



Legal advantages and disadvantages of an area orientated approach

Cost effectiveness
Polluters pays principle

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From a single case approach towards an area orientated approach

- The single case approach was for a long time the starting point of any legal action.
 - focus was on holding the polluter liable for the pollution he caused;
 - soil surveys and soil pollution actions were primarily focused on single cases.



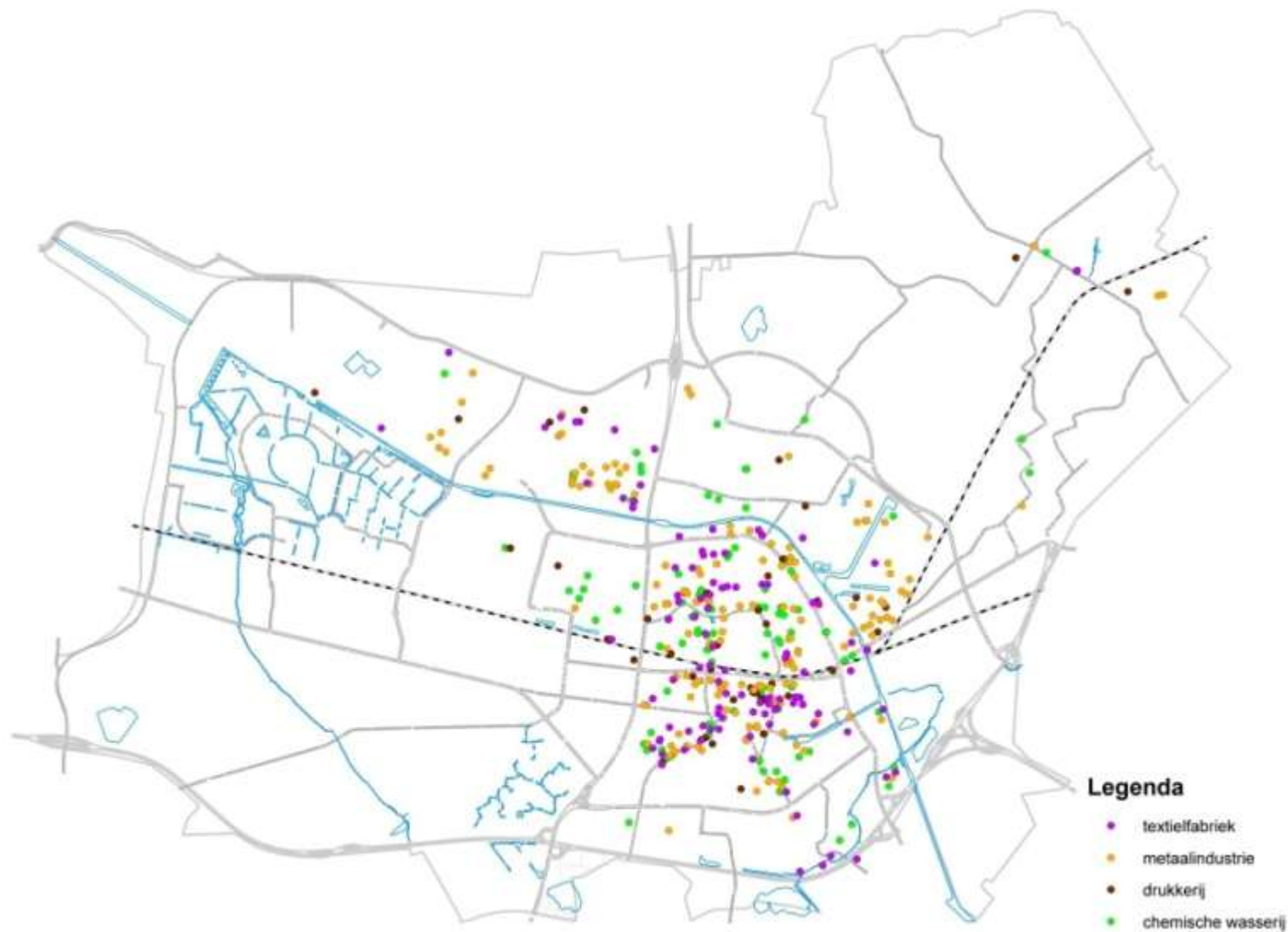
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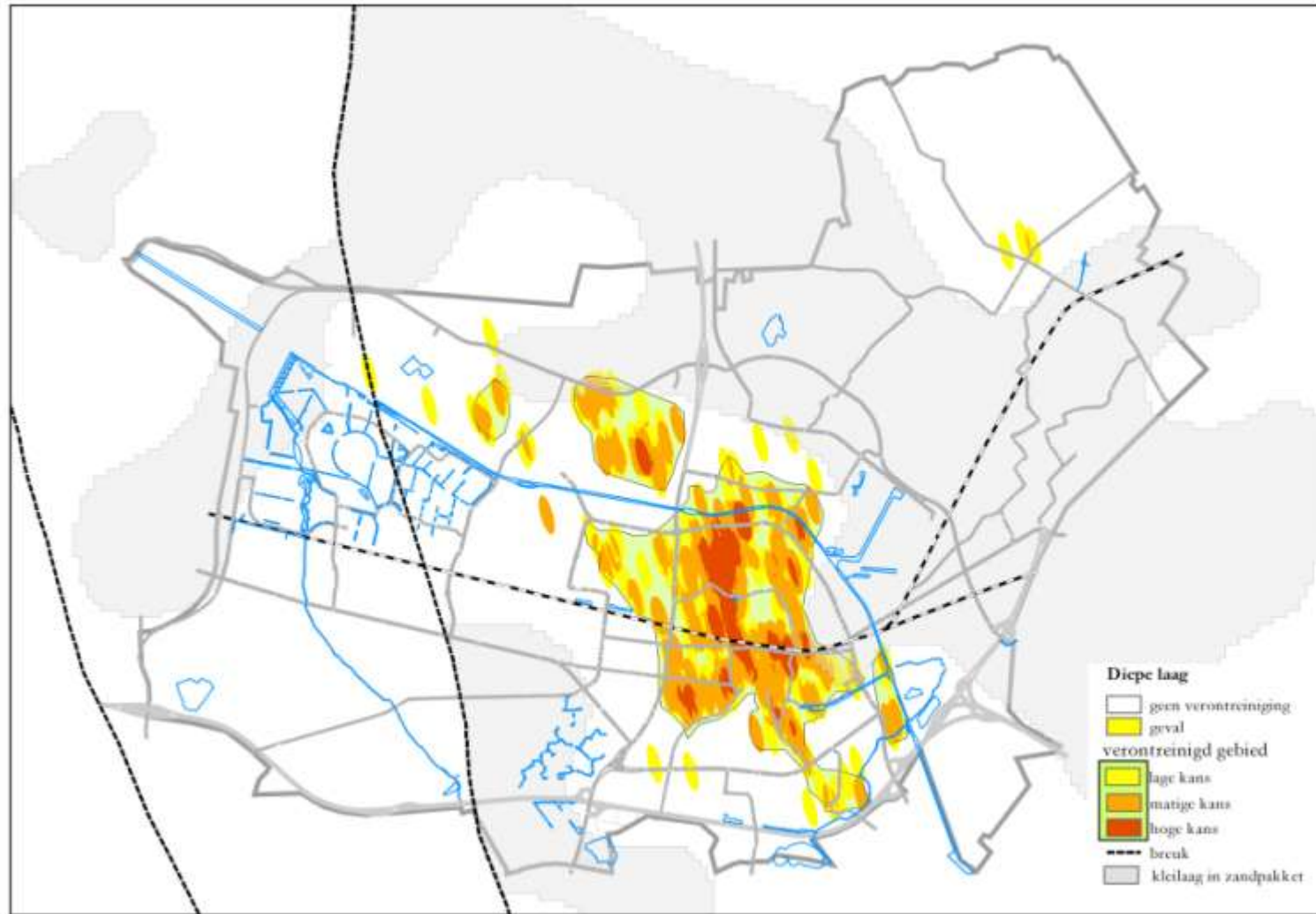
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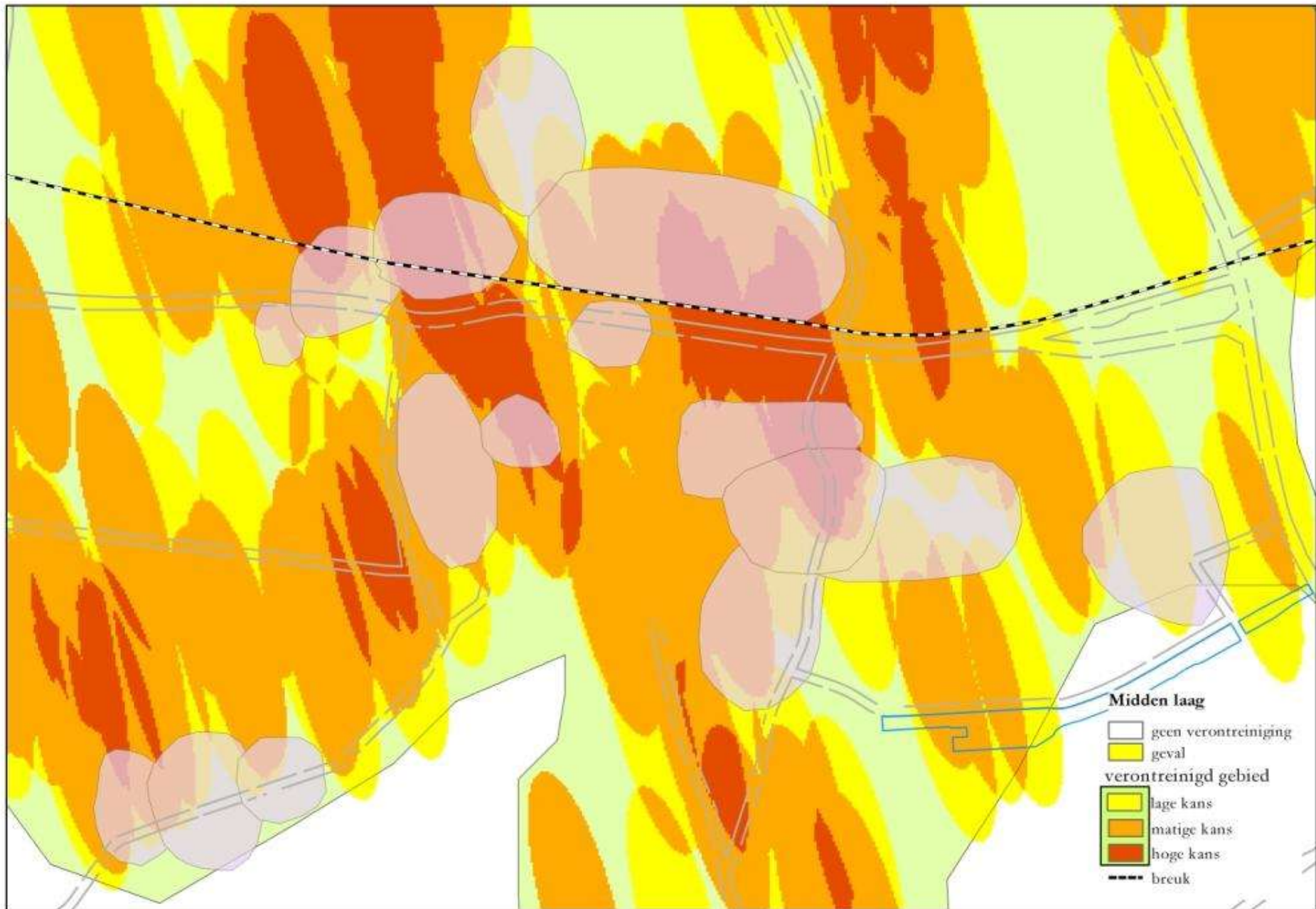


