

**Beyond compliance, beyond covenants**  
Comparing Dutch legal practice with Wisconsin's Green Tier  
*Handout for the conference*  
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**Introduction** (of the full paper)

The Dutch province of Gelderland is not unlike many areas in developed western countries. They share problems regarding qualities of life like housing, health, nature conservation, mobility, spatial development, water storage, agriculture, recreation, industry, and the environment. Within the provincial government the department for environmental management has a bureau that focuses on industry. This bureau aims at making the environment part of an encompassing framework of qualities of life. This framework allows a division of the province in for instance industrial, rural and urban areas wherein the various qualities of life differ. So in industrial areas certain emissions may be higher than in urban areas, whereas in rural areas they should be lowest.

Asked for a legal basis for this framework the University of Amsterdam has come up with a system of four steps starting with compliance with Dutch and European environmental law. The second step is aimed at involving the industry in the framework. Idea is to incite companies to go beyond compliance and agree upon that in covenants. The third step builds on certain measures in covenants that bind parties to follow all mandatory legal procedures in an optimal way. The fourth step builds on a new phenomenon that can be observed in the Netherlands nowadays: instead of implementing themselves what they've agreed upon in a covenant the parties hire a manager to take care of that. That sometimes goes beyond covenants because parties don't even make a covenant and immediately hire the manager.

The first three steps show a lot of parallels with Wisconsin's Environmental Results Program, which will referred to by its original name Green Tier. These four steps show how a shift takes place from government to governance. Because of these parallels Green Tier is also an example of the shift to governance. What government can do with enforcing compliance will be done, and as soon as success diminishes there's a move towards instruments of governance like covenants and Green Tier. This paper will give prove of that and will show the fourth step as a recent Dutch example of modern governance. It will also show the possibility of a fifth step that is implied in both Dutch practice and Green Tier.

Idea behind the fifth step is that various parties together can work on eco-efficient innovations. All the knowledge they make use of and produce in the preceding steps, many of which is legal knowledge, can be useful to come up with innovative products that can protect the environment. Those products can help to comply better with regulation and can give the legislation the chance to demand higher standards of environmental protection. That brings us back to compliance, the first step, and from there we can begin again making the other steps. Idea is that such a cycle could emerge in both Wisconsin and the Netherlands and that's reason to propose this fifth step. This paper will present this cycle, but it will start with the relationship between modern governance and the law, including Green Tier.

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## **Beyond Compliance, Beyond Covenants**

### **Introduction**

Step 1: Compliance

Step 2: Covenants

Step 3: Coordination and Optimisation

Step 4: Manager

Step 5: Eco-efficient Innovations

Start: Modern governance and the law

### **Modern Governance and the Law**

5 ways to give the right law for the given circumstances:

- 1) deregulation
- 2) regulation
- 3) negative incentives
- 4) positive incentives (Green Tier)
- 5) Deviation (the Dutch experimental City & Environment Act).

#### **Step 1: Compliance**

Compliance is consistent with the control tier.

Both other tiers go beyond compliance.

Is compliance that simple, is it business as usual?

Unless all efforts to move beyond compliance it is an instrument that also changes, and can contribute to new ways of environmental performance.

#### **Step 2: Covenants**

Covenants don't always go beyond compliance; Green Tier does.

Many covenants mandate EMS, like Green Tier does.

Especially Tier II incites involvement of more parties, and that consistent with a second kind of covenants.

1<sup>th</sup>: Mutual agreements; 2<sup>nd</sup>: Reciprocal agreements

**Step 3: Coordination and Optimisation**

Many covenants demand optimisation, EMS does also, and therefore Green Tier does.

- 1: Coordination
- 2: Integration
- 3: Optimisation

Multi-disciplinary working group of lawyers

**Step 4: “Recombination” manager**

Emergence of a new breed of officials, managers.

Work for parties that are in the typical position to make covenants, and do so, but sometimes don't; why?

Managers do the “recombinations” of these parties.

Do these managers work on the basis of trust, or entrepreneurship, or both?

**Step 5: Eco-efficient Innovations**

Can the law create a lead market?

Government can empower that; public procurement.

“Reciprocal dialogue” creates knowledge for better products: eco-efficient innovations.

These products can enhance environmental and economic performance.

**Is there a cycle?**

Compliance

Go beyond compliance in dialogue

Dialogue creates eco-efficient innovations

Innovations enhance environmental performance

Compliance at higher level, therefore raise standards

Again go beyond compliance in dialogue

Create even better innovations

Etc.

Is this cycle viable in the real world? (EU's EATD)