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Body	District Court of North Holland
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Jurisdictions	Environmental law
Special features	First instance - multiple
Content indication	

see also: ECLI:NL:RBNHO:4341 and ECLI:NL:RBNHO:4343

Provincial Executive allowed to grant permits for biomass power plant Diemen

The Board of the Provincial Executive of North Holland (GS) was allowed to grant Vattenfall an environmental permit and nature permit for the construction and commissioning of a biomass power plant (BMC) in Diemen. This is apparent from three judgments of the District Court of the District Court of Noord-Holland.

Background

Vattenfall wants to build and commission a BMC within the existing facility on the Overdiemerweg in Diemen. There are now two gas-fired power stations and an auxiliary heat plant on the plot. In order to be able to build and use the BMC, Vattenfall has applied for an environmental and nature permit. These permits were granted by GS on September 9, 2019 and April 10, 2020.

Various parties, including the Cooperative Mobilization for the Environment and the Association for the Preservation of Nature Monuments in the Netherlands (claimants) object to the granted permits and argue that GS wrongly granted the permits. Plaintiffs are concerned about the effect of the BMC on the environment and living environment. They fear, among other things, higher emissions of harmful substances, including nitrogen.

Judgment court

According to the court, the BMC meets the requirements set for this and GS was therefore able to grant the permits. Contrary to what the plaintiffs argue, the court rules that the BMC cannot be regarded as a waste incineration plant. The wood pallets used as fuel by the BMC are not classified as waste, because they are clean wood that has not been chemically treated. An environmental impact report was therefore not necessary.

The court also ruled that with the arrival of the BMC there will be no higher emissions of harmful substances than is permitted by law. According to the court, whether the BMC will lead to higher nitrogen emissions than the current power station is irrelevant to the assessment. What is relevant is the

question whether nitrogen emissions from the BMC will increase compared to the license granted for the current plant. But according to the court, that is not the case. Because there are no higher emissions of harmful substances such as nitrogen and particulate matter, the court does not agree with the claimants that the arrival of the BMC entails such risks to public health that the living and living environment deteriorates unacceptably.

The plaintiffs argued that the CO2 emissions from burning wood have consequences for global warming, among other things. However, according to the court, this is not relevant to the question of whether the permits could be granted, because this does not concern specific consequences for the (immediate) environment of the BMC. The court also ruled that the political-administrative choice for biomass, the question whether biomass is a suitable transition fuel and the question whether the climate objectives can be achieved with the use of biomass, are not aspects that can be considered by GS when granting the permit. involved. The court cannot therefore include these aspects in its assessment.

Locations

Rechtspraak.nl
OGR-Updates.nl 2021-0136
JOM 2021/271
Environmental permit in practice 2021/8517
JM 2021/104 with annotation by Meulen, T. van der, Geense, S.
JAF 2021/9

Pronunciation

NORTH HOLLAND COURT

Seating location Haarlem

Administrative law

case numbers: HAA 19/4813 and HAA 19/4816 and HAA 19/4925

decision of the multiple chamber of 7 June 2021 in the cases between

1. Cooperative Mobilization for the Environment UAte Nijmegen

(Agent: JG Vollenbroek) and others, all in Diemen,

(Agents: M. Oude Breuil and Drs. JG Vollenbroek).

2. [claimant 2] , at [place of residence] ,

(Agent: B. Bernard),

3. [claimant 3] and [claimant 4] [place of residence] ,

together plaintiffs

in

the provincial executive of Noord-Holland, defendant

(Agent: RT de Grunt, Ing PE van Houten, B. Abma and A. Pet Msc).

Participating in the proceedings as a third party: Vattenfall Power Generation Netherlands BV, Diemen, license holder,

(Agent: mr. MM Kaajan).

Also participating in the proceedings: the council of the municipality of Diemen, in Diemen

(Agent: A. Pet Msc).

Process sequence

By decision of 9 September 2019 (the contested decision), the defendant granted an environmental permit to a third party for the realization of a biomass power station on the Overdiemerweg 35 plot in Diemen.

Plaintiffs appealed against the contested decision.

Defendant has filed a statement of defence.

The third party has responded to the appeals.

The hearing took place on 1 February 2021. The Cooperative Mobilization for the Environment UA (hereinafter: MOB) and others are represented by Drs. JG Vollenbroek. Mr. [name 1], mr. [name 2] and mr. [name 3] have also appeared. [claimant 2] (hereinafter: [claimant 2]) is represented by its authorized representative. [claimant 3] and [claimant 4] (hereinafter: [claimant 3] and [claimant 4]) appeared in person. Defendant was represented by its aforementioned attorneys. Drs. [name 4] (project manager), drs. [name 5] (specialist environment and permits), mr. [name 6] (employment lawyer), assisted by the aforementioned authorized representative (hereafter: Vattenfall) appeared. Also present was [name 7] on behalf of RoyalHaskoningDHV.

The council of the municipality of Diemen is represented by its authorized representative.

Considerations

Introduction

1.1 Vattenfall wants to build and commission a biomass power plant (hereinafter: BMC) within the existing facility on the Overdiemerweg 35 plot in Diemen. Vattenfall already operates two gas-fired power stations (DM33 and DM 34) and an auxiliary heat plant (HWC), consisting of five boilers, on the plot. For the realization and commissioning of the BMC, Vattenfall has applied for an environmental permit that relates to changing the existing layout. The change concerns the construction and operation of a biomass boiler on wood pellets with a maximum output power of 120 Megawatt thermal (MWth) that will be in operation for a maximum of 8000 hours per year.

1.2 The application relates to the construction of a structure, the use of land or structures in violation of a zoning plan and the alteration of an establishment, as referred to in Article 2.1, first paragraph, preamble and under a, c and e, respectively, of the General Provisions Environmental Law Act (Wabo).

1.3 In the contested decision, the defendant granted Vattenfall the requested environmental permit. By decision of 11 July 2019, the council of the municipality of Diemen issued a statement of no objections (hereinafter: DNO).

1.4 In an application dated 25 August 2020, Vattenfall asked the defendant for an environmental permit for changing the facility. The change entails a change in operational management when the BMC will be commissioned, whereby the annual NOÿ and NHÿ loads of DM 33 and DM 34, the HWC and the BMC can be reduced. By decision of 20 October 2020, the defendant granted the requested environmental permit.

In addition, provision 3.7 of the contested decision was repealed and a provision attached to the license in which the annual loads are determined for the individual installations, applicable from the moment the BMC was put into operation.

Crisis and Recovery Act

2. Pursuant to Article 1.1, first paragraph, preamble and under a, read in conjunction with category 1, under 1.1, of Appendix I, of the Crisis and Recovery Act, Section 2 of Chapter 1 of this Act applies to these proceedings. .

receptiveness

3.1 Vattenfall has raised the admissibility of the appeal of [claimant 2] as well as the appeal of [claimant 3] and [claimant 4], raising the question whether they can be regarded as interested parties in the contested decision.