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From a single case approach towards an area orientated approach

- The single case approach is not cost effective in case of large scale groundwater pollution cases with plumes of pollutions.
 - research costs to distinguish individual pollution cases from each other are enormous;
 - not useful to cleanup one spot of pollution in case of a large scale groundwater pollution;

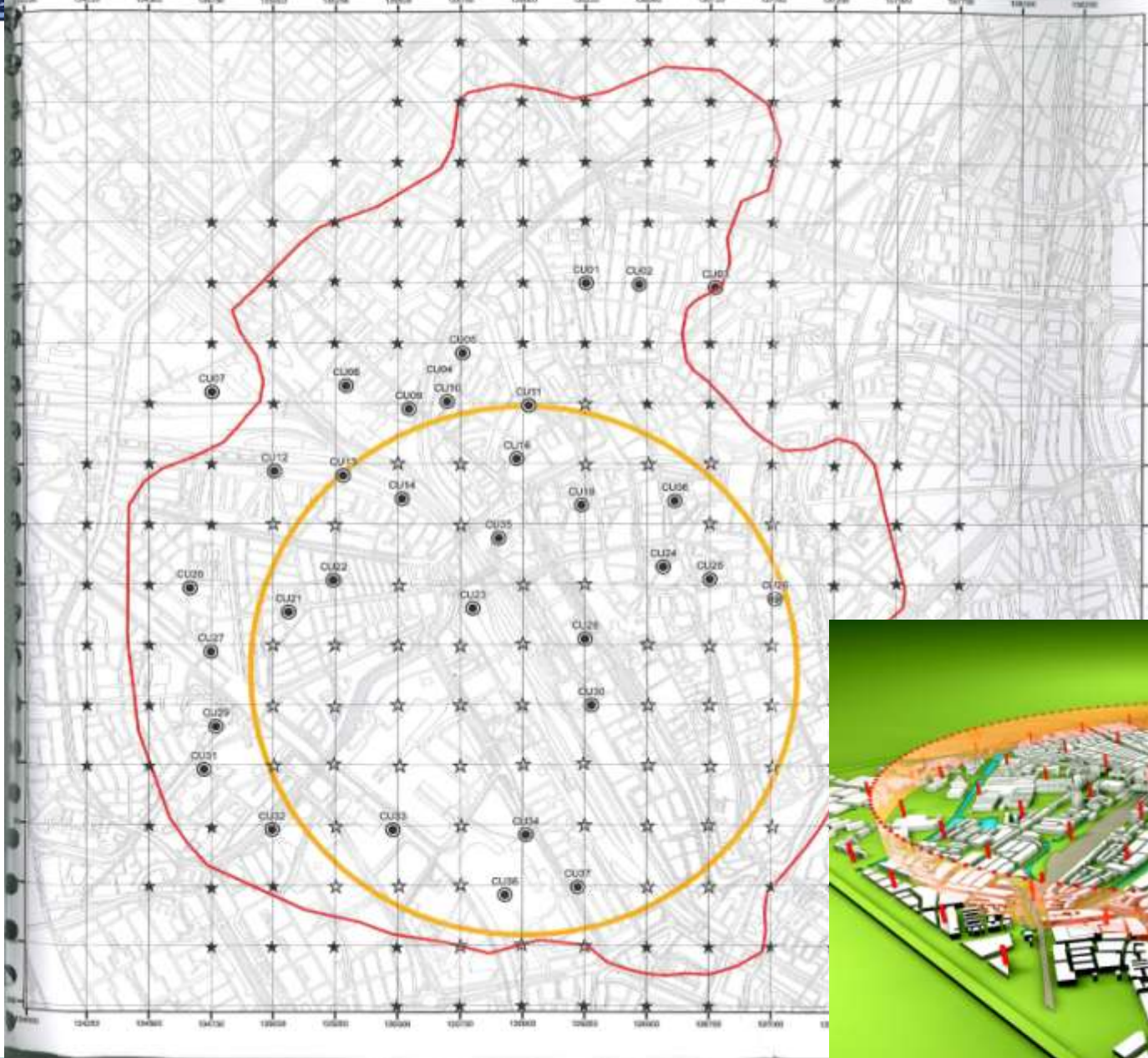




What solutions are available?

- Area orientated approach → does not fit in the Dutch Soil pollution act
- Clustering single pollution cases
 - fits in the Dutch Soil pollution act but has not been given a real chance.
 - has not been fully legally tested
 - it could be an instrument to finance an area orientated approach





