

Due diligence voor milieu bij internationaal ondernemen

Een NGO-perspectief

VMR Themamiddag 24 juni 2013

Jasper Teulings

General Counsel / Advocaat

Greenpeace International

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THE GOOD THE BAD AND THE UGLY

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THE JOURNEY

Journey of the coker naphtha and toxic waste on board the Probo Koala



Tijdlijn

- (jan '06) Coker Naphta gekocht in Mexico
- Caustic washing (CW) in VAE
- (mrt '06) CW in Tunesie, **gaslek met gewonden**
 - Authoriteiten schorten activiteiten op
- (jun '06) CW op Probo Koala in Med
- Afval geweigerd in Gib, It, Mt, Fr
- (jul '06) PK lost afval in Amsterdam, daarna herladen
- PK geinspecteerd in Estland
- Twee lospogingen in Nigeria
- (aug '06) **Afval gedumpt in Abidjan**

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27 mei 2007, Vest Tank, Noorwegen

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Trafigura interne emails voor dumping

“This is as cheap as anyone could imagine and should make a serious dollar”

“Claude owns a waste disposal company and wants us to be creative. Graham has worries that it will all turn black. Me and Leon want it cos each cargo should make 7m!!”

“Caustic washes are banned by most countries due to the hazardous nature of the waste (mercaptans, phenols, smell)”

“Under EU laws you [are] no longer allowed to transport such waste across EU borders”

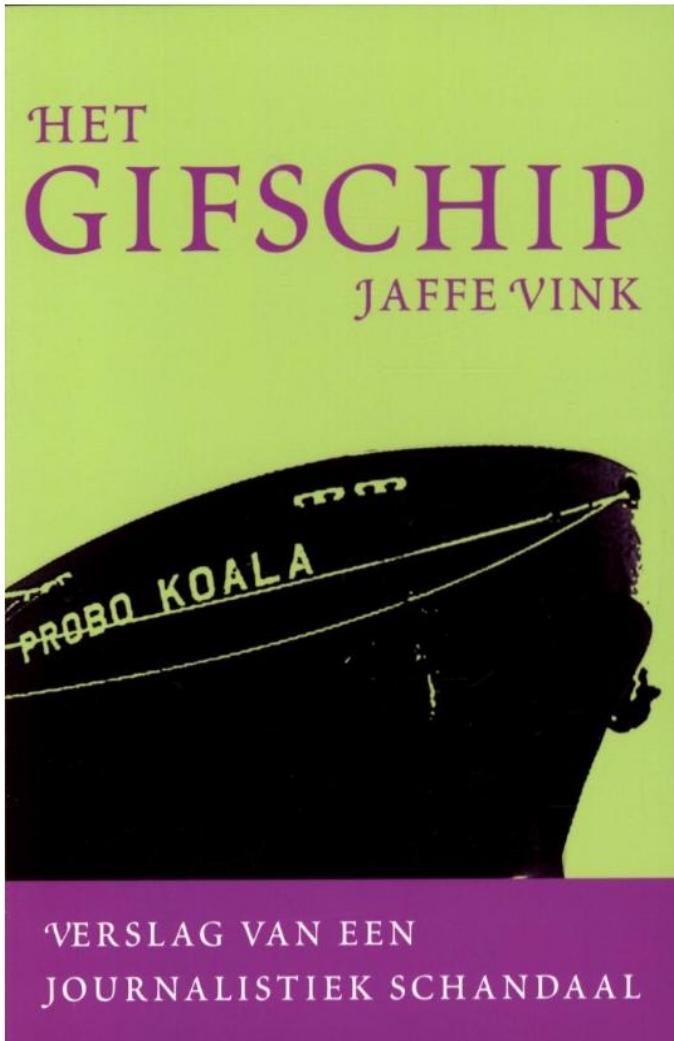
“DO NOT, REPEAT DO NOT DISCLOSE THE PRESENCE OF THE MATERIAL TO ANYONE AT LASKHIRA AND MERELY DECLARE IT AS TANK WASHINGS”

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Giftig?