3.2 In the judgment of 4 May 20211, the Administrative Jurisdiction Division of the Council of State, in view of the judgment of the Court of Justice of the European Union of 14 January 20212, considered the following. Contrary to what is stipulated in Article 8:1 of the Awb, the judgment of the Court of Appeal means that a non-interested party who has put forward an opinion on a draft decision on the basis of a statutory provision in the field of environmental law, Article 9(3) of the [Aerhus] Convention cannot be relied upon as not being an interested party as referred to in Article 1:2, first paragraph, of the Awb, if he subsequently lodges an appeal against the decision". The Division has further considered that this requires adjustment by the legislator and "As long as there is no such amendment to the law, it is for the administrative court who is the competent court to judge these decisions to provide a solution. . A person who is not an interested party in a decision within the meaning of Article 1:2, first paragraph, of the Awb, but who has submitted an opinion against the draft decision on the basis of the option given to him under national environmental law, will appeal. cannot be objected to that he is not an interested party."

3.3 The court establishes that [claimant 2] as well as [claimant 3] and [claimant 4] have both submitted views against the draft decision. Because, pursuant to Article 3.12, fifth paragraph, of the Wabo, everyone has the opportunity to present an opinion on a draft decision, the appeals lodged by [claimant 2] as well as [claimant 3] and [claimant 4] fall under Article 9 , paragraph 3, of the Convention. Their actions are therefore admissible.

3.4 An opinion against the draft decision has also been submitted on behalf of the persons named on the list accompanying the notice of appeal from MOB and others. The appeal of MOB and others, therefore also insofar as these others are concerned, is therefore also admissible.

Incorrect Disclosure

4.1.1 MOB and others take the position that, contrary to what was stated in the notification of the draft decision, the draft decision and the accompanying documents were not available for inspection in the Noord Hollands Archief. As a result, stakeholders may be disadvantaged.

4.1.2 In the opinion of the court, the defendant has sufficiently substantiated that the draft decision and the accompanying documents have been made available digitally to everyone at the Noord-Hollands Archief location, and that the documents will be stored there, after making an agreement to that effect and could be viewed under supervision if desired. With reference to the decision of the Division of 31 January 20183, the court further considers that Article 3:11 of the Awb does not oblige the draft decision and the accompanying documents to be made available for inspection in paper form at physical visiting addresses. The argument fails.

Insufficient documents made available for inspection

4.2.1 MOB and others further argue that the EIA assessment memorandum of May 2018 and the electronic annual environmental reports were wrongly not made available for inspection at the same time as the draft decision.

4.2.2 Pursuant to Section 3:11(1) of the Awb, the administrative authority makes the draft of the decision to be taken, together with the related documents that are reasonably necessary for an assessment of the draft, available for inspection. It is not in dispute between the parties that the EIA assessment memorandum is a document as referred to above and that it was not made available for inspection with the draft decision. The decision was therefore reached in violation of the provisions of Article 3:11 of the Awb. Unlike MOB and others, the court is of the opinion that the defect can be overcome by applying Article 6:22 of the Awb now that the claimants were still able to take cognizance of this document by sending it to them by the defendant and the existence of the document for Others

interested parties could have been known during the draft decision being made available for public inspection, now that the memorandum is referred to in the draft. The District Court finds support for its judgment in the decisions of the Division of 19 March 2008 and 11 June 20084.

The court also agrees with the defendant that an electronic annual environmental report is not a document as referred to in Article 3:11 of the Awb. An environmental annual report provides an outline of the state of affairs with regard to the environmental impact and the environmental measures taken in the previous calendar year. It is not apparent that, due to the lack of electronic annual environmental reports, those involved were unable or insufficiently able to assess whether the requested and licensed activities could have significant adverse effects on the environment. The argument therefore fails.

No possibility to give an oral opinion

4.3.1 MOB and others also state that, contrary to Article 3:15 of the Awb, no opportunity was given to express an opinion orally.

4.3.2 The notification of the draft decision provides an opportunity to submit an oral opinion. To be given the opportunity to do so, you can use the contact form. The fact that reference has been made to the contact form does not exclude the possibility that if a person concerned reports in another way to submit an oral opinion, he will also be given the opportunity to do so. The argument fails.

Jurisdiction DNO

5.1 MOB and others further argue that it is not the Municipal Executive but the Council that is authorized to prepare the draft DNO and to deal with the opinions presented against it. The act was contrary to the provisions of Article 3:11 of the Wabo. The fact that the council has made the final decision does not alter this.

In addition, the North Sea Canal Area Environmental Agency has made the draft of the DNO available for inspection, and methods of inspection also had to be submitted to this Environmental Department. However, on the basis of the joint regulation, the Council does not have the option of granting the North Sea Canal Area Environmental Service a mandate to do so. This authority is vested in the municipal executive only.

5.2 In the opinion of the court, the defendant and Vattenfall have correctly read the board of mayor and aldermen of the municipality of Diemen in the grounds of appeal of MOB and others as a board and not the defendant, as stated by MOB and others at the hearing. The reference by MOB and others in this regard in the notice of appeal to the “Process overview VVGB Biomassacentrale NUON Diemen” also shows the correctness of that reading. The file does not show the correctness of the statement of MOB and others at the hearing that the draft decision was prepared by the defendant and the plaintiffs have not demonstrated any further evidence. The court therefore disregards that assertion.

Respondent also rightly points out that the Municipal Executive is authorized by virtue of Article 160, first paragraph, under b, of the Municipalities Act to prepare and implement decisions of the Council, unless the mayor has been authorized by or pursuant to the law. charged with this. That is not the case. After preparation by the Municipal Executive, the competent authority, the council of the municipality of Diemen, has adopted the draft decision to issue a DNO and the final decision to issue a DNO. Furthermore, the defendant is the competent authority for the environmental permit. The DNO issued by the Council is attached to the draft decision and has been made available for inspection at the same time as that draft decision.

Defendant has mandated actions regarding the deposit for inspection to the director of the environmental service. Contrary to what MOB and others state, there are no procedural defects mentioned by them in the preparation of the DNO and the environmental permit. The argument fails.

EIA obligation: category C22.1

6.1 Category 22.1 of part C of the appendix to the Environmental Impact Assessment Decree (EIA Decree) designates the establishment, modification or expansion of an industrial installation intended for the production of electricity, steam and hot water.

In column 2 of this category, the following are mentioned as cases in which the activity relates to an installation with a capacity of 300 MWth or more.

6.2 According to MOB and others, an EIA should have been drawn up because category C22.1 of the annex to the EIA Decree requires this. It is important here that the threshold value mentioned in the second column for this category applies to the entire establishment and not just to the requested activity.

6.3 With the defendant, with reference to, among other things, the Explanatory Memorandum to the EIA Decree,

the court is of the opinion that when determining the EIA (assessment) obligation, the activities already realized must be disregarded and that the requested activity itself must meet the threshold value. In this case, no EIA requirement under category C22.1 applies, because an increase of 120 Mwth does not exceed the threshold value of 300 Mwth. The argument fails.

EIA obligation: category C 18.4

7.1 Category 18.4 of part C of the appendix to the EIA Decree has designated the establishment, modification or extension of an installation intended for the incineration or chemical treatment of non-hazardous waste as an activity.

In column 2 of this category, cases are mentioned in which the activity relates to a capacity of more than 100 tons per day.

Pursuant to Article 2, first paragraph, preamble and under f of Directive 2008/98/EC (the Waste Framework Directive), this Directive does not apply to faeces, if not covered by paragraph 2, point b), straw and other natural, non-hazardous material directly from agriculture or forestry that is used in agriculture, forestry or for the production of energy from that biomass by processes or methods which are harmless to the environment and which do not endanger human health bring.

