

elni

REVIEW

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ship dismantling

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Editorial

The main topics of this issue are the *enforcement of EU law*, and *criminal law and the environment*. Enforcement of EU law is often prescribed by the national legal framework and therefore depends strongly on national definitions of the findings of the facts. When focusing on criminal environmental law one of the main hurdles to the effectiveness results from the different national implementation practices of European Directives. In this respect, the problems also differ between the different EU Member States. This issue of elni Review provides valuable insights into selected national law frameworks:

“Environmental penalties in Italy” by Paola Brambilla focuses on the history and actual issues of criminal environmental law in Italy.

“Enforcing EU environmental law outside Europe? The case of ship dismantling” by Thomas Ormond provides a special view on EU law enforcement from an international perspective.

Armelle Gouritin and Paul De Hert critically discuss the recent developments of European environmental criminal law in their article “Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law: A new start for criminal law in the European Community?”

Topics which focus on actual EU-law issues:

The viewpoint of environmental organisations towards the setting of standards of emissions is provided in “Development of harmonised European standards for measuring emissions from construction products in CEN from the perspective of environmental organisations – Part 1” by Michael Riess and Ralf Lottes.

The article “Regulation of nanomaterials under present and future Chemicals legislation - Analysis and regulative options” by Stefanie Merenyi, Martin Führ and Kathleen Ordnung critically reviews REACH under the perspectives of nanomaterials. It also contains information on recent developments on EU level.

Other topics focus on national laws of non-EU countries:

In his article Eugene A. Wystorobets focuses on the “Principle of public participation in environmental law of the Russian Federation” and provides general insights into Russian law.

“A survey of the Vietnamese environmental legislation on water” by Michael Zschesche and Duong Thanh An focuses on Vietnamese water law and the organisational background of administrative institutions in this context.

The next issue of the *elni review* will focus on the Industrial Emissions Directive (IED). Please send contributions on this topic as well as other interesting articles to the editors by the end of June 2009.

Nicolas Below/Gerhard Roller

March 2009

elni Forum 2009

on 14th May 2009

at FUSL, Facultés universitaires Saint-Louis in
Brussels, Belgium.

***“The Directive on Industrial Emissions
and its implementation in national law -
key issues and practical experiences”***

The elni Forum 2009 will offer the opportunity to discuss implementation issues of the upcoming European Directive on Industrial Emissions (IED). European and national environmental law experts will comment on this issue.

The **Annual Meeting of the elni Association 2009** will take place before the elni Forum.

More information is available at:
www.elni.org

Special Announcement

The representative for interested parties of the ECHA Management Board and co-founder of the *Environmental Law Network International* – Marc Pallemmaerts – is now member of the ECHA Board of Appeal.

The editors wish him all the best and every success in the future!

In his place Martin Führ, also co-founder of *elni* and editor of the *elni Review* was nominated at 18 December 2008 by the Commission as a new member of the Management Board of the ECHA (European Chemicals Agency) to represent interested parties.

A survey of the Vietnamese environmental legislation on water

Michael Zschiesche and Duong Thanh An

In recent years there have been great changes in Vietnamese environmental legislation. Especially the 2005 Environmental Protection Act and the Water Law have been significantly impacted by these recent developments.

This article outlines and explains the basics of the Vietnamese water environment legislation. Since the main environmental protection and water acts are accompanied by several additional legislations such as decrees and decisions, this article focuses on the basic structure of the Vietnamese environmental legislation on water rather than the many policies of the Vietnamese government on water (Master Plans, Strategy Plans etc.), on which such legislation is founded.¹

1 Legislation and law in general

Separation of powers is not as common to the Socialist Republic of Vietnam as it is to Western democracies. Legislature, executive and judiciary are strongly interdependent. The Vietnamese National Assembly works on a part-time basis. About 500 delegates from all regions of Vietnam generally gather twice a year to discuss and adopt laws, resolutions, and programs. In recent years, the executive has been gaining power in the field of Environmental Protection at the national level and the provincial level as well, notably through the establishment of the Ministry of Natural Resources and Environment (MONRE) and Departments of Natural Resources and Environment (DONRES), respectively. By expanding and setting up environmental protection agencies (VEPA nationwide and EPAS in the provinces), the administration has been improved significantly. More and more provisions will be developed and drafted at MONRE and VEPA. Like other developing countries, the weakest part of Vietnam's environmental protection system concerns enforcement and compliance issues. The existing environmental criminal chapter in Criminal Code is difficult to enforce in practice.

