taxes (Implementing) Decree is amended as follows:

Section 5, first subsection is replaced by:

- l. building materials as referred to in Section 1 of the Soil Quality Decree, for which a recognised certificate of quality, batch inspection or manufacturer's declaration has been issued in accordance with the rules laid down in or by virtue of that decree showing that they comply with the conditions referred to in Section 28, first subsection or Section 30, first subsection of that decree and which are used in a facility which has been installed in the establishment on the basis

of the permit referred to in Section 8.1, first subsection of the Environmental Management Act issued for the establishment;

m. excavated soil as referred to in Section 1 of the Soil Quality Decree, for which a recognised certificate of quality, batch inspection or manufacturer's statement has been issued in accordance with the rules laid down in or by virtue of that decree, showing that the quality of the excavated soil does not exceed the soil use value for the soil function category for industry as referred to in Section 8.1, first subsection of the Environmental Management Act and which is used in a facility that has been installed in the establishment on the basis of the permit referred to in Section 8.1, first subsection of the Environmental Management Act issued for the establishment.

Section 73

The Decree on non-notifiable soil remediation is amended as follows:

A

Section 1 lapses.

B

Section 2 is amended as follows:

In the first subsection, part b shall read:

b. If the competent authority has established with respect to a notification as referred to in Section 42 of the Soil Quality Decree that it is not a serious case of contamination.

Section 74

Part (c) of the Appendix to the Decree on Environmental Impact Reports 1994 is amended as follows:

A

In Column 2 of activity 18.3, part 1° shall read:

1°. dredged material of category B as referred to in the Soil Quality Decree, and

B

Section d in k of the Appendix to the Decree on Environmental Impact Reports 1994 is amended as follows:

In Column 2 of activity 18.3, part 1° shall read:

1°. The landfilling or storage of dredged material of category B as referred to in the Soil Quality Decree in a volume of 250,000 m³ or more.

Section 75

The right that applied before the time of the entry into force of Section 65 shall remain applicable to the retention of building materials, including excavated soil and dredged material, in a work if the building materials were used in the work in question before that time.

Section 76

The Earth Moving (Exemption) Regulation shall remain applicable if before the time of the entry into force of this decree a soil quality map was adopted by virtue of that regulation for the area on or in which the excavated soil is used for the duration of the period that the soil quality map applies, with a maximum of five years after the entry into force of this decree.

Section 77

The right that applied before the time of the entry into force of Section 65 shall remain applicable to batch inspections, recognised certificates of quality and other forms of proof that were issued by virtue of the Building Materials (Soil and Surface Waters Protection) Decree as it applied at the time of the entry into force, for the duration of the relevant declaration, but for not more than three years after the entry into force of this decree.

Section 78

The right that applied before the time of the entry into force of Section 65 shall remain applicable for a maximum of three years after that time if before that time a notification was made by virtue of Sections 11, first subsection, 18, second subsection or 21, second subsection of the Building Materials (Soil and Surface Water Protection) Decree and the use commences within six months of that time.

Section 79

1. The right that applied before the time of the entry into force of Section 65 shall remain valid if before that time or not later than six months after that time a permit was granted by virtue of Section 8.1, first subsection of the Environmental Management Act or Section 1, first or third subsection of the Pollution of Surface Waters Act for the duration of the permit but for not more than three years after that time.

2. In as far as a permit on the grounds of Section 1, first or third subsection of the Pollution of Surface Waters Act relates to an act as referred to in Section 35 under g, the relevant part of the permit shall lapse.

3. In derogation from the second subsection, the terms of a permit by which spreading 'cells' are designated shall lapse six months after the date of the entry into force of this decree.

Section 80

The Exemption Scheme for plant residues and earth tare shall continue to apply to earth tare for two years after the entry into force of this Decree.

Section 81

If the proposal for a law to amend the Pollution of Sea Water Act and some other laws, Parliamentary Documents II, 2006/07, 31 049, no. 1 submitted by Royal message of 21 May 2007, becomes law and enters into force, this decree shall enter into force for the use of excavated soil and dredged material in the Dutch territorial seas.