Category 19 12 of the European List of Waste, included as appendix 5 to the European List of Waste Regulations, relates to waste from mechanical waste processing not elsewhere specified (eg sorting, crushing, compaction, palletising).

Category 19 12 07c refers to wood that does not contain any hazardous substances within the aforementioned category.

On the basis of Article 1.1, first paragraph, preamble of the Environmental Management Activities Decree (Activities Decree), in this Decree and the provisions based on it, biomass is understood to mean:

a. products consisting of vegetable agricultural or forestry material that can be used as a fuel to exploit its energetic content;

(..).

7.2 MOB and others argue that an environmental impact report (hereinafter: EIA) should have been drawn up because the BMC can be regarded as a waste incineration plant as referred to in category 18.4 of part C of the annex to the EIA Decree. hazardous waste. Wood pellets are classified as waste listed in category 19 12 07c of the European Waste List. The wood pellets consist of compressed waste wood. They can only be used as fuel. The wood pellets are therefore a waste material. MOB and others refer to the decision of the Division of 22 February 20176 to substantiate their position. Because the installation also has a capacity of more than 100 tons per day, an EIA requirement applies.

7.3 In the decision-making process, the respondent took the position that the wood pellets cannot be regarded as waste since they fall within the definition of biomass in Article 1.1 of the Activities Decree and must be regarded as a by-product as referred to in Article 5 of the Waste Framework Directive. At the hearing, the defendant primarily took the position that the Waste Framework Directive does not apply because Article 2, opening words and under f of the Waste Framework Directive applies to wood pellets.

7.4 The court considers that in category 19 12 07c of the European Waste List, the palletising of wood that does not contain hazardous substances is classified as waste. The Waste Framework Directive therefore applies in principle to wood pellets. Article 2 of the

However, the Waste Framework Directive provides exclusions from the scope of this directive.

In the opinion of the court, untreated primary wood and untreated wood belong to “other natural, non-hazardous forestry material” as referred to in Article 2, first paragraph, preamble and under f, of the Waste Framework Directive. Such wood can be qualified as clean wood. Defendant and Vattenfall have made it sufficiently plausible that the wood to be burned in the BMC, unlike the wood pellets referred to in the MOB and other judgments cited, is clean and has therefore not been chemically treated and that it is only compressed for the purpose of further processing thereof. Because in the opinion of the District Court wood pellets for this reason fall within the provisions of Article 2, first paragraph, preamble and under f of the Waste Framework Directive, the Waste Framework Directive does not apply. So there is no waste. The argument therefore fails.

7.5 In view of the foregoing, MOB and others cannot be followed in their assertion that a waste incineration plant or a waste co-incineration plant is involved. Contrary to what they state, Article 5.19 of the Activities Decree and the Activities Regulation therefore do not apply to the BMC with regard to monitoring.

Mer rating: flaws

8.1. MOB and others argue that the EIA assessment is flawed. Respondent has only tested whether the establishment will be able to comply with the applicable rules. According to established case law, however, this question cannot be equated with the question whether significant adverse effects on the environment can occur that necessitate the preparation of an EIA. There is therefore insufficient justification that no significant adverse effects on the environment can occur.

8.2 Pursuant to Article 7.2, first paragraph, under b of the Environmental Management Act (Wm) in conjunction with Article 2.1, second paragraph, of the EIA Decree and in view of the threshold value of categories 22.1 and 22.6 of part D of the appendix to the Decision EIA, an EIA must be made if there are significant adverse effects for the environment on relevant criteria under which the activities are undertaken. For this purpose, on the basis of Article 7.17, paragraph 3, of the Wm, the stated circumstances must be taken into account, as described in Annex III to Directive 2011/92/EU7. Annex III to that Directive lists the following criteria: the characteristics of the projects, the location of the projects and the characteristics of the potential impact.

8.3 Unlike MOB and others and with the defendant and Vattenfall, the court is of the opinion that

In the EIA assessment decision, the defendant has not limited itself to the question of whether the project can comply with the applicable rules, but that the other criteria referred to above have also been assessed on the basis of the notification memorandum. For example, the defendant has also taken into account the size and location of the project as well as the cumulation of the construction and commissioning of the BMC with other projects. Furthermore, the defendant assessed the use of natural resources, the production of waste, pollution and nuisance and the risk of accidents. The argument fails.

Infringement procedure

9.1 With reference to the infringement procedure that the European Commission started on 7 March 2019 with regard to the Dutch transposition of Article 11 of the EIA Directive, MOB and others have asked the court to rule that an EIA must be drawn up or the handling of the appeal should be retained.

9.2 With reference to what has been considered above with regard to (the lack of the obligation to) draw up an EIA, the court sees no reason to grant the first request. The court also sees no reason to grant the request for detention at this point

it is unclear what exactly the formal notice procedure refers to and it is unclear whether the infringement procedure will be continued after the administrative phase has been completed. Because it has thus not been established that there has been an incorrect implementation, the defendant rightly assumed the applicable implementation legislation and the court sees no reason to adjourn the appeal.

Mer rating: Inadequate - I

10.1 MOB and others further argue that the EIA assessment note of 9 May 2018 that
The application is based on incorrect figures and does not form a good basis for the DNO, the present environmental permit and the nature permit granted to Vattenfall. The deposition calculations on which the EIA assessment decision is based are based on incorrect data such as the expired PAS and the associated Aerius model.
Furthermore, the nature test of 9 May 2018 as well as the nitrogen deposition study of 3 May 2018 are inadequate. These could not be used as the basis for the EIA assessment decision.
The nitrogen deposition study of 22 May 2019 is also not adequate now that the Aerius model used for calculations has been decommissioned. Furthermore, it is based on incorrect numbers. For example, the maximum number of operating hours of the HWC, which is assumed in the study, has been reduced to 5,600, while the reduction has not been included in the regulations. Also, the requested limitation of DM34 with regard to kilogram/year nitrogen oxide (NOÿ) and kilogram/year ammonia (NHÿ) has not been included in the permit. The electronic annual environmental reports also show that the emission data for NOÿ and NHÿ used for DM33 and DM34 are incorrect.

Furthermore, also in view of what has been requested, the calculation is based on an incorrect number of operating hours and a maximum of 120 failure hours/year has not been calculated. Despite the licensed emissions of sulfur dioxide (SOÿ), hydrogen fluoride (HF) and hydrogen chloride (HCl), the depositions of SOÿ, HF and HCl are not included in the nitrogen deposition calculations. The cadmium deposition has not been tested at all. There is an enormous latent scope for nitrogen in the applicable permits, which was wrongly not included in the EIA assessment decision. Furthermore, the increase in COÿ emissions has been overlooked in the EIA assessment memorandum. The EIA assessment is based on 3 to 4 trucks per day, while 25 are licensed.

Furthermore, aspects such as choice of location and change of fuel were not addressed in the EIA assessment, nor was the cumulative effect of the BMC with other companies in the area assessed. In view of the foregoing, a full EIA should have been made.