1.1 "Who" issues "which" legal acts in Vietnam?

Since Vietnam established MONRE and joined the WTO in 2007, its legislation addressing environmental protection has increased. The basis of the environmental provisions is the environmental law – "The Environmental Protection Act" – first issued in 1993 and fundamentally amended in 2005. It is considered

as the basis of environmental-administrative law. Environmental provisions are formally issued by the following legal institutions:

Organ/Institution	Type of the Legislation
National Assembly	Act, Resolution
Standing Committee of the National Assembly	Ordinances, Resolutions
Government	Decrees, Resolutions
Prime Minister	Decisions, Directives
Environmental Minister	Decisions, Directives, Circulars
People's Council	Resolutions
People's Committees	Decisions, Instructions

Table 1: Legal institutions in Vietnam

Besides the formal legislation procedure all laws and other legislation such as decrees and decisions are ordered, decided, and approved by organs of the party. Almost all delegates of the National Assembly are also members of the Communist Party of Vietnam. Resolutions of the Politburo are often converted into formal legislation.

1.2 Forms of legislation in the administrative branch

Forms of legislation in Vietnam and Germany are similar to a certain extent. According to the German hierarchy of norms, only acts of parliament, which are issued by parliament and approved by the Federal President, and ordinances, which are based on authorisation by an act of the parliament, are binding for everybody. Administrative regulations are binding for the executive only. Pursuant to the system of separation of powers, administrative regulations do not have a legal effect, either on the judiciary or on the legislature, especially in terms of the effect of regulations and directives of the European Union. While EU regulations are directly applicable like German law, EU directives have to be transposed into national law.

At the top of the Vietnamese hierarchy of norms regarding water environment are the National Constitu-

¹ Decision of Prime Minister 81/2006/QĐ-TTg promulgating the National Water Resources Strategy Towards the Year 2020, 14 April 2006.

tion, the Environmental Protection Act (EPA) and the Water Resources Act (WRA). These two acts are supported by their decree on implementation. The forms of most important legislation in Vietnam regarding water environment are presented as follow:

- **National Constitution**, 1992, and its amendment in 2001.
- **Environmental Protection Act**, 1993, and its amendment in 2005.
- **Water Resources Act**, (08/1998/QH 10), 1998.
- **Government Decree** No. 82/2006/ND-CP on implementation of the 2005 Environmental Protection Act.
- **Government Decree** No. 179/1999/ND-CP on Implementation of the Water Resources Act, 30 December 1999.
- **Decision** No. 67/2000/QD-TTg of the Prime Minister on the Establishment of the National Council on Water Resources, 15 June 2000.

The number and date followed by an acronym should be considered in order to classify a particular Vietnamese legislation. Most of the provisions regarding water are decrees or decisions of the Governmental Conference, hence, of all Ministers together.

- QH National Assembly
- ND-CP Government Decree (ND = Decree, CP = Government)
- QD-TTg Decision of the Prime Minister (QD = Decision, TTg = Prime Minister)
- QD-BTNMT Decision of the Minister of Natural Resources and Environment (QD = Decision, BTNMT = Minister)

The important division is between Government Decrees (ND-CP) and Decisions of the Prime Minister (QD-TTg). While government decrees are generally binding, legislation from Decisions of the Prime Minister on downwards is binding only for the administration.

1.3 Scope and system of the legislation

A lot of legislation, mainly directives, decisions, and decrees have been issued in the field of water environment. Besides the Environmental Protection Act, which provides an umbrella regulatory framework, there is the Water Resources Act of 1998. It is considered to be a little outdated and is expected to be amended by the end of 2009. The Water Resource