Section 82

Our Minister shall, in consultation with the Ministers of Agriculture, Nature and Food Quality and of Transport, Public Works and Water Management, send a report on the effectiveness and the practical effects of this decree to the States General within three years of the entry into force of this decree.

Section 83

1. This Decree shall enter into force at a time to be determined by Royal Decree, which may be set at different times for the various sections or subsections or for the use or uses as referred to in Section 35.

2. Section 36 of the Soil Protection Act shall enter into force at the same time as Section 1 enters into force.

Section 84

This Decree shall be cited as: the Soil Quality Decree.

Orders that this Decree and the accompanying explanatory memorandum shall be published in the Bulletin of Acts, Orders and Decrees.

The Hague, 22 November 2007

Beatrix

The Minister of Housing,
Spatial Planning and the Environment ,

J.M. Cramer

The State Secretary of Transport, Public Works and Water Management,
J.C. Huizinga-Heringa

The Minister of Agriculture, Nature and Food Quality,

G.Verburg

Published on 3 December 2007

The Minister of Justice

E.M.H. Hirsch Ballin

Bulletin of Acts, Orders and Decrees 2007 469

The report of the Council of State is not published on the grounds of Section 25a, subsection five in conjunction with subsection four under b of the Council of State Act because it contains solely editorial comments.

Appendix 1, as referred to in Section 28 (1) and (2) and Section 41

List of parameters for building materials, excavated soil and dredged material	
1. Metals	CAS numbers
Antimony (Sb)	7440-36-0
Arsenic (As)	7440-38-2
Barium (Ba)	7440-39-3
Beryllium (Be)	7440-41-7
Cadmium (Cd)	7440-43-9
Chrome (Cr)	7440-47-3
Cobalt (Co)	7440-48-2
Copper (Cu)	7440-50-8
Mercury (Hg)	7439-97-6
Lead (Pb)	7439-92-1
Molybdenum (Mo)	7439-98-7
Nickel (Ni)	7440-02-0
Selenite (Se)	7782-49-2
Tellurium (Te)	13494-80-9
Thallium (Tl)	7440-28-0
Tin (Sn)	7440-31-5
Vanadium (V)	7440-62-2
Silver (Ag)	7440-22-4
Zinc (Zn)	7440-66-5
2. Other inorganic substances	
Bromide	n.a.
Chloride	n.a.
Cyanide (free)	n.a.
Cyanide-complex (ph < 5)	n.a.
Cyanide-complex (ph ≥ 5)	n.a.
Fluoride	n.a.
Thiocyanates (sum)	n.a.
Sulphate	n.a.
3. Aromatic substances	
Benzene	71-43-2
Ethylbenzene	100-41-4
Toluene	108-88-3
Orthoxylene	95-47-6
Metaxylene	108-38-3
Paraxylene	106-42-3
Styrene	100-42-5
Phenol	108-95-2
Catechol	120-80-9
Resorcinol	108-46-3
Hydrochinon	123-31-9
Ortho-Cresol	95-48-7
Meta-cresol	108-39-4
Para-Cresol	106-44-5
Dodecylbenzene	123-01-3
1,2,3-trimethylbenzene	526-73-8
1,2,4-trimethylbenzene	95-63-6
1,3,5-trimethylbenzene	108-67-8