10.2 The court allows the statement of MOB and others with regard to the nature test of 9 May 2018 and the nitrogen deposition study of 3 May 2018 are not discussed in substance now that the environmental permit is not based on these documents, but on the nature test and the nitrogen deposition study that were carried out in 2019. It has not been argued or shown that the 2019 nature assessment still provides grounds for the opinion that an EIA should have been drawn up. Furthermore, the nature permit granted to Vattenfall is not based on the AERIUS model applicable at the time of the nitrogen deposition study of 22 May 2019, but on the version of the AERIUS_Calculator applicable at the time of the decision-making and on the Policy Rule for internal and external balancing Noord-Holland. The statements made by MOB and others about the nitrogen investigation from 2019 therefore offer no grounds for the opinion that an EIA should have been drawn up.

In view of the fact that the requested limitation of DM34 with regard to NOÿ and NHÿ is not included in the contested decision, the court sees no grounds for the conclusion that an EIA should be drawn up. Notwithstanding the fact that the requested restriction has now been granted, a nature permit has been granted to Vattenfall on the basis of the data used in the nitrogen study, which regulates that NOÿ and NHÿ may no longer be used from DM34, together with DM33, the HWC and the BMC. emitted than was assumed in the nitrogen deposition study.

The court does not follow that the emission data used for DM33 and DM 34 are incorrect because they do not correspond with the data from the electronic annual report, now that the EIA assessment is based on the licensed emissions and not on the

actual emissions as in the electronic annual report.

Contrary to what MOB and others state, the reduced maximum number of operating hours is laid down in regulation 1.4 of the environmental permit. The argument in this regard therefore fails. The fact that the legal possibility to use 120 interruption hours per year has not been taken into account does not constitute an omission and does not mean that an EIA must be drawn up. After all, the interference emissions must remain within the maximum NOÿ and NHÿ emissions to be caused by the business units on the basis of the permits.

The report 'Deposition of acidifying substances and heavy metals Vattenfall Diemen' of 15 November 2019, drawn up by Vattenfall in response to views of MOB, shows that the BMC also emits the acidifying substances SOÿ, HCl and HF. However, the circumstance that the depositions of SOÿ, HF and HCl have not been included in the nitrogen deposition calculations does not lead to the conclusion that no EIA was drawn up incorrectly. Vattenfall's reduction (with a nature permit) of the annual NOÿ and NHÿ load for the existing installations has sufficiently demonstrated that, as far as acidification is concerned, on balance there will be no increase in deposition in Natura 2000 areas. Furthermore, the defendant has sufficiently substantiated that the cadmium deposition has indeed been tested in the report “Review of the effect of Substances of Very Concern for Biomass Boiler Diemen”. It follows from the report that the maximum permissible risk (MPR) is not exceeded anywhere in the environment and that the MPR is amply complied with. Insofar as MOB and others argue that the MPR for fluoride (in this case HF), the court does not follow them in this regard since fluoride does not appear on the list of ZZS for which a value (MTR) is included in Appendix 13 to the Activities Regulation.

The court further considers that the defendant has sufficiently substantiated that because no definitive choice had yet been made in the notification memorandum for the supply of biomass by truck, it was assumed that the supply would be both by truck and by ship. In the contested decision, the choice for delivery exclusively by truck had been made, as a result of which the number of trucks per day was recalculated. Even now that MOB and others have not put forward any grounds against this recalculation, the court sees no reason not to follow this recalculation, which amounts to the licensed 25 trucks per day. The argument fails.

Mer rating: Inadequate - II

Dioxins and Furans

11.1 MOB and others state that no emission of dioxins and furans has been requested, that the EIA assessment was also based on zero emissions, but that a load of 140 mg/year was subsequently permitted in the permit.

11.2 The court agrees with the defendant that not emissions but activities are applied for and that these are standardized by regulations that are attached to the permit or by provisions of the Activities Decree directly applicable to the establishment. There is therefore no question of licensing a load of 140 mg/year. The court also considers that the regulations do not include a limit value for the emission of dioxins and furans because the BMC falls under the scope of the Activities Decree. In the opinion of the court, the defendant has sufficiently substantiated that for the time being he has seen no reason to attach a customized regulation to the license with regard to dioxins and furans. The reason for this is that it is stated in both the EIA notification memorandum and in the application that it can be considered impossible that the flue gases contain dioxins and furans. In addition, the biomass contains a very low concentration of chlorinated components and complete combustion takes place, whereby possible traces of dioxins and furans are captured by the addition of activated carbon.

Pursuant to the Activities Decree, an emission limit value of 0.1 ng TEQ/Nmÿ applies to the emission of dioxins and furans if the exemption limit of 20 mg TEQ/year is exceeded. The one-off check prescribed in regulation 3.3 is included to verify that the exemption limit of 20 TEQ/year is not exceeded and to confirm that the emission of dioxins and furans can actually be regarded as negligible in practice.

are considered. The argument of MOB and others does not succeed.

Kwik

12.1 MOB and others argue that there is a discrepancy with regard to mercury emissions between the EIA assessment procedure, which assumes a mercury emission of 1 microgram/Nm³, and the contested decision, which includes a value of 2 microgram/Nm³ in the permit regulations.

12.2 The court sees no grounds for annulment of the contested decision in the alleged discrepancy. The court thus follows the defendant's argument that, unlike in the contested decision, indicative values were used in the context of the EIA assessment procedure.
Furthermore, the value included in the contested decision does not lead to the conclusion that the conclusion of the EIA assessment decision cannot be followed and that an EIA should have been drawn up. The reason for this is that, as also stated by the defendant, the MPR limit value for mercury is 50 ng/m³ with an annual average background concentration of 3 ng/m³ and that the BMC with a maximum contribution of 0.02 ng/m³ to the MPR value meets.
Furthermore, the value licensed for mercury is lower than the value of 5 micrograms/Nm³ included for mercury in the Activities Decree.

Revision permit procedure

13.1 MOB and others argue that a change permit would not suffice, but that
The defendant should have required Vattenfall to apply for an overhaul permit. The reason for this is that the noise standards for the entire establishment change as a result of the change permit. Also in the circumstance that DM33 makes use of the ammonia storage of DM 34, MOB and others find reason to require an overhaul permit.

13.2 With reference to (among other things) the decision of the Division of 14 January 20158 , the court considers that the competent authority has discretion in deciding whether or not to apply Article 2.6, first paragraph, of the Wabo (the so-called revision permit). due. Legislative history9 shows that the importance of a clear license file in particular may be a reason to request a revision licence. In the opinion of the court, the defendant has not seen any reason to require Vattenfall to apply for an overhaul permit in the circumstance that the change permit includes noise standards that apply to the entire facility. After all, this circumstance does not mean that an obscure license file would arise if the change permit was granted. The argument fails.

Incorrect coordination of Wnb and Wabo

14.1 MOB and others argue that the permit under the Wnb and the present permit
differ from each other in terms of NOÿ loads. The Noÿ loads included in the environmental permit lead to unauthorized nitrogen deposition on Natura 2000 areas.
In order to obtain a Wnb permit, these loads must be reduced. These differences indicate insufficient care in the coordination and coordination between the (future)
Wnb permit and the environmental permit.

