

PERSPECTIVE

ON THE NITROGEN ISSUE AND PFASs

18 december 2019

IN BRIEF

Thorough preliminary research means that new construction and renovation projects can be expected to take longer to complete.

New construction is still an option, provided that the nitrogen standard is adhered to during the construction and operational phases.

With the AERIUS Register, it is possible to check whether the contribution made during the construction and operational phases of a construction project on a Natura 2000 site is zero.

Without an AERIUS report, you cannot apply for an environmental permit.

Potential sources where there is a high risk that per- and polyfluoroalkyl substances (PFASs) are present in the soil are located mostly in industrial areas in the south and the west of the Netherlands.

STEP-BY-STEP PLAN INCLUDED

on the last page

NITROGEN?

The nitrogen issue is in the headlines almost every day. Even though the government is looking hard for opportunities to open up the space for development again, the construction industry is suffering enormously as a result of the nitrogen issue, and this is having an impact on existing real estate.

Delays in new construction projects can run up to five years and lead to tens of millions in extra costs. It is estimated that 18,000 construction projects will grind to a halt. The European Investment Bank is forecasting a contraction of 6 billion euros for the construction sector, while ABN AMRO has said that more than 70,000 jobs are at risk. In addition, the construction of a million extra houses is also in danger of slowing down rather than speeding up, which is what is wanted. Residential builders are expecting the number of building permits to drop by half, to 35,000 homes, in 2020. For the time being, the construction industry has few solutions. Even though they already cause considerably less pollution than before, large machines on the construction site still need fossil fuels to run their engines. There are no electric shovels or cranes yet, and electric trucks are still in the development phase. The nitrogen issue will speed up the development of electrical construction equipment, but zero-emissions construction is still not going to happen any time soon.

EXACTLY WHAT DOES THIS LEGISLATION ENTAIL?

As a result of the decision of the Council of State, the threshold for nitrogen precipitation has been abolished, and permits can be granted only if there is no nitrogen precipitation at all. The AERIUS Register shows, at a glance, the depletion of room for development per sector. This is related to how much room for deposits, and how much for development, has been found to be available. Environmental permits will not be granted unless there is a report showing that the contribution of the construction and operational phases of a project on a Natura 2000 site for which an application has been made, is zero. In order for the real estate to be used, then, the current package of measures must also remain in force. However, whether a nitrogen calculation is necessary when it comes to converting existing real estate varies from one municipality to another. If a few interior walls and bathrooms are rebuilt, this is less drastic than if only the concrete shell remains in place.

WHAT DOES THIS MEAN FOR THE IMPLEMENTATION OF OUR SERVICES?

Developers do not have to give up on the prospect of new construction. Building permits will still be granted as long as the construction complies with the nitrogen standard. In practice, municipalities grant permits for projects involving fewer than 10 dwellings, without having calculated whether the development meets the nitrogen standard. For non-residential property, an upper threshold usually applies, as a guideline, to investments of less than a million. That said, for larger projects, a calculation is made to determine whether the development and operation of the property will have an impact on the nearest Natura 2000 site. This also applies to the conversion of existing property.

An ecologist performs a check to see the extent of the deposit on a Natura 2000 site. If the nitrogen deposit is higher than 0.00 mol/ha/year, the possibility of internal off-setting should be considered. If that option is used, the new situation may not lead to an increase in the level of nitrogen deposits over the current situation. Internal off-setting might include the construction of a residential area on industrial or agricultural soil. In order to assess whether this is the case, a calculation has to be done to determine the difference between the actual nitrogen deposits in the existing situation (to the extent that this is permitted) and the level of nitrogen deposits in the new situation. The conclusion might be that there is no increase in the level of nitrogen deposits within the project or site, in view of the internal off-setting, and that significant effects can therefore be ruled out a priori. In that case, internal off-setting can be done, but a nature permit is required. This is also possible in the case of existing properties that have been vacant for some time. In such cases, the Provincial Executive usually has the authority to grant this permit.

WHAT ARE PFASs AND WHAT EFFECTS DO THEY HAVE?

PFASs are another problem we are facing. The cause of PFAS levels in the soil may be that a local source (in industry, or an incident requiring that a fire be extinguished) has directly impacted the soil. Potential sources where there is a high risk that per- and polyfluoroalkyl substances (PFASs) are present in the soil are located mostly in industrial areas in the south and the west of the Netherlands.