- Diverse monsters geanalyseerd
- Trafiguras analyses nooit prijsgegeven
- Rechtbank Amsterdam (2010): Slops bevatten “**gevaarlijke tot (zeer) giftige stoffen**, naast stoffen waaruit **schadelijke tot zeer giftige stoffen kunnen vrijkomen** [...] is volgens ons de conclusie gerechtvaardigd dat het hier om **zeer gevaarlijk afval** gaat.’ [NFI rapport]
- Rb: ‘**schadelijk voor gezondheid**’
- Gerechtshof Amsterdam (2011) “**schadelijk voor leven en/of gezondheid**”

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THE TOXIC TRUTH

ABOUT A COMPANY
CALLED TRAFIGURA,
A SHIP CALLED
THE PROBO KOALA,
AND THE DUMPING
OF TOXIC WASTE IN
CÔTE D'IVOIRE

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AMNESTY
INTERNATIONAL

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Rechtszaken

- '07 schikking Ivoorkust € 152m
- '09 schikking civiel £ 30m
- '10 Rb A'dam: € 1m boete
- '11 Hof A'dam: bevestigd
- '12 schikking NL €1.3m
- Geen hoorzittingen in IK, VK
- Vertrouwelijkheid
- Verbodsacties/dreigingen jegens media/ngo's

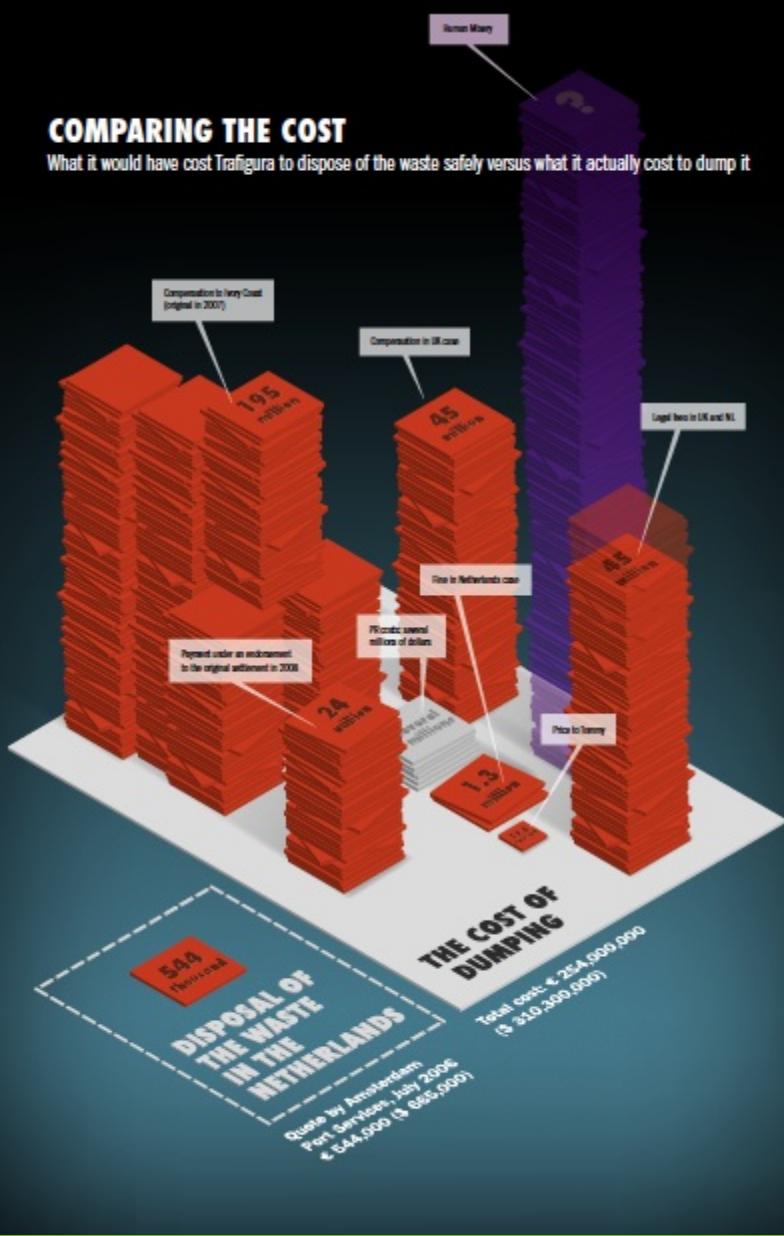
Greenpeace

- Lid Int. Onderzoekscommissie Ivoorkust
- Kopie dossier rechtszaak VK
- Ontmoeting met o.m. John Ruggie inzake bewijs tegen Trafigura
- '12 AI en GP publiceren rapport om informatie voor publiek domein te behouden