14.2 In the opinion of the court, the defendant has sufficiently substantiated that coordination between the two permits takes place and that this does not in itself require that the annual loads of NOÿ in the environmental permit and the Wnb permit are equal. The reason for this is that the environmental permit is primarily based on emission concentrations and the nature permit is primarily based on (annual) loads), both of which may not be exceeded. Nevertheless, by the decision contested here, the annual NO freight of installation DM33 was reduced and, by decision of 19 October 2020, the annual NOÿ and NHÿ freights of the installations DM33, DM34, HWC and BMC were reduced with effect from the moment of commissioning BMC. The argument therefore fails.

Licensed assets unclear

15. The court does not agree with the MOB and others in their argument that the license regulations wrongly do not stipulate that the licensed capacity is 120 MW thermal. The defendant has provided sufficient reasons for this that it is superfluous to include the power in the regulations now that it follows from the documents underlying the application and which are part of the environmental permit that a maximum output power of 120 MWth has been requested and licensed and that with this output power corresponds to an input power of 130.4 MWth.

No ban on delivery by ship in permit

16. The court sees no reason to follow MOB and others in their assertion that the licensing regulations should exclude delivery by ship, since the defendant and Vattenfall have explained sufficiently that the application does not relate to delivery by ship, but only to delivery by truck.

Dust explosion hazard

17.1 MOB and others argue that there are no regulations in the environmental permit included with regard to dust explosion hazard. After all, when wood pellets are stored, high concentrations of carbon monoxide (CO) and carbon dioxide (COÿ) can arise, causing the CO concentration to rise to explosive values.

17.2 Defendant indicates that he does not comply with any regulations with regard to the risk of dust explosion environmental permit because the Labor Inspectorate is the supervisory authority for this on the basis of the Working Conditions Act and the Working Conditions Decree (and directly effective ATEX guidelines derived from them).

Referring to the application and investigations of ISMA explosion safety consultancy of 17 October 2018 (Annex K1 to the contested decision) and Peutz bv of 17 December 2018 (Annex K2 to the contested decision), Vattenfall states that the risk of explosion as a result of design choices made is minimal and that in the unlikely event that an explosion occurs, this will not cause damage to adjacent buildings or installations (within the facility).

17.3 The court considers that not MOB and others, but the Security Region against the draft decision have put forward a point of view. Defendant and Vattenfall responded to this view and the Security Region did not appeal against the contested decision. Leaving aside the fact that MOB and others have now sufficed on appeal with a repetition of the view submitted by the Security Region, the court finds that the defendant and Vattenfall have sufficiently substantiated why no regulations (can) be imposed on this point. The argument fails.

Pellets acceptance conditions

18.1 The claimants argue that acceptance conditions for wood pellets should have been included in the permit regulations, in order to ensure that the wood pellets do not contain harmful substances.

18.2 In the opinion of the court, the defendant did not see any reason to include acceptance conditions in the regulations. It is sufficiently clear from the application and the environmental permit granted that only wood pellets consisting of forest residues are used in the BMC. Together with the defendant, the court considers that the emission requirements and standards applicable to the BMC, as well as the obligations to monitor the emissions, do not require a front-end inspection, all the less now that the SDE+ conditions must also be met to obtain subsidy.

Best available techniques

19.1 MOB and others argue that information about oven layout and flue gas cleaning is not wrongly missing. It follows from case law of the Division10 that it must be clearly indicated which components the flue gas cleaning consists of and how it is carried out. Now that things are unclear, it is not possible to check whether the best available techniques are being complied with.

19.2 The court has established that the exact layout of the flue gas cleaning is not yet known; Vattenfall has indicated that this will only be announced after the tender procedure to be followed has been completed. Nevertheless, unlike MOB and others, the court agrees with the defendant that the application and accompanying documents make it sufficiently clear which cleaning techniques are used. It is also important that Vattenfall has provided insight into the essential components of flue gas cleaning in the application. This makes it possible to check whether the specified emission requirements will be met and the present situation is not comparable with that in the judgment quoted by MOB and others. The argument of MOB and others about the lack of clarity therefore fails. They have not put forward any further grounds why the defendant's position - based on the report “BBT-test biomass boiler Nuon Diemen”11 - that the BMC complies with BAT is incorrect. The court sees no grounds for doubting the defendant's position.

Sound

20.1 MOB and others argue that because the noise standards for the entire establishment were changed in the contested decision, it must be established that the BAT for the noise aspect is applied throughout the establishment. Now that it has only been tested whether the changes are in accordance with BAT, it is not possible to check whether BAT is applied for the noise aspect for the entire establishment and the contested decision qualifies for annulment.

20.2 Defendant argues that the maximum noise levels (LAmax) of the establishment will not change as a result of the change and that therefore the applicable permit will not change in this regard, the relevant provision will continue to apply to the establishment. The assessment of the cumulative noise exposure of the establishment – that is, of both existing and currently licensed activities – shows that the limit values within the zone are also met after changes have been made.

A requirement has been included in the license granted for the long-term average assessment level (LAr,LT) to guarantee this. According to the respondent, there is no reason for a further BAT test of the existing activities because they do not change. By installing silencers on the ventilation facilities of the receiving bunker and the boiler installation (including chimney) and on the ventilation facilities of the separator and the grinder, the currently requested and licensed activities also comply with the BAT, according to the defendant.

The court sees no grounds for a different opinion. The argument of MOB and others does not succeed.

CO-emissie

21.1 MOB and others state that in regulation 3.1 for CO a standard of 100 mg/Nm³ as target value is included. This is in conflict with the Industrial Emissions Directive (RIE) because this directive makes a limit value for CO, among other things, mandatory in Article 14(1)(a). MOB and others propose to include the BAT standard of 30 mg/Nm³ in the permit in accordance with table 5.19 of the Activities Decree.

21.2 The court agrees with the defendant that it follows from the third paragraph of article 14 of the RIE that the BAT conclusions form the reference for determining permit conditions. Furthermore, the BAT conclusions of the BREF Large Comburtion Plants (LCP) applicable here do not include emission levels associated with the best available techniques for CO, but only indicative values that lie between 30 - 160 mg/Nm³. Now that the permit for CO is subject to a standard that falls within this scope, MOB and others' argument succeeds

not. The court has left the alternative proposed by MOB and others out of discussion for that reason.

NH-emission measurement

22.1 MOB and others believe that provision 3.1 of the contested permit should be amended in the sense that the continuous measurement of NHÿ is maintained even after the one-year period. The reason for this is that NHÿ is a ZZS.

22.2 The defendant rightly points out that the monitoring obligation is derived from BAT conclusion 4 of the BREF LCP. Note 7 to this conclusion states that if it is demonstrated that the emission levels are sufficiently stable, a minimum monitoring frequency of once a year is possible. The defendant argues that the fact that NHÿ is a ZZS does not alter this. In the opinion of the court, MOB and others have not substantiated why defendant

cannot be followed therein.

Fluoride

23.1 MOB and others argue that there is wrongly no standard for fluoride in the environmental permit Hospitalized. This should have been done from the point of view of the protection of natural areas. The emission and deposition of fluoride should have been tested and, if necessary, a lower emission standard should have been included.

23.2 In the opinion of the court, the protection of Natura 2000 areas does not form part of the environmental permit before you. This is what the nature permit granted to Vattenfall for the operation of the BMC. In the opinion of the court, the defendant further rightly points out that because the Activities Decree provides an emission limit value for HF of 1 mg/Nm³, which standard corresponds to the emission level associated with BBT Duct Sorbent Injection (DSI), the permit does not contain any emission limit value is included. The argument of MOB and others does not succeed.