No.	Name in English	Vietnamese Index	Type	No.	Name in English	Vietnamese Index	Type
01	The Environmental Protection Act of 12 December 2005 (in force since 1 July 2006)	So: 29/2005/L-CTN	Act	10	Decree on contractual assignment of agricultural land, production forest land and land with water surface for aquaculture in state-run agricultural farms and forestry farms	135/2005/ND-CP	Decree
02	Water Resources Act of 20 May 1998	08/1998/QH10	Act				
03	Decree on the Implementation of the Law on Water Resources	179/1999/ND-CP	Decree				
04	Decree on environmental protection charges for waste water	67/2003/ND-CP	Decree	11	Decree providing Detailed Regulations for Implementation of Law on Protection of the Environment	80/2006/ND-CP	Decree
05	Decree on Regulation on collecting, managing, exploiting and using of Water Resources Information	162/2003/ND-CP	Decree	12	Decree on sanctioning of administrative violations in the domain of environmental protection	81/2006/ND-CP	Decree
06	Decree on sanctioning of administrative violations in the field of environmental protection	121/2004/ND-CP	Decree	13	Decree amending and supplementing a number of articles of the Government's Decree No. 67/2003/ND-CP of 13 June, 2003, on environmental protection charges applicable to waste water (summary)	04/2007/ND-CP	Decree
07	Decree on the issuance of permits for water resource exploration, exploitation and use, or for discharge of waste water into water source	149/2004/ND-CP	Decree				
08	Decree on sanctions against administrative violations of water resources management regulations	34/2005/ND-CP	Decree	14	Decree on urban and industrial-park water drainage	88/2007/ND-CP	Decree
09	Decree on Management and protection of underwater cultural heritage	86/2005/ND-CP	Decree	15	Decree on clean water production, supply and consumption	117/2007/ND-CP	Decree

Table 2: Survey of the most important current water legislation in Vietnam)

Management Department of MONRE is in charge of making the proposal for this amendment. Since the Water Resources Act is issued by parliament, it is supplemented by many ordinances, even more administrative regulations, and plenty of decrees and decisions. For this reason it is hard to keep up to date with the general picture since provisions do not always complement one another. At the same time, some important aspects of water protection (surface water, groundwater, coastal preservation) are still not regulated by law or are regulated in the other acts.

As can be deduced from Table 2, the number of decrees in Vietnam regarding water has increased considerably since 2000. However, the number of ordinances, directives and decisions covering issues of water is scarcely much lower.²

2 Environmental legislation on water in detail

This section introduces the basic provisions of the Vietnamese environmental legislation on water, including the Environmental Protection Act, the Water Resources Act, and their implementation legislations. The Environmental Protection Act, which has been amended in 2005 and is in force since July 2006, has several additional implementation regulations.³ The Water Resources Act of 1998 has an implementation ordinance issued in 1999.⁴ The high number of additional directives, decisions and decrees addressing water illustrates the importance of this issue for Vietnam.

2.1 Water provisions of the Environmental Protection Act

The Environmental Protection Act contains many provisions relating to water resources. The most important chapter for water is chapter VII. Generally, the Act distinguishes between provisions regarding:

- protection of the marine environment
- protection of the river water environment
- protection of groundwater, lakes, ponds, canals and ditches (i.e. other water sources)⁵.

The 11 articles regarding water are divided into three sections:

Section 1: Protection of the marine environment

Art. 55 Principles for marine environmental protection

Art. 56 Conservation and rational use of marine resources

Art. 57 Control and treatment of marine environmental pollution

Art. 58 Organisation of prevention and response to marine environmental incidents

Section 2: Protection of the river water environment

Art. 59 Principles for river water environment protection

Art. 60 Control and treatment of the pollution of the water environment in river basins

Art. 61 Responsibilities of provincial People's Committees for water environment protection in river basins

Art. 62 Organisation of water environmental protection in river basins

Section 3: Protection of the environment of other water sources

Art. 63 Protection of the environment of water sources in lakes, ponds, canals and ditches

Art. 64 Protection of the environment of reservoirs used for irrigation and hydropower purpose

Art. 65 Groundwater environment protection

2.2 Environmental protection provisions of the Water Resources Act

The Water Resources Act of 1998 contains 10 sections and 75 articles. According to its preamble it provides for the management, protection, exploitation, and use of the water resource as well as the protection, combat against and overcoming the harmful effects of water (e.g. flooding and high water). Its structure is similar to the structure of German environmental legislation. However, instrumental provisions are less distinctive.

The 10 sections are:

Section 1: General provisions

Section 2: Protecting water resources

Section 3: Exploitation and use of water resources

Section 4: Preventing, combating and overcoming the consequences of floods and other harmful effects of water

Section 5: Exploitation and protection of water conservancy works

Section 6: International relations in water resources

Section 7: State management of water resources

Section 8: Specialised inspection of water resources

Section 9: Rewards and handling of violation

Section 10: Implementation provisions

While the Environmental Protection Act (as a law providing guidelines) can be accepted as mostly declaratory, a specialised law is expected to provide more definite provisions and rules. The Water Resources Act does not satisfy this expectation yet. This might be due to its early date of adoption (1998), which was prior to the amended Environmental Protection Act. A rough comparison between the Viet-

² See Section 2.3.