Before soil can be moved, it must be sampled by an approved sampler and tested in a laboratory. After it has been analyzed, you know what you can do, and what you are permitted to do, with it. If a code orange is involved, the ground may be used for housing and industry, but these locations have limited space for soil. What remains is categorized as natural agriculture on land that is above groundwater level. The soil may be moved to this kind of land only if the levels of PFAS in the natural farmland in question are higher than those in the soil that is to be moved.

If the levels of PFAS in the natural farmland in question are lower than those in the land to be moved, the land may not be added to the natural farmland. In the latter case, the soil has to be transported to a soil bank, but soil contaminated with PFASs cannot be transported to a soil bank just like that. It must be decontaminated first. If the soil is polluted, there is a risk that the soil bank will not accept it. In addition, there is a chance that the soil bank has no room for the soil. As a result, the soil can often not be removed from the building site. Contaminated soil is usually moved by the contractor themselves from one site to another one where the same contractor is active. In the latter case, there is no other option than to store the soil itself, leave it to lie fallow, or to look for another serviceable place that has the right PFAS levels.

As a rule, the soil may not be moved if it contains more than 0.1 micrograms of PFASs per kilogram. More than 85% of the soil tested exceeds that standard. However, the standard will be raised to 0.8 micrograms of PFASs per kilogram of construction soil in order to get construction going again. (18 December 2019)

WHAT DOES THIS MEAN FOR THE REAL ESTATE MARKET?

The current package of measures may have an impact on the value of real estate. As soon as it is no longer possible to stay below the standard when new construction is going on, building will have to stop. In this case, there will be a shortage of real estate (and therefore an increase in demand for existing property). This can increase the value of property that has potential. On the other hand, the impact could be negative. The construction sector is an important economic engine. Construction stoppages can be the cause of a crisis in the building sector, or even of a general crisis. A halt to construction will lead to a rise in unemployment, and can impact other sectors, too. The results could include higher unemployment and so on. The increased value of the property could lead to a drop in demand, because people are no longer able to finance the purchase or are simply no longer willing to spend that much money.

For the time being, municipalities are looking for the right way to carry out enforcement in relation to the threshold values involved. It is possible that the guideline will have to be formulated more strictly in the future in response to an objection and/or an appeal. For each property, the need for a nitrogen test should be carefully considered and, should there be any doubt, further investigation should be done.

WHAT SHOULD BE DONE IF THERE IS A HOUSING ISSUE?

The nitrogen issue is complex and is having an impact on issues related to housing, among other things. Action should be taken sooner if new construction or relocation to existing buildings is being considered. If you have any questions or are looking for advice, please get in touch with the contact persons listed below.

STEP 1

Designating
two phases

STEP-BY-STEP PLAN

1. CONSTRUCTION

Mapping out the extent of nitrogen deposits during the construction phase. The effects in question are as follows:

- A. All transportation from the highway*
- B. Use of machines

*Key indicator: the distance from the construction site to the highway.

2. THE OPERATIONAL PHASE

Mapping out the extent of nitrogen deposits during the operational phase. The effects in question are as follows:

- A. Transportation of staff, suppliers, and so on from the highway.*
- B. Building
For new construction: A building that does not have gas does not emit nitrogen unless there are user-specific installations.

*Key indicator: the distance from the building to the highway.

STEP 2

Check
in AERIUS
Register

Designate
2 phases
again

1. CONSTRUCTION

Mapping out the extent of nitrogen deposits during the construction phase.
If this is higher than 0.00 mol/ha/year -> an ecologist's report is required that indicates whether the temporary deposits will impact a Natura 2000 site.

2. THE OPERATIONAL PHASE

Mapping out the extent of nitrogen deposits during the operational phase. If this is higher than 0.00 mol/ha/year -> an ecologist's report is required that indicates whether the permanent deposits will impact a Natura 2000 site. The effects in question are as follows:

- A. Transportation of staff, suppliers, and so on from the highway.*
- B. Building
For new construction: A building that does not have gas does not emit nitrogen unless there are user-specific installations.

When it comes to issuing a permit, the public authority in question will also call in an ecologist to check for this.

CONTACTS



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