Regulation 3.3 **12**

24.1 MOB and others argue that the formulation of regulation 3.3 does not lead to a good estimate of the annual load of dioxins and furans. Most dioxins and furans are released when the installation is lit and fired. Measurements should take place at these times.

Regulation 3.3 should be adapted accordingly.

24.2 Defendant argues that the BMC is continuously in process and that the process is occasionally stopped for maintenance. Start-up and shutdown procedures are therefore not part of the regular emission pattern. An emission measurement at only these start and stop times would not provide a representative picture of normal operating conditions and regular emissions.

Furthermore, the start-up of the installation is done with natural gas. It can be started in 20 minutes, regardless of whether it is a cold, warm or hot start. No biomass is used during start-up. There will then only be emissions of NOÿ, CO and COÿ. The complete flue gas cleaning is operational before the installation switches to biomass. The gas burners are then automatically switched off.

24.3 In the opinion of the court, the defendant has sufficiently substantiated that the start-up and shutdown of the BMC is done with natural gas and that emissions of dioxins and furans are excluded. MOB and others cannot therefore be followed in their statement that measurements of the emission of dioxins and furans should be carried out precisely during start-up and shutdown. The argument fails.

Regulation 3.4 **13**

25.1 MOB and others argue that regulation 3.4 erroneously does not provide that after one year of operation a study is carried out into reduction of the emission values. 's letter

23 May 2019 from Vattenfall, in which it was offered to conduct research into lowering the emission limit values after one year of operations, does give rise to such an obligation. MOB and others further state that Vattenfall should investigate annually whether the emission limit values can be lowered.

25.2 The court sees no grounds for following MOB and others with the defendant. Regulation 3.4 is compatible with said letter. Furthermore, the court is of the opinion that there is no ground for the opinion that an annual obligation to investigate the reduction of the emission values should be attached to the permit as a requirement. On the basis of the E-PTR rules, Vattenvall is already obliged to report annually on the actual emissions achieved. The competent authority may, if this information gives cause to do so, ex officio adjust the permit with a view to protecting the environment. The argument therefore fails.

Regulation 3.7 **14 :** *Insufficient emission controls in existing installations*

26.1 MOB and others argue that Regulation 3.7 erroneously states that only the necessary reduction of NOÿ of DM33 is included. The reduction of the NOÿ and NHÿ loads for DM34 should also have been included in the regulations. It appears from the supplement to the application of 23 May 2019 that the reduction at DM34 is also part of this procedure. Not including emission standards for DM34 does not ensure that the total emissions remain within the standards.

26.2 The court agrees with the defendant that the reduction in the annual freight NOÿ of DM34 is not part of the present procedure, now that the “supplementary application for an environmental permit for a biomass power plant” of 23 May 2019 states that a separate application will be made for DM34 and that (only) the changes relating to DM33 and the HWC boilers have been requested. 1 to 5 in the current application. The court further considers that a change permit was granted to Vattenfall by decision of 19 October 2020 whereby the annual NOÿ and NHÿ loads of the installations DM33, DM34, HWC and BMC were reduced, applicable from the moment the BMC is in operation. Regulation 3.7, which was attacked here by the MOB and others, was repealed by that decision and replaced by a new regulation that provides for the aforementioned reduction of the annual loads, including that of DM34. The court sees this as grounds for leaving the ground of appeal of MOB and others in this matter out of discussion.

Regulation 3.7: incorrectly formulated conditionally

27.1 MOB and others argue that the NOÿ annual load limit in regulation 3.7 not conditionally but should have been formulated in general so that the emission limitation does not depend on whether or not the BMC is in operation.

27.2 In the opinion of the court, the defendant has sufficiently substantiated that the reduction in the NOÿ annual load of DM33 is related to the operation of the BMC. Because the BMC will produce part of the heat, the NOÿ emissions of DM33 can be reduced. The reduction of NOÿ emissions from DM33 provides that the NOÿ emissions from BMC, DM33 and DM34 and the HWC together will not lead to an increase in nitrogen on Natura 2000 sites. If and to the extent that MOB and others argue that the NOÿ emissions of DM33 must be reduced for other reasons, so viewed separately from the new development, the court considers this to be outside the scope of these proceedings. The argument fails.

Regulations for combustion and combustion burners

28.1 In order to reduce the emissions to air and/or water during other than normal operating conditions, according to MOB and others, start-up and combustion burners are needed that should have been prescribed. Because these are not prescribed, their use is not assured.

[claimant 3] and [claimant 4] argue that emissions are too high during the start-up and shutdown of the BMC. In addition, it takes one and a half to three hours before the SCR is heated up and can be deployed and therefore the environmental permit contains insufficient guarantees with regard to emissions during the start-up and shutdown of the BMC.

28.2 Defendant argues that start-up and combustion burners form part of the licensed application. Vattenfall has pointed out that this follows from paragraph 4.2.1.2 of the application, viewed in combination with paragraph 1.6 of the letter of 23 May 2019. Respondent further argues that in the situation that Vattenfall does not provide the BMC with start-up and firing burners acted in violation of the permit granted, against which the defendant will take enforcement action. It further follows from the aforesaid addition to the application that the start-up time can be reduced to 20 minutes.

28.3 In the opinion of the court, the defendant, partly explained in more detail by Vattenfall, has sufficiently substantiated that the use of start-up and combustion burners is assured, even without imposing a specific provision to that effect. The argument of MOB and others does not succeed.

Environmental management system/ environmental care system

29.1 MOB and others argue that the license regulations wrongly do not include an environmental management system/environmental care system, while the conduct of an environmental management system is prescribed according to the BAT conclusions of the BREF LCP.

29.2 In the opinion of the court, the defendant and Vattenfall, with reference to the report “BBT test Nuon Diemen biomass boiler”15 adequately explained that Vattenfall operates an environmental care system that, according to the certification, meets the requirements to be set for it. In accordance with regulation 1.1 of the present environmental permit, this report forms part of this environmental permit. Under these circumstances, the court is of the opinion that a specific provision prescribing an environmental management system is not required. The argument fails.

Declaration of no reservations

30. MOB and others argue that a number of planning-related circumstances were wrongly not included in the granting of the DNO.

Public health

31.1 First of all, they argue that, in the context of good spatial planning, it must be examined whether a plan or project entails such risks to public health that the living and living environment deteriorates unacceptably as a result. In this case, not all risks of the emissions of ZZS, COÿ, NOÿ, HCl, SOÿ, HF and particulate matter on public health and the living environment are entirely clear, which should have been taken into account when granting the DNO. GGD Amsterdam has indicated that the current calculations cannot properly assess the health effects of the emissions from the BMC and that new distribution calculations must be performed to map the effect of emissions on all future homes. In addition, any increase in particulate matter emissions is undesirable because it can harm the health of local residents.

31.2 With reference to what has been considered above and below with regard to the emission of the aforementioned substances, the court agrees with the defendant that the documents underlying the application and the DNO do not show that the plan has such risks to public health that the living and living environment will deteriorate unacceptably as a result. Vattenfall has also rightly pointed out in this regard that MOB and others cannot represent the interests of owners and residents of future homes yet to be built.