³ See 80/2006/ND-CP

⁴ See 179/1999/ND-CP

⁵ Chapter VII, protection of marine, river and other water source environment
section 1: protection of the marine environment
section 2: protection of river water environment
section 3: other water sources (lakes, ponds, canals, ditches, groundwater)

namese Water Resources Act and the German *Wasserhaushaltsgesetz* shows significant differences, especially regarding the legal instruments. These are:

- The principle that water bodies are to be managed according to their catchment areas.⁶
- A license system for the use of water bodies.
- Protection of sensitive areas by labelling them as water protection area.
- The system of an authorised representative for water protection.
- A regulation for the maintenance and development of water bodies.⁷
- A respective general planning regime through directions, decisions and decrees.

Like the provisions of the Environmental Protection Act, many provisions of the Vietnamese Water Resources Act are only declaratory. They state objectives, general rights and duties.

Only a few sections and articles formulate defined instruments. For example, flood prevention and prevention of other natural disasters caused by water is a focus of section 4. This section contains precise legal duties, including respective planning and development of emergency planning. However – as is common for the Vietnamese environmental law – there are rarely any sanctions for contravention.⁸

Some sections of the Water Resources Act in more detail

Section 1: General provisions

The Water Resources Act does not cover all water bodies. It applies to surface water, rainwater, groundwater and coastal waters.⁹ Not covered are groundwater and coastal waters of special areas. Mineral waters and thermal waters are separately addressed in the Law of Mineral Resources.

Art. 3 of the Water Resources Act provides 20 legal definitions for terms and expressions. This is a long list of undefined legal terms. Other than “surface water” and “underground water” terms as “permit on water resource” (No. 13), “river basin” (No. 15) and “zoning of river basin” (No. 16) are defined.

Art. 1 provides that the state is responsible for ensuring systems to monitor water bodies and events. The

polluter-pays principle is laid down in Art. 7. Pursuant to this norm organisations and individuals who exploit and use water resource have a financial duty as well as the duty to contribute manpower and budget to the protection of the water body.

Art. 18 regulates permits to discharge wastewaters into water sources.¹⁰ Discharges shall be permitted according to the capacity of the water source to receive waste water and the assurance of no further pollution of the water source and its protection.

Section 3: Exploitation and use of water resources

Art. 20 provides the principle that the use of water resources must be based on respective planning. Pursuant to the principle of fairness, the planning shall ensure access to the resources. Priority has to be given to the supply of households with drinking water.¹¹

In Art. 22 the rights of organisations and individuals to exploit and use water resources are listed. Art. 23 provides general obligations and rules for the exploitation and use of water. Amongst others it is stated that water is to be used efficiently and economically.

Art. 24 lists the cases in which no permit is required for the use of water. These include to:

- exploit and use sources of surface water and underground water of small scale for family use in living;
- exploit and use sources of surface water and underground water of small scale for the family in
 - agriculture,
 - forestry production,
 - aquaculture,
 - small industry and handicraft production,
 - hydropower generation and other purposes;
- exploit and use sources of sea water on a small scale for family use in making salt and raising marine products; and
- exploit and use rain water, surface water and surface sea water already assigned or leased according to prescriptions of law on land, the provisions of this Act and other prescriptions of law.

Art. 25 repeats the principle of Art. 20(2) and emphasises explicitly the priority of the exploitation and use of water resource for basic living purposes.

In Art. 26 to 32 are listed other water-uses of priority, including agriculture (Art. 26), aquaculture (Art. 27), industry and mining (Art. 28), hydro-electricity (Art. 29), water navigation (Art. 30) and scientific research (Art. 31).

Art. 34 provides that prospecting and exploiting groundwater always requires permission from the competent state agency except for cases stipulated in points a and b of item 2 of Art. 24. Likewise, pursuant

⁶ This is most likely going to be regulated in the new Vietnamese water law; It is provided as a basic principle in the Environmental Protection Act and is also regulated in several decrees on the management of river catchment areas.

⁷ Formally there are requirements for the use of water sources, but what is missing are use-conditions or obligations.