COMPARING THE COST

What it would have cost Trafigura to dispose of the waste safely versus what it actually cost to dump it



- Afvalverwerking in NL
€ 544.000
- Afvalverwerking IC
€ 12.500
- Trafigura's totale kosten
(incl. schikkingen)
€ 254 miljoen
- Trafigura's winst 2011
€ 1.11 miljard

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Ruggie's Guiding Principles

1. State's duty to respect
 2. Corporate responsibility to respect
 3. Access to remedy
-
- HRC – unaniem bekraftigd
 - NL – bekraftigd
 - Shell – benadering mensenrechten ‘informed by’ UN GP

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Kiobel v Shell (SCOTUS)

- NL/VK Amicus Brief ter verdediging van Shell
- Amicus Brief NL hoogleraren

The amici's interest in the present case is twofold. First, they wish to ensure that the amicus brief filed by the Governments of the United Kingdom of Great Britain and the Kingdom of The Netherlands does not cause any misperceptions.² That brief criticizes certain practices by United States courts under the Alien Tort Statute, 28 U.S.C. § 1330 (“ATS”), which are in fact commonplace in the Netherlands as well.



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Kiobel v Shell

- Ruggie Issues Brief:



What is my interest in this case? I would not be involved in it at all were it not for the fact that Shell's initial Supreme Court brief and its lead attorney's oral argument misconstrued a central finding of a United Nations report I had authored. Let me explain the context. From 2005

liability to companies for international crimes, under domestic jurisdiction but reflecting international standards."⁵ In short, my findings do not support the claim Shell attributes to them.

To set the record straight in *Kiobel*, I submitted an amicus brief to the Supreme Court in the second round of briefing, in support of neither party. However, as a long-time proponent of corporate social responsibility practices and author of the UN Guiding Principles, my concerns rose anew when I read Shell's most recent brief, on the issue of extraterritoriality ("Supplemental Brief for Respondents"—hereafter "Supplemental Brief"). This is so on two counts.

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First, Shell's attorneys are now seeking to persuade the Supreme Court to issue an extraordinarily far-reaching ruling: that the ATS does not apply to corporations, including U.S. firms; that as it currently stands the ATS violates international law; and that, therefore, even for natural persons its reach should be pulled back to cover only violations committed within the jurisdiction of the United States and "possibly" on the high seas. Had this view held all along, there would have been no *Filártiga*, no successful Holocaust survivors' claims, no statutory basis for civil action by foreign victims even against U.S. nationals for gross human rights violations.

Second, some of the arguments in support of this expansive aim include more of what the D.C. Circuit Court described as "selective quotation" as well as other misconstructions. Consider just one illustration of each regarding extraterritoriality.

ends up increasing it by projecting U.S. jurisdiction into their midst. As evidence it cites, among other things, the amicus brief submitted by Shell's two home countries, the United Kingdom and Netherlands. But that amicus doesn't go nearly as far as Shell's Supplemental Brief in seeking to undo the ATS. The Supplemental Brief also cites, not once but twice, complaints by South

to be the case. Yet questions remain. Should the corporate responsibility to respect human rights remain entirely divorced from litigation strategy and tactics, particularly where the company has choices about the grounds on which to defend itself? Should the litigation strategy aim to destroy an entire juridical edifice for redressing gross violations of human rights, particularly where other legal grounds exist to protect the company's interests? Or would the commitment to socially responsible conduct include an obligation by the company to instruct its attorneys to

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The Good

The journey
towards
a **toxic-free**
future



Detox

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Clothing and the global toxic cycle

1) Formulations containing nonylphenol ethoxylates (NPEs) and other chemicals are delivered to textile manufacturers for use as surfactants.



2) Lax regulation permits wastewater discharges of NPEs which break down into persistent, bioaccumulative and hormone-disrupting nonylphenols (NPs) in rivers.



3) NPs accumulate in sediments and can build up in the food chain, such as in fish.



4) Global exports deliver clothing containing residual levels of NPEs to markets even where these chemicals are banned in clothing manufacture.



5) Washing releases NPEs to water treatment facilities.

6) Water treatment is generally ineffective in dealing with NPEs, essentially only speeding up their breakdown to toxic NPs.