2-ethyltoluene	611-14-3
3-ethyltoluene	620-14-4
4-ethyltoluene	622-96-8
Isopropylbenzene	98-82-8
Propylbenzene	103-65-1
4. Polycyclical aromatic hydrocarbons (PAHs)	
Naphthalene	91-20-3
Phenanthrene	85-01-8
Antracene	120-12-7
Fluoranthene	206-44-0
Chrysene	218-01-9
Benzo(a)anthracene	56-55-3
Benzo(a)pyrene	50-32-8
Benzo(k)fluoranthene	207-08-9
Indeno(1,2,3cd)pyrene	193-39-5
Benzo(ghi)perylene	191-24-2
Pyrene	129-00-0
Acenaphthene	83-32-9
Benzo(b)fluoranthene	205-99-2
Benzo(j)fluoranthene	205-82-3
Dibenz(a,h)anthracene	53-70-3
9H-Fluorene	86-73-7
Acenaphthylene	208-96-8
5. Chlorohydrocarbons	
A. (volatile) chlorohydrocarbons	
Monochloroethene	75-01-4
Dichloromethane	75-09-2
1,1-dichloroethane	75-34-3
1,2-dichloroethane	107-06-2
1,1-dichloroethene	75-35-4
Cis-1,2-dichloroethene	156-59-2
Trans-1,2-dichloroethene	156-60-5
1,1-dichloropropane	78-99-9
1,2-dichloropropane	78-87-5
1,3-dichloropropane	142-28-9
Trichloromethane	67-66-3
1,1,1-trichloroethane	71-55-6
1,1,2-trichloroethane	79-00-5
Trichloroethene	79-01-6
Tetrachloromethane	56-23-5
Tetrachloroethene	127-18-4
B. Chlorobenzenes	
Monochlorobenzene	108-90-7
1,2-dichlorobenzene	95-50-1
1,3-dichlorobenzene	541-73-1
1,4-dichlorobenzene	106-46-7
1,2,3-trichlorobenzene	87-61-6
1,2,4-trichlorobenzene	120-82-1
1,3,5-trichlorobenzene	108-70-3
1,2,3,4-tetrachlorobenzene	634-66-2
1,2,3,5-tetrachlorobenzene	634-90-2

1,2,4,5-tetrachlorobenzene	95-94-3
Pentachlorobenzene	608-93-5
Hexachlorobenzene	118-74-1
C. Chlorophenols	
2-chlorophenol	95-57-8
3-chlorophenol	108-43-0
4-chlorophenol	106-48-9
2,3-dichlorophenol	576-24-9
2,4-dichlorophenol	120-83-2
2,5-dichlorophenol	583-78-8
2,6-dichlorophenol	87-65-0
3,4-dichlorophenol	95-77-2
3,5-dichlorophenol	591-35-5
2,3,4-trichlorophenol	15950-66-0
2,3,5-trichlorophenol	933-78-8
2,3,6-trichlorophenol	933-75-5
2,4,5-trichlorophenol	95-95-4
2,4,6-trichlorophenol	88-06-2
3,4,5-trichlorophenol	609-19-8
2,3,4,5-tetrachlorophenol	4901-51-3
2,3,4,6-tetrachlorophenol	58-90-2
2,3,5,6-tetrachlorophenol	935-95-5
Pentachlorophenol	87-86-5
D. Polychlorobiphenyls (PCBs)	
PCB 28	7012-37-5
PCB 52	35693-99-3
PCB 101	37680-73-2
PCB 118	31508-00-6
PCB 138	35065-28-2
PCB 153	35065-27-1
PCB 180	35065-29-3
E. Other chlorohydrocarbons	
2-chloroaniline	95-51-2
3-chloroaniline	108-42-9
4-chloroaniline	106-47-8
2,3-dichloroaniline	608-27-5
2,4-dichloroaniline	554-00-7
2,5-dichloroaniline	95-82-9
2,6-dichloroaniline	608-31-1
3,4-dichloroaniline	95-76-1
3,5-dichloroaniline	626-43-7
2,3,4-trichloroaniline	634-67-3
2,3,5-trichloroaniline	18487-39-3
2,4,5-trichloroaniline	636-30-6
2,4,6-trichloroaniline	634-93-5
3,4,5-trichloroaniline	634-91-3
2,3,4,5-tetrachloroaniline	634-83-3
2,3,5,6-tetrachloroaniline	3481-20-7
Pentachloroaniline	527-20-8
EOX	n.a..
2,3,7,8-TCDD	1746-01-6