⁸ See section 8 and 9 of the Water Resources Act. The sections provide authorisations in cases of environmental offence. However, enforcement is insufficient.

⁹ Art. 2(1) of the Water Resources Act: The water resource as provided for in this Law comprises surface water, rain water, underground water, sea water in the territory of the Socialist Republic of Vietnam.

¹⁰ See Section 2.3 above.

¹¹ See Art. 20(2) Water Resources Act.

to Art. 34(3) permission is always required for conducting drills and geological surveys.

Art. 35 addresses situations in which the permission has been granted. The competent state agency shall issue an additional or amended permission when the exploitation and use of the water source changes. So far there is no differentiation between material and immaterial changes, as known from the German environmental administrative law. If the changed use causes damage to the water source, compensation has to be paid by the polluter. Natural compensation is not mentioned in this context.

Section 5: Exploitation and protection of water conservancy works

Like the German Federal Water Resources Act, the Vietnamese Water Resources Act has a special section on maintenance of water sources. However, similar to section 3, section 5 mainly contains general provisions and principles. For example, pursuant to Art. 48 organisations and individuals are responsible for conservancy works. More precise is Art. 48(3), which provides that the provinces carry the responsibility for conservancy works in their localities. Pursuant to Art. 49 conservancy works shall be carried out according to a plan. The “competent agencies” or “the government” are responsible for the plan.¹² Regarding maintenance and development of dykes, pursuant to Art. 51 No. 3 and 4, the government shall decide and direct the responsible ministries. The government shall also regulate the competence between the provincial governments. According to Art. 51(4) the ministries, branches and People's Committees of all levels are jointly responsible for the dyke reinforcement and protection. Art. 52 lists all cases of forbidden acts in the management, exploitation and protection of water conservancy works.

Section 7: State management of water resources

Other than the competence issues¹³, section 7 of the Water Resources Act regulates the set-up of a National Water Resource Council (Art. 63) and the Management of River Basin Planning (Art. 64). Pursuant to Art. 64 the management of river basin planning comprises the preparation and planning (Art. 64a) and the coordinated implementation (Art. 64b) of all measures regarding river basins. The agency managing the planning of the river basin is a non business agency of the Ministry of Agriculture and Rural Development (Art. 64(2))¹⁴. In the following it is stated that the agency shall act on the basis of a governmental regulation. Since MONRE was founded in 2002, the competence for this issue has shifted from the

Ministry of Agriculture and Rural Development to MONRE. The expected amendment of the Water resources Act will certainly adjust this fact legally.

2.3 Implementation decree for the Water Resources Act

The most important decree of Vietnamese water legislation is the implementation decree for the Water Resources Act (179/1999/ND-CP). It provides the Water Resources Act with several definition and implementation provisions. According to the decree, permits to discharge wastewater into water sources have to be limited in time. The time limits are from three to five years. Pursuant to Art. 5(3b), for a permit of which the use duration has expired, the agency competent to grant such permit shall decide upon its extension. Whether the permit is valid for the period between expiration and extension decision of the agency is not regulated.

In Art. 5(3c) the decree indirectly requires an examination of the permits. The norm stipulates under which circumstances the permit (i.e. the use) can be changed. For a changed use the agency has to examine whether the conditions have changed. The extent to which the examination is required is not clearly defined. This also might be regulated more precisely in the new Vietnamese Water Resources Act.

According to the decree, the use duration of a permit may be changed in one of the following cases:

- when the water source is incapable of taking in waste water
- when the water use demand is on a sharp rise, thus leading to much larger volume of waste water, but no remedial measure has been taken to overcome this situation
- when other (out of the ordinary) circumstances occur, by means of which the discharge of waste water must be restricted

Art. 5(4) regulates the withdrawal and suspension of permits for discharge of waste water into water sources. Permits can be withdrawn or suspended when:

- organisations and/or individuals that discharge waste water violate the provisions in Clause 2, Art. 19 of the Law on Water Resources
- organisations and/or individuals that discharge waste water into water sources are dissolved, transferred or declared bankrupt
- such permits have been granted ultra vires
- such permits have been left unused for 1 year for no plausible reason
- the competent state agencies deem it necessary to withdraw or suspend such permits for reasons of national defence or security, or for national or public interests

¹² The wording of Art. 49 is quite indefinite and leaves the responsibility unclear.

¹³ See Section 3 below.

¹⁴ By now this should be MONRE's task, see Section 3.1 of this article.