7) Hormone-disrupting NPs end up in aquatic systems even in countries where use of the parent compounds (NPEs) is banned.



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- 
- 70% van Chinese rivieren, meren vervuild
 - 50% van Chinese water onveilig voor menselijk contact
 - Belangrijke bron: fabrieken die stoffen, kleding en consumentenproducten maken
 - Gebruikte giften duiken op in voedsel en drinkwater, in dieren en mensen

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Detox eis aan bedrijven

Doe een geloofwaardige, individuele en publieke belofte om per 1 januari 2020 gebruik en lozing van alle giftige afvalstoffen te elimineren uit de wereldwijde productieketen en producten.

Principes:

- Zero discharge van alle gevaarlijke stoffen
- Preventie en voorzorg
- Recht op toegang tot informatie



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WHY HASN'T H&M DETOXED YET?



TOXIC IS SO LAST SEASON

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CLICKERS AND STICKERS MAKE

H&M DETOX

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COMMITS TO DETOX

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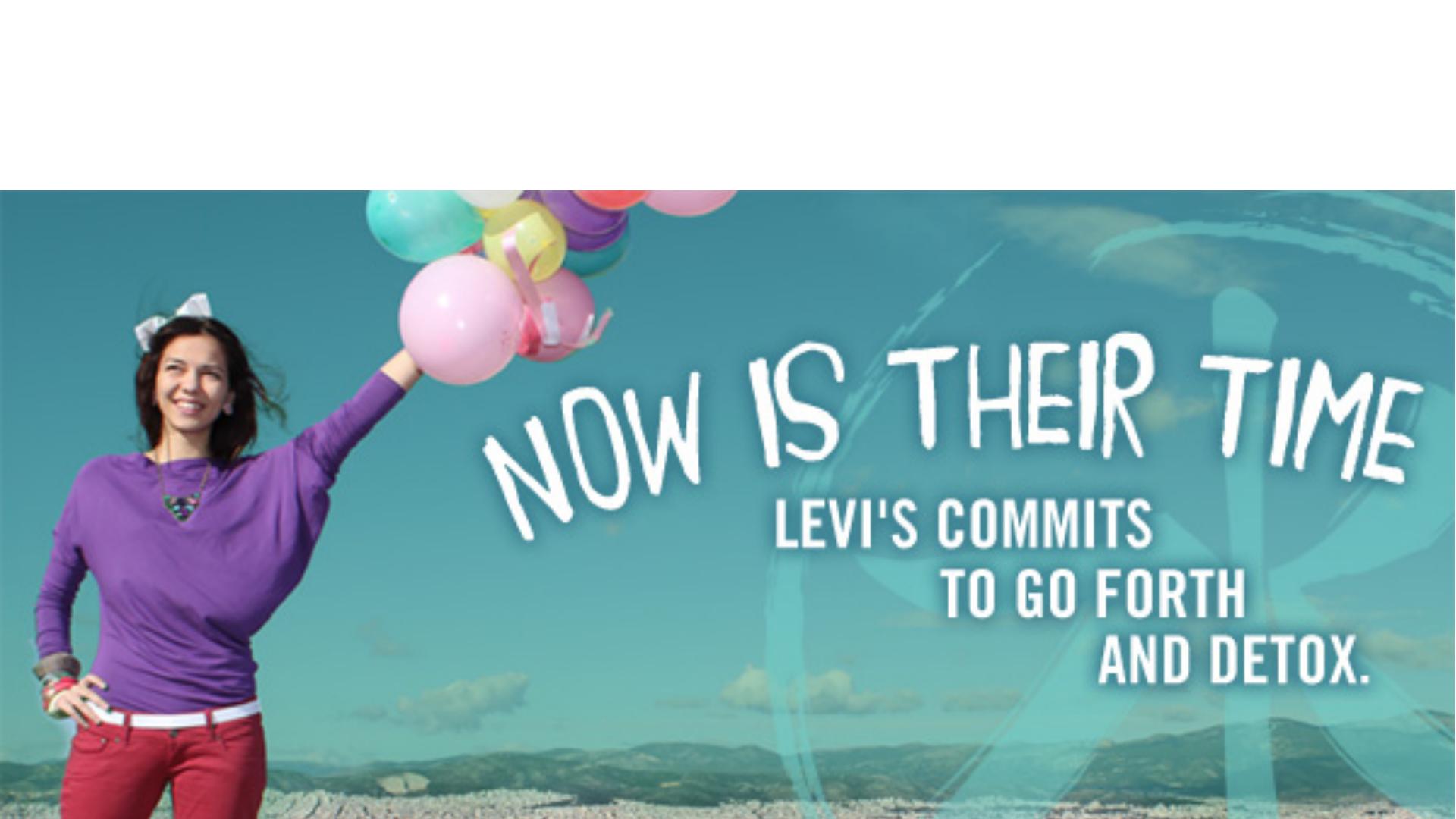
MANGO & ESPRIT
join Zara in making
fashion without pollution
a trend to last the seasons