1,2,3,7,8-PeCDD	40321-76-4
1,2,3,6,7,8-HxCDD	57653-85-7
1,2,3,7,8,9-HxCDD	19408-74-3
1,2,3,4,7,8-HxCDD	39227-28-6
1,2,3,4,6,7,8-HpCDD	35822-46-9
1,2,3,4,6,7,8,9-OCDD	3268-87-9
2,3,7,8-TCDF	51207-31-9
1,2,3,7,8-PeCDF	57117-41-6
2,3,4,7,8-PeCDF	57117-31-4
1,2,3,6,7,8-HxCDF	57117-44-9
1,2,3,7,8,9-HxCDF	72918-21-9
1,2,3,4,7,8-HxCDF	70648-26-9
2,3,4,6,7,8-HxCDF	60851-34-5
1,2,3,4,6,7,8-HpCDF	67562-39-4
1,2,3,4,7,8,9-HpCDF	55673-89-7
1,2,3,4,6,7,8,9-OCDF	39001-02-0
α -Chloronaphthalene	90-13-1
β -Chloronaphthalene	91-58-7
C ₁₀₋₁₃ -chloroalkane	85535-84-8
6. Pesticides	
A. Organochloropesticides	
Aldrin	390-00-2
Dieldrin	60-57-1
Endrin	72-20-8
Isodrin	465-73-6
Telodrin	297-78-9
Cis-chlorodane	5103-71-9
Trans-chlorodane	5103-74-2
2,4-DDT	789-02-6
4,4-DDT	50-29-3
2,4-DDE	3424-82-6
4,4-DDE	72-55-9
2,4-DDD	53-19-0
4,4-DDD	72-54-8
α -Endosulphane	959-98-8
Endosulphane sulphate	1031-07-8
Endosulphane	115-29-7
α -HCH	319-84-6
β -HCH	319-85-7
γ -HCH	58-89-9
δ -HCH	319-86-8
ϵ -HCH	6108-10-7
Heptachlorine	76-44-8
Cis-Heptachloroepoxide	280044-83-9
Trans-Heptachloroepoxide	1024-5703
Hexachlorobutadiene	87-68-3
B. Organophosphorpesticides	
Azinfos methyl	86-50-0
C. Organotin pesticides	
Tributyltin	688-73-3
Trifenylytin	892-20-6

Tributyltin cation	36643-28-4
D. Chlorophenoxy herbicides	
MCPA	94-74-6
E. Other pesticides	
Atrazine	1912-24-9
Carbaryl	63-25-2
Carbofuran	1563-66-2
Maneb	1247-38-2
4-chloor-3-methylfenol	59-50-7
4-chloor-2-methylfenol	1570-64-5
Propazine	139-40-2
Simazine	122-34-9
Terbutryn	886-50-0
Bromophos-ethyl	4824-78-6
Bromophos-methyl	2104-96-3
Chloropyriphos-ethyl	2921-88-2
Dichlorovos	62-73-7
Disulphoton	298-04-4
Fenthion	55-38-9
Malathion	121-75-5
Parathion-ethyl	56-38-2
Parathion-methyl	298-00-0
Alachlorine	15972-60-8
Chlorophenvinfos	470-90-6
Diuron	330-54-1
Isoproturon	34123-59-6
Trifluraline	1582-09-8
7. Other parameters	
Acrylonitril	107-13-1
Asbestos	n.a..
Butanol	71-36-3
Butylacetate	123-86-4
Cyclohexanon	108-94-1
Diethylene glycol	111-46-6
Ethylacetate	141-78-6
Ethylene glycol	107-21-1
Formaldehyde	50-00-0
Dimethylphthalate	131-11-3
Diethylphthalate	84-66-2
Di-isobutylphthalate	84-69-5
Dibutylphthalate	84-74-2
Butylbenzylphthalate	85-68-7
Dihexylphthalate	84-75-3
Di(2-ethylhexyl)phthalate	117-81-7
Di-n-octylphthalate	117-84-0
Isopropanol	67-63-0
Methanol	67-56-1
Methylethyl ceton	78-93-3
MTBE	1634-04-4
Mineral oil	n.a.
Branched and unbranched	n.a.

alkanes consisting of at least 5 and not more than 40 carbon atoms ⁽¹⁾	
Nutrients	n.a.
pH	n.a.
Pyridine	110-86-1
Reducing capacity	n.a.
Tetrahydrofuran	109-99-9
Tetrahydrothiophene	110-01-0
Tribromomethane	75-25-2
Volatile substance	n.a.
Nonylphenols	25154-52-3
4-para-nonylphenol	104-40-5
Octylphenols	1806-26-4
Para-tert-octylphenol	140-66-9

(1) (1) The branched and unbranched alkanes can be standardised both as individual substances and in various sub-compositions in aggregate parameters.