Some of the reasons for rejecting or cancelling permits are quite extensive and, therefore, not always in accordance with the rule of law.

The decree also regulates the payment of the fee for discharge of wastewater into water sources.¹⁵ Art. 9 regulates the granting of permits and the exploitation and use of water resources stipulated in Art. 24 of the Water Resources Act. Pursuant to this norm permits for exploitation and use of surface water shall be valid

for 20 years. Permits for exploitation and use of underground water shall be valid for 15 years.

No.	Name of the decision in English	Vietnamese Index	No.	Name of the decision in English	Vietnamese Index
01	Decision of 11 December 2006, approving the national target program on rural clean water and environmental sanitation in the 2006 - 2010 period	277/2006/QD-TTg	09	Decision of 25 August 2000 approving the National Strategy on Rural Clean Water Supply and Hygiene until the year 2020	104/2000/QD-TTg
02	Decision of 14 April 2006, approving the national strategy on water resources to 2020	81/2006/QD-TTg	10	Decision of 25 August 2000 approving the national strategy on rural clean water supply and hygiene until the year 2020	104/2000/QD-TTg
03	Decision of 4 October 2005, approving the Scheme on the establishment of the Vietnam Construction Investment Corporation for Water Supply and Drainage and Environment, which shall operate after the parent company - subsidiary company mode	242/2005/QD-TTg	11	Decision of 28 May 1996 of the Prime Minister on the functions, tasks, powers and organisational structure of the Water Resources and Irrigation Works Management Department under the Ministry of Agriculture and Rural Development	No. 354-TTg
04	Decision of 4 October 2005, approving the Scheme on the establishment of the Vietnam Construction Investment Corporation for Water Supply and Drainage and Environment, which shall operate after the parent company-sub subsidiary company model	242/2005/QD-TTg	12	Decision of 7 March 1996 of the Prime Minister to rename and assign more tasks to the Rural Clean Water and Environmental Hygiene Program Steering Committee	No. 138-TTg
05	Directive of 29 September 2005, on enhancing the assurance of inland waterway traffic order and safety	31/2005/CT-TTg	13	Decision issued on 19 September 1994, by the Prime Minister on establishing the Steering Committee for the Rural Clean Water and Environmental Sanitation Program	No. 516-TTG
06	Decision of 23 July 2002 on setting up the Managing Board of the national target program for clean water and rural environmental hygiene	99/2002/QD-TTg	14	Directive dated 29 April 1994 of the Prime Minister on ensuring clean water and rural environmental hygiene	No. 200-TTg
07	Decisions of 24 December 2001 on ratification of the overall planning for water supply in Ho Chi Minh City up to 2010 and the orientation up to 2020	1600/QD-TTg	15	Decision of the Prime Minister on the Establishment of the National Water Resources Council	67/2000/QD-TTg
08	Decision of 11 December 2000 on the policy of investment and entitlement for family households, individuals and communes taking part in the Project on the Forestry Sector and the management of headwater protective forests in Thanh Hoa	141/2000/QD-TTg			

Table 3: Decisions of the Prime Minister taken before the end of 2007 regarding water

¹⁵ See Art. 6 of the Implementation Decree.

2.4 List of administrative regulations of Vietnamese water legislation

Decisions and directives normally issued by the Prime Minister and by MONRE. Decisions and directives of the Prime Minister are more important since they apply to all ministries (for example, they also apply to issues of agriculture and construction). Since the list of decisions and directions regarding water is very long only, those which have been issued by the Prime Minister before the end of 2007 are listed in Table 3 above.

Moreover, for standards and technical rule types regarding water limits and norms are laid down in TCVN^s.¹⁶

Task	Responsibility before MONRE	Responsibility after MONRE
National Water Management	MARD	MONRE
Water Quality	MOSTE, MARD, MOH	MONRE, MOH, MARD
Land use planning	GDLA	MONRE
Environmental Monitoring regarding Groundwater and Surface Water	GDHM, MARD, MOSTE, MOI	MONRE

Table 4: Responsibilities regarding water before and after MONRE

3 Water law enforcement in Vietnam

Since 2002 responsibilities for the enforcement of water law have shifted as a result of the establishment of MONRE and DONRES. Initially, the Ministry of Agriculture and Rural Development (MARD) and sometimes the Ministry of Construction (e.g. for the construction of a sewage plant) were competent for the enforcement of water law provisions. With the restructuring at the beginning of the millennium more and more responsibilities have shifted to MONRE and its respective departments in Vietnam's provinces. Above all, new environmental provisions are issued without the older provisions always being abolished.