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NOW IS THEIR TIME
LEVI'S COMMITS
TO GO FORTH
AND DETOX.

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BENETTON shows its true "colors"
and commits to go toxic-free



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VICTORIA'S SECRET
commits to clean up and Detox
after its dirty little secret is exposed



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G-STAR RAW

**SHOWS ITS TRUE FACE
AND COMMITS TO DETOX**



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Politieke signalen

http://www.zhb.gov.cn/gkml/hbb/bwj/201107/t20110729_215544.htm

The screenshot shows a government information disclosure page from the Ministry of Environmental Protection of the People's Republic of China. The page includes the Chinese seal, the ministry's name in Chinese and English, and a red banner with the text '政府信息公开' (Government Information Disclosure). The main content area displays a document with the following details:

索引号: 000014672/2011-00654
分类: 环境科技及其管理信息\环境标准
发布单位: 科技标准司
生成日期: 2011年07月21日
名 称: 关于未纳入污染物排放标准的污染物排放控制与监管问题的通知
文 号: 环发[2011]85号
主 题 词: 环保 排放 标准 通知

环境保护部文件
环发[2011]85号

关于未纳入污染物排放标准的污染物排放控制与监管问题的通知

各省、自治区、直辖市环境保护厅（局），新疆生产建设兵团环境保护局，辽河保护区管理局：

排放标准是对向环境排放污染物行为作出的限制性规定，国家和地方排放标准是依法制定、强制实施的环境保护技术法规。因此，排放标准是对污染源进行排放控制的基本要求。排放标准中规定的污染物排放控制要求，都是在现实条件下可量化、可测量、可核查的内容。由于污染源的实际排污行为具有多样性、不稳定性、隐蔽性等特点，以及受到排放监控技术适用性、实施和监管成本等因素的制约，一些实际存在的排污行为和污染源排放的污染物尚难采用制定和实施排放标准的方式加以控制。而排污行为是影响环境质量状况的重要因素，对排污行为进行监督、限制和规范，是保障环境安全的必要措施。为切实防范环境和健康风险，进一步落实环境保护责任，现就完善污染物排放监控体系等问题提出如下意见。

请各地环境保护行政主管部门在工作中参照实行。

一、进一步明确排污者的环境保护责任

向环境排放污染物的企业事业单位，是环境污染责任的第一责任主体。无论排污行为是否达到国家或地方规定的排放标准，无论排放的污染物在国家或地方排放标准中是否规定了排放控制要求，排污者都应对其排污造成的环境污染承担相应

Verklaring China's Ministerie van Milieu 21 juli 2012 (2 weken na lancering Detox campagne):

“Ongeacht of de vervuilende stof wordt gedekt door landelijke of lokale lozingsnormen, is de vervuiler verantwoordelijk voor de veroorzaakte vervuiling. De vervuiler dient de lozingsinformatie te verstrekken aan het publiek”





中华人民共和国环境保护部

Ministry of Environmental Protection of the People's Republic of China

政府信息公开

China has issued measures for the trial implementation of an environmental management registration programme for hazardous chemicals. The measures will require entities producing, using, and importing or exporting hazardous chemicals to register with the government.

Date 10 October 2012, effective from 1 March 2013

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Conclusies

- nog geen middel om ‘the ugly’ te adresseren
 - > UNGP houden nationale verkokerde benadering in stand
- ‘the bad’ blijven profiteren van lagere normering
- ‘the good’ passen hogere normen toe – na druk
- ‘the best’ internaliseren die normen en sturen positieve verandering aan
- alleen bindende regulering schept ‘level playing field’

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