Feasibility

32.1 MOB and others argue that because it is not certain that the Wnb permit can be granted, the council of the municipality of Diemen has not taken sufficient account of the feasibility of the project.

32.2 The court agrees with the defendant that the council of the municipality of Diemen has taken sufficient account of the question of the feasibility of the plan with the defendant's statement that it intends to grant the requested Wnb permit. The argument of MOB and others does not succeed.

Area Protection

33.1 MOB and others further state that quality was not taken into account when issuing the DNO of the natural areas in the area, even though this is a spatially relevant aspect. The substances emitted by the BMC can have a negative effect on the living environment and the quality of nature in Diemen and should have been included in the granting of the DNO.

33.2 The court agrees with the defendant that the protection of Natura 2000 areas is provided for in the Wnb. In the court's opinion, the Nature Assessment16 also does not show any significant effects on other nature reserves. In addition to the foregoing, the court also agrees with the defendant that, viewed in the light of the decision-making process and the reports on which it is based, MOB and others have also insufficiently substantiated the potentially negative effect of substances to be emitted by the BMC. The ground of appeal fails.

COÿ

34.1 MOB and others further argue that the spatial relevance of the COÿ aspect is incorrect has not been included in the granting of the DNO. The BMC produces more COÿ emissions per unit of generated energy than a coal-fired power station. The large emissions of COÿ have negative effects on the environment. Burning wood pellets increases the atmospheric concentration of COÿ, accelerating global warming.

34.2 The court agrees with the defendant that the consequences of the COÿ emissions as a result of burning wood, ie global warming and the increase in the atmospheric concentration of COÿ, are not spatially relevant. A direct and specific effect on the municipality of Diemen and its residents as a result of the COÿ emissions has also not been stated. They therefore do not concern interests that should have been taken into account in the decision-making process about the DNO. The documents to which MOB and others refer in this regard rather relate to the global consequences of COÿ emissions on the climate and not to the specific consequences of the commissioning of the BMC on the (immediate) environment of the facility.

Conclusion DNO

35. In view of what has been considered above, the court does not follow MOB and others in their position as expressed under 30.

Increase in COÿ in violation of the Paris Climate Agreement, the Treaty on the Functioning of the European Union and the Climate Law

36.1 Plaintiffs argue that burning wood in the BMC will lead to an increase in COÿ emissions that should be considered contrary to the Paris Climate Agreement, the Treaty on the Functioning of the European Union and the Climate Law.

36.2 In the opinion of the court, the Paris Climate Agreement imposes obligations on the contracting parties, from which third parties cannot directly derive rights. It is, as follows from the Urgenda judgment of the Supreme Court17, up to the State to determine which measures

will be taken to achieve the climate goals agreed in the Paris Climate Agreement. In the Netherlands, “The government is convinced that the use of biomass now and towards 2030 and 2050 is necessary to make our economy more sustainable and to achieve the climate challenge”.18 The respondent further stated, referring to the content of the memo “Translation strategic Biomass Vision 2030 into climate tables”19, the answers to questions about the wood oven in Diemen of 21 May 201920 and the answers to questions about the (co-)firing of biomass in power stations of 4 June 201921, sufficiently substantiated that biomass is Based on international agreements, this is seen as a form of renewable energy because the source of energy (biomass) can grow again and that the COÿ released by the combustion is seen in this context as COÿ neutral.

In the opinion of the court, the political-administrative choice for biomass, the question whether biomass is indeed a suitable transition fuel and the question whether the climate objectives can be achieved with the use of biomass are not aspects that the defendant can consider when granting the environmental permit. be involved and can be reviewed by the court.

Because the COÿ emissions released as a result of the commissioning of the BMC are seen as COÿ neutral in the context of the Paris Climate Agreement, the plaintiffs' argument does not succeed. With reference to the foregoing considerations, the court allows the statements of [claimant 3] and [claimant 4] with regard to the calculation of COÿ emissions, the definition of biomass with reference to RED I and RED II and the In relation to whether or not only the use of wood residues as an energy source, the carbon debt and, in that regard, the regrowth time of forests, as well as the statement about COÿ capture and storage, are not discussed further. This also applies to the argument of [claimant 2] in which, with reference to various investigations, articles, an open letter from experts to the province of Noord-Holland and a letter from ten GGDs to the Minister of Economic Affairs and Climate, it states that it cannot be found in the choice of biomass as an energy source.

Air quality damage living and living environment and health

37.1 As a result of the commissioning of the BMC, [claimant 3] and [claimant 4] fear a further deterioration of the air quality, as a result of which their living and living climate will be further affected. They argue, with reference to the judgment of the Court of Justice of 26 June 201922, that in the studies on which the environmental permit is based, when determining the consequences for air quality due to the BMC, average calculation values were wrongly assumed. In their view, this means that it cannot be stated that the applicable immission and emission standards are amply complied with.

[claimant 2] is also seriously concerned about the increase in air pollution and the adverse consequences for her health and that of her family as a result of the increase in COÿ as a result of the BMC.

37.2 Defendant argues that the European Air Quality Directive 2008/50/EC has been implemented in the Dutch legislation; the air quality requirements and obligations are included in the Environmental Management Act and the rules regarding measuring, calculating and assessing air quality are included in the Air Quality Assessment Regulations. The consequences for the air quality of the BMC have been tested against these laws and regulations. The application is based (among other things) on the air quality study biomass boiler Diemen23 (hereinafter: the air quality study). In the contested decision, the defendant stated with regard to NOÿ that the dispersion calculations included in the air quality study show that the maximum annual average contribution of Vattenfall Diemen for NOÿ is a maximum of 4.96 g/m³, which means that the annual average concentration (background concentration and source contribution) is a maximum of 21.53 g/m³, which means that the maximum annual average concentration of 40 ÿg/m³ is more than met. There are also a maximum of 3 exceedances of the hourly average limit value for NOÿ, where the maximum number of permitted exceedances per year is 18. The air quality study also shows that the limit value for PMÿÿ (Particulate Matter; particulate matter with a size of up to 10

micrometers) due to the BMC is not exceeded. The study also shows that the contribution from the BMC to the PMÿÿ concentration already present in the air is very small; the same conclusion can then be drawn for PMÿ,ÿ (particulate matter with a size of up to 2.5 micrometers; PM2.5 is part of the PM10 fraction). The report also shows that the already existing (background) level of air quality complies with the applicable legal regulations and that this will also be the case once the BMC has been commissioned.

37.3 The court considers that Dutch air quality legislation is based on European Directive 2008/50/EC. By judgment of 13 May 202024, the Division considered that this directive has been correctly implemented in the Dutch legal system. The court sees no reason to doubt the air quality investigation. It follows from this that it is not plausible that the living and living climate at the location of the homes and the health situation of [claimant 3] and [claimant 4] as well as [claimant 2] will be disproportionately affected as a result of the commissioning of the BMC. Unlike [claimant 3] and [claimant 4], the court is also of the opinion that the judgment cited by them is not applicable here. This judgment relates to the way in which an exceedance at a sampling point must be calculated, whereby an averaging between sampling points may not take place. Since it follows from the air quality investigation that no such averaging has been applied here, there is no question of a situation as referred to in the judgment cited.