3.1 Competence of MONRE

MONRE was founded by a decision of parliament on 5 August 2002 (Resolution No. 02/2002/QH11). It incorporates the former General Department of Land Administration, the General Department of Hydro and Meteorology, the National Environment Agency of the Ministry of Science, Technology and Environment, the Vietnam Department of Geology and Minerals. A department of Water Resources Management from the

Department of Water Resources and Dyke Works Management was also incorporated, which had been under the administration of the Agriculture and Rural Development (MARD).

Table 4 lists the responsibilities regarding water which have been shifted by foundation of MONRE.¹⁷ It shows that the establishment of MONRE concentrated the responsibilities regarding water. Meanwhile, MONRE is, amongst other things, also responsible for issues regarding access and supply of clean water and the coordination of the National Water Resources Council. The latter was previously coordinated by MARD.¹⁸

Now the water department has been upgraded to a **Water Resource Management Agency**¹⁹. It is now an independent unit of organisation under the roof of MONRE. It is on one level with VEPA, the Vietnam Agency of Geology and Minerals and the Agency of Mapping and Surveying, being the fourth independent corporation. Consequently, water is the only natural resource with an independent agency under MONRE.

The most important operational unit of organisation under MONRE is **VEPA**. Within a few years it grew from 60 employees to over 200 employees by the end of 2007. VEPA had the following tasks regarding environmental protection in general and the protection of water environment in particular:²⁰

- conducting surveys, statistics and assessment of the impacts on environment by exploitation and use of natural resources, and environment of river basins and coastal zones;
- developing, providing guidance for and the transferring of models for integrated management and environmental protection of river basins and coastal zones;
- assuming the key responsibility and coordinating with other organisations and agencies in researching and applying scientific advancements, training and information and experience sharing, and enhancing awareness in the environmental science and management of river basins and coastal zones;

¹⁶ Abbreviated of Directorate for Standards and Quality in Vietnam, see Directorate for Standards and Quality, 8, Hoang Quoc Viet Street, Hanoi: +84 4 791 16 33, Fax: +84 4 791 15 95, E-mail: htqt@tcvn.gov.vn www.tcvn.gov.vn

¹⁷ See Truong Thi Quynh Trang, Water Resources Management in Vietnam, Workshop on the Water in mainland southeast Asia, Siem Reap, Cambodia, Nov-Dec. 2005, page 3-4.

¹⁸ See Art. 3 of the Decision of Prime Minister on the Establishment of the National Water Resources Council, 5 June 2000 (67/2000/QD-TTg).

¹⁹ See <http://www.dworm.gov.vn/en/>

²⁰ See www.nea.gov.vn

- guiding the formulation of the strategy for integrated management of coastal zones at the provincial level;
- participating in granting permits/licenses, inspecting, examining and supervising the compliance with rules and regulations on environmental protection and trans-boundary environmental matters in river basins and coastal zones; and
- organising and coordinating the performance of environmental protection tasks within prevention and overcoming environmental incidents on rivers and at sea, especially oil leakages.

3.2 Environmental departments - DONRES

DONRES are formally the most important institutions for the enforcement of Vietnamese environmental law. By the Decision 45/2003/QĐ-TTg of MONRE and of the Ministry of Internal Affairs, environmental departments (DONRES) have been set up in the 64 provinces of Vietnam since 2003. The DONRES follow the structure of MONRE. Like MONRE they have been outsourced from the former departments of science, technology and environment and the number of employees is growing. They vary in their level of equipment and expertise. In addition to the DONRES respective agencies have been set up since the last year. HEPA (Ho Chi Minh Environmental Protection Agency) of HCMC has already existed for several years. It provides important services for the environmental monitoring and the enforcement of legislation. The DONRES have been given a lot of responsibility and competence through the Vietnamese Environmental Protection Act and its implementation decrees.

