

Needs for new collaborative mechanisms in environmental law?

LYY-Institute's research seminar:
Current and future challenges
of sustainable natural resources governance
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Focus / structure of the presentation

- Integrative and inclusive collaborative governance (joint problem-solving) mechanisms in the valid environmental law.
 - How the legal system engages diverse societal actors in the search for efficient and wise solutions to environmental problems?
- Legal means (PP-rights) vs. real possibilities to influence and collaborate
 - Case Linnunsuo
- Conclusions + Questions for the discussion and further research

PP rights as legal mean for inclusion and integration

- Public participatory rights in EIA, permit procedures, land-uses planning schemes and preparation of plans, programmes and policies:
 - 1) wide access to information
 - the parties affected must be informed of the proposals / applications / plans at the early phase
 - 2) rights for expressing views prior to decision-making
 - anyone can lodge comments in the permit and land use planning processes
 - **Various modes of knowledge for the decision-making (problem-solving)**
 - 3) access to justice for parties affected, local NGOs, municipalities etc.
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Functions of PP rights

Preventive

- Anticipation of the consequences
- Conflict mediation / prevention

Integrative

- Interplay between the actors (understanding)
- Integration of knowledge

Democratic

- Transparency
- Means to influence planning & decision-making
- Support implementation of legislation

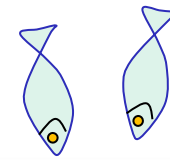
Case Linnunsuo

- Regional newspaper: “Jukajoki is dead. The problem seems to be the Linnunsuo peat production site. But according to ELY the environmental permit VAPO holds has not been breached...”
- Company response: lime stone dams on the ditches to control the discharges.
- June 2011: The fish deaths reoccurred despite efforts taken by the company and monitoring. They were observed again first by fishermen.

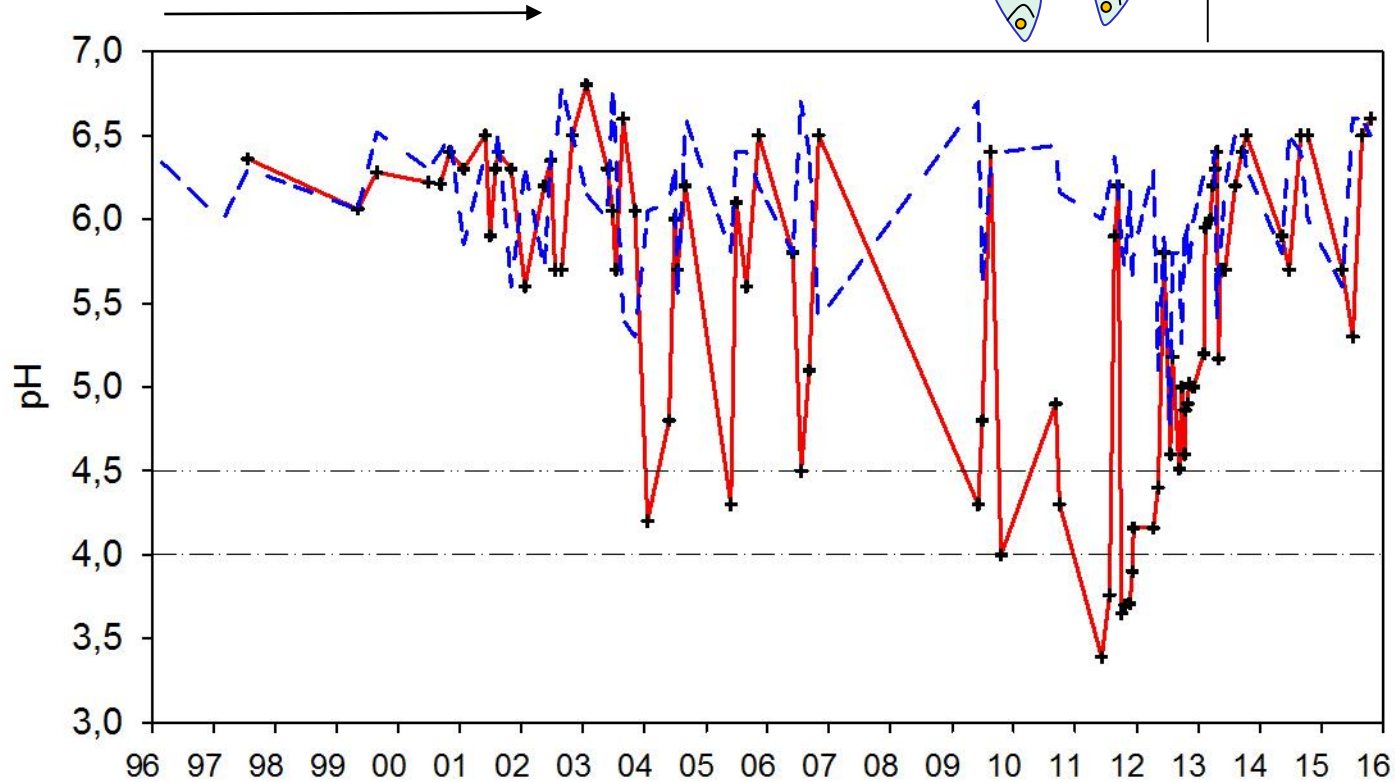
=> VAPO suspended all activities on the production site 2. Later (Feb 2012) it applied for a new permit and decided to create buffer wetland over 120 ha on the suspended site.

Acidic spells

Continuing peat extraction exposes sulphate rich layers



Wetland construction



Jukajoki water quality

BLUE = upstream

RED = downstream from peat extraction area outlet

Data from Hertta

Role of of PP-rights

- The local fishermen observed the fish deaths caused by the peat production, and finally, this lead to a closing of the peat production section causing lethal discharges.
- However, efficient action did not take place in the formal procedures
- The use of formal participatory rights inefficient
- Almost all initiatives and complaints by the local residents and community were rejected in the formal PP-procedures on various grounds:

ELY: Linnunsuo site has a valid environmental permit in order. The impacts of 2010 fish deaths an unexpected event. (reluctance to use stick if the activity permitted)

AVI: Village association is not a party (no standing)

AVI: No competence to investigate the claim of environmental liability (remedying of environmental damage)

Role of PP-rights

- **ELY:** The environmental permits will be re-assessed later (administrative “ping pong”)
- **Police:** “...based on the evidence it is clear that nobody acted against the law or regulations [of an environmental permit] in a manner that would have caused environmental pollution”
- **Administrative court** did not investigate the appeal due to procedural reasons (the local stakeholders should have used the “access to justice” in other process)

Conclusions & questions for the discussion

- Wide PP rights, but mainly *ex ante*
 - Restricted PP-rights at the follow-up phase
 - Possibilities for the regulatory improvements
- PP rights and planning, assessment / permit procedures create only loose frames for the collaboration / joint problem-solving
 - Minimum requirements do not reflect collaboration, rather gathering of knowledge / viewpoints (information base for the decision-making)

Questions & themes for discussion

- Is new type of legal steering (for joint problem-solving / collaborative governance) needed or well-reasoned?
- Relations to traditional legal values, structures and concepts
- Shift from government to governance, from participation to partnership, from hierarchies to networks, from command to contract.
 - If incorporated to law, how to safeguard fundamental legal values, e.g. legal certainty (predictability, protection of rights once gained), sufficient legal protection of environment, land-owners rights, right to livelihoods.
 - Contracts based on the collaboration
 - Impacts to third parties and their rights?
 - Role of law as an (external) driver for collaborative governance?