Permit for an indefinite period

38.1 [claimant 3] and [claimant 4] take the position that the environmental permit was wrongly granted for an indefinite period. After all, the BMC will be fired on wood pellets for a maximum period of 12 years.

38.2 Defendant states that it has decided on the application as submitted to it. The application is not limited to 12 years. That Vattenfall, in the covenant concluded with the province of Noord-Holland and various municipalities, has expressed the ambition to use the BMC for 12 years, making use of a subsidy from the government, as a base-load power station and then only as a peak-load power station to be used during colder periods. does not mean that the defendant should have refused the requested environmental permit for that reason or should have required Vattenfall to limit the application to a validity period of 12 years, now that the application has been assessed as submitted and there is no reason to refuse it as requested.

Lack of balancing of interests

39.1 [claimant 2] doubts whether the interests involved and the effects of the intended environmentally hazardous activity have been adequately mapped out and whether a balancing of interests has therefore actually been made. To this end, it is important that the effect on air quality is completely unknown and that insufficient weight is given to the interests of individual citizens. The contested decision also does not show the objections and concerns of the municipal administrative bodies concerned about the arrival of the BMC. Referring to various studies, articles, an open letter from experts to the province of Noord-Holland and a letter from ten GGDs to the Minister of Economic Affairs and Climate, [claimant 2] argues that the discussion about the choice of biomass as an energy source is not involved in the deliberation. According to [claimant 2], insufficient research has therefore been carried out into the harmful effects that the arrival of the contested BMC has on the inhabitants of Diemen and the region, the surrounding nature and the environment, especially in the field of health. It is highly questionable whether all health effects have been fully mapped out, all the more so because the effect on air quality is completely unclear. Because the residents of Diemen, including [claimant 2], were not informed in good time about the potential dangers, the contested decision constitutes a violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 7 of the Charter of Fundamental Rights of the European Union (EU Charter).

39.2 With reference to all that has been considered above, [plaintiff 2]'s argument does not succeed. The
The court refers in particular to legal considerations 36.2 and 37.3, which discuss the political/administrative choice for the use of biomass as an energy source and the air quality in connection with the living and living climate and health. In view of what has been considered in this judgment about the consequences of air emissions for the living and living climate and the health of [claimant 2], there is no question of a violation of Article 8 of the ECHR and Article 7 of the EU Charter.

Insufficient information and measurement obligation

40.1 [claimant 2] states that there is no reliable information available about the quantity and type emissions and their impact on the environment. For that reason, the contested decision was not taken with due care. [claimant 2] states that it must be ensured that the BMC is equipped with measuring equipment with which the situation can be viewed on a monthly basis

40.2 In the opinion of the court, the defendant has sufficiently
substantiated that and which measures are applied to prevent or limit emissions to air as much as possible. r The court sees no grounds for doubting the documents on which the defendant relied in the contested decision in the mere assertion of [claimant 2] that no reliable information is available. The defendant has expressed in the contested decision that and in what manner monitoring of air emissions is taking place or will take place. Reference was made either to the monitoring of various emissions via the Activities Decree, or to the regulation(s) attached to the environmental permit that provide for monitoring. In the further unsubstantiated statement of [claimant 2] that monitoring should take place on a monthly basis, the court sees no reason not to follow the defendant in the monitoring frequencies chosen by him or to rule that he should have looked further into whether or not (in the case of customized or further provision to be attached to the environmental permit) should have deviated from the monitoring obligations regulated in the Activities Decree.

41. In view of the foregoing, the appeals of MOB and others, [claimant 3] and [claimant 4], as well as the appeal of [claimant 2] are unfounded.

42.1 Because the court found the defect established in legal consideration 4.2.2 under the application of Article 6:22 of the Awb, the court orders the defendant to pay the costs incurred by MOB and others. The court sets these costs on the basis of the Administrative Costs Decree for legal aid provided by a third party professionally at € 1068 (1 point for submitting the notice of appeal, 1 point for appearing at the hearing, with a value per point of € 534 and a weighting factor 1).

42.2 In the appeals of [claimant 3] and [claimant 4] as well as [claimant 2] there is no reason for a court order for costs.

Decision

The court:

- declares the appeals unfounded; orders the
- defendant to pay the costs of the proceedings of MOB and others (the appeal with number HAA 19/4813) up to an amount of € 1068,-.

This statement was made by mr. drs. JHAC Everaerts, chairman, and

mr. JM Janse van Mantgem and mr. DM de Feijter, members, in the presence of mr.PC van der Vlugt, registrar. The verdict was handed down in public on June 7, 2021.

clerk	chair

A copy of this ruling has been sent to the parties at:

Do you disagree with this statement?

An appeal can be lodged against this decision with the Administrative Jurisdiction Division of the Council of State within six weeks of the date on which it was sent.

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[1] ECLI:NL:RVS:2021:953

[2] ECLI:EU:C:2021:7

[3] ECLI:NL:RVS:2018:295

[4] ECLI:NL:RVS:2008:BD0564 respectively ECLI:NL:RVS:2008: BD3578

[5] Etc. 1999, 224, page 39

[6] ECLI:NL:RVS:2017:483

[7] Directive of the European Parliament and of the Council of 13 December 2011 on the environmental impact assessment of certain public and private projects, OJEU 2012, L 26

[8] ECLI:NL:RVS:2015:65

[9] Parliamentary Papers II, 1988/89, 21 087, no. 3, p. 31 and 2006/07, 30 844, no. 3, p. 100

[10] ECLI:NL:RVS:2010:BK8980

[11] Report of 1 August 2018, prepared by Royal HaskoningDHV (Annex A6 contested decision)

[12] Regulation 3.3: Within 3 months after the biomass power plant has been operational, the concentration of dioxin and furans must be determined in accordance with the emission measurement standards and analysis standards NEN-EN 1948 parts 1, 2 and 3, whereby the applicable standards for measuring location, sampling and reporting of the substances be taken into account. Within 3 months after the measurements have been taken, a report must be drawn up and sent to the director of the North Sea Canal Area Environmental Service. This must also include an assessment against the applicable exemption limit of 20 mg TEQ/year.

[13] Regulation 3.4: Based on actual emissions in the first full year of operation, Vattenfall must make an effort to further lower all licensed emission limit values.

[14] Regulation 3.7: From the moment the biomass power plant is in operation, the NOx annual load, or the related annual load, if the installation is not in operation as of 1 January, of the DM33 power station do not exceed 536,438 kg.

[15] Report of 1 August 2018, prepared by Royal HaskoningDHV, included under part M, annex I, A6.

[16] Part of the documents associated with the environmental permit application, A10

[17] Decision of the Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006

[18] (national) Climate Agreement of 28 June 2019, chapter D2: Biomass

[19] Memo of 21 November 2019 from the Ministry of Economic Affairs and Climate, reference:
1 DGETM-K/18287026

[20] By the Minister of Economic Affairs and Climate Policy to the President of the House of Representatives of the States General, reference DGKE-K/19114870

[21] By the Minister of Economic Affairs and Climate Policy to the President of the House of Representatives of the States General, reference DGKE-K/19132817

[22] ECLI:EU:C:2019:533

[23] Version May 15, 2019, production H2

[24] ECLI:NL:RVS:2020:1217