List of acronyms

DONRE	Department of Natural Resources and Environment
EPA	Environmental Protection Act
EU	European Union
GDHM	General Department of Hydrology and Meteorology
GDLA	General Department of Land Administration
HCMC	Ho Chi Minh City
HEPA	Ho Chi Minh Environmental Protection Agency
MARD	Ministry of Agriculture and Rural Development
MOC	Ministry of Construction
MOI	Ministry of Industry
MOH	Ministry of Health
MOIT	Ministry of Industry and Trade
MONRE	Ministry of Natural Resources and Environment
MOST	Ministry of Science, Technology
MRC	Mekong River Commission
NWRC	National Water Resources Council
TCVN	Directorate for Standards and Quality
V	Decree
VEPA	Vietnam Environmental Protection Agency
VNMC	Vietnam National Mekong Committee
WRA	Water Resources Act

The Öko-Institut (Institut für angewandte Ökologie - Institute for Applied Ecology, a registered non-profit-association) was founded in 1977. Its founding was closely connected to the conflict over the building of the nuclear power plant in Wyhl (on the Rhine near the city of Freiburg, the seat of the Institute). The objective of the Institute was and is environmental research independent of government and industry, for the benefit of society. The results of our research are made available of the public.

The institute's mission is to analyse and evaluate current and future environmental problems, to point out risks, and to develop and implement problem-solving strategies and measures. In doing so, the Öko-Institut follows the guiding principle of sustainable development.

The institute's activities are organized in Divisions - Chemistry, Energy & Climate Protection, Genetic Engineering, Sustainable Products & Material Flows, Nuclear Engineering & Plant Safety, and Environmental Law.

The Environmental Law Division of the Öko-Institut:

The Environmental Law Division covers a broad spectrum of environmental law elaborating scientific studies for public and private clients, consulting governments and public authorities, participating in law drafting processes and mediating stakeholder dialogues. Lawyers of the Division work on international, EU and national environmental law, concentrating on waste management, emission control, energy and climate protection, nuclear, aviation and planning law.

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The University of Applied Sciences in Bingen was founded in 1897. It is a practiceorientated academic institution and runs courses in electrical engineering, computer science for engineering, mechanical engineering, business management for engineering, process engineering, biotechnology, agriculture, international agricultural trade and in environmental engineering.

The *Institute for Environmental Studies and Applied Research* (I.E.S.A.R.) was founded in 2003 as an integrated institution of the University of Applied Sciences of Bingen. I.E.S.A.R. carries out applied research projects and advisory services mainly in the areas of environmental law and economy, environmental management and international cooperation for development at the University of Applied Sciences and presents itself as an interdisciplinary institution.

The Institute fulfils its assignments particularly by:

- Undertaking projects in developing countries
- Realization of seminars in the areas of environment and development
- Research for European Institutions
- Advisory service for companies and know-how-transfer

Main areas of research:

- **European environmental policy**
 - Research on implementation of European law
 - Effectiveness of legal and economic instruments
 - European governance
- **Environmental advice in developing countries**
 - Advice for legislation and institution development
 - Know-how-transfer
- **Companies and environment**
 - Environmental management
 - Risk management

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The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.

The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.

The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of *homo oeconomicus institutionalis*, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover

- Product policy/REACH
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conservation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- Self responsibility

sofia is working on behalf of the

- VolkswagenStiftung
- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Nature Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

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elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and co-operation worldwide. Since then, elni has grown to a network of about 350 individuals and organisations from all over the world.

Since 2005 elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

The Coordinating Bureau was originally set up at and financed by Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit research institute.

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focusing on European and international environmental law as well as recent developments in the EU Member States. It is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt). The Coordinating Bureau is currently hosted by the University of Bingen. elni encourages its members to submit articles to the Review in order to support and further the exchange and sharing of experiences with other members.

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researchers, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in

the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

- Access to justice in Environmental Matters and the Role of NGOs, de Sadeleer/Roller/Dross, Europa Law Publishing, 2005.
- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant, 2002.
- Voluntary Agreements – The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London, 1998.
- Environmental Impact Assessment – European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd., London, 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann/Dyssli (eds.), Cameron May Ltd., London, 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebbers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
- Environmentally Sound Waste Management? Current Legal Situation and Practical Experience in Europe, Sander/Küppers (eds.), P. Lang, 1993.
- Licensing Procedures for Industrial Plants and the Influence of EC Directives, Gebbers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilimowsky/Roller, P. Lang, 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/Roller (eds.), P. Lang, 1991.

Elni Website: elni.org

On the elni website www.elni.org one finds news of the network and an index of articles. It also indicates elni activities and informs about new publications. Internship possibilities are also published online.