Legenda

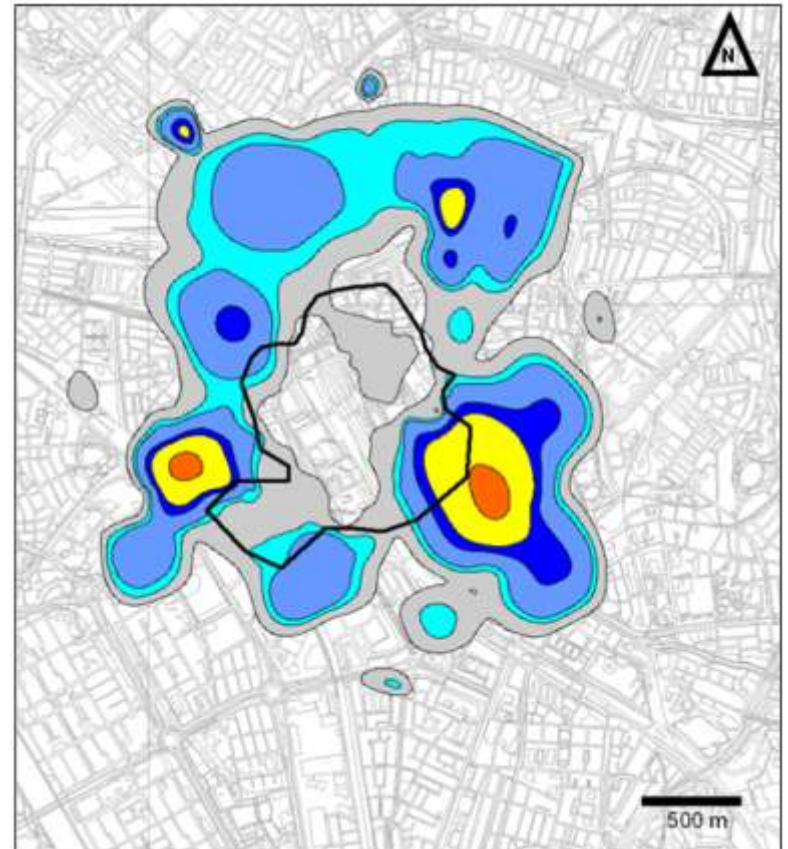
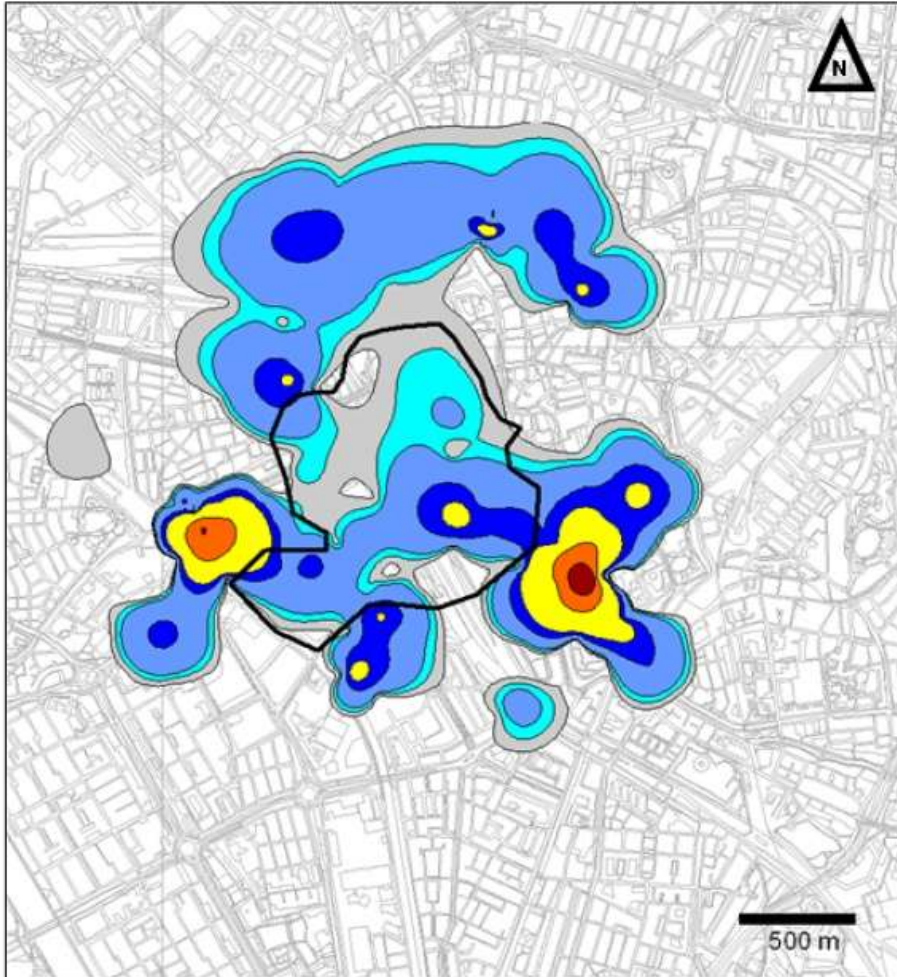
- Voorlopige systeengrens gebiedsgerichte aanpak
- Stationsgebied (fase 1)
- Reeds geplaatste peilbuizen meetnet (fase 1)
- ☆ Peilbuizen te plaatsen in fase 1 *51 Study*
- ★ Peilbuizen te plaatsen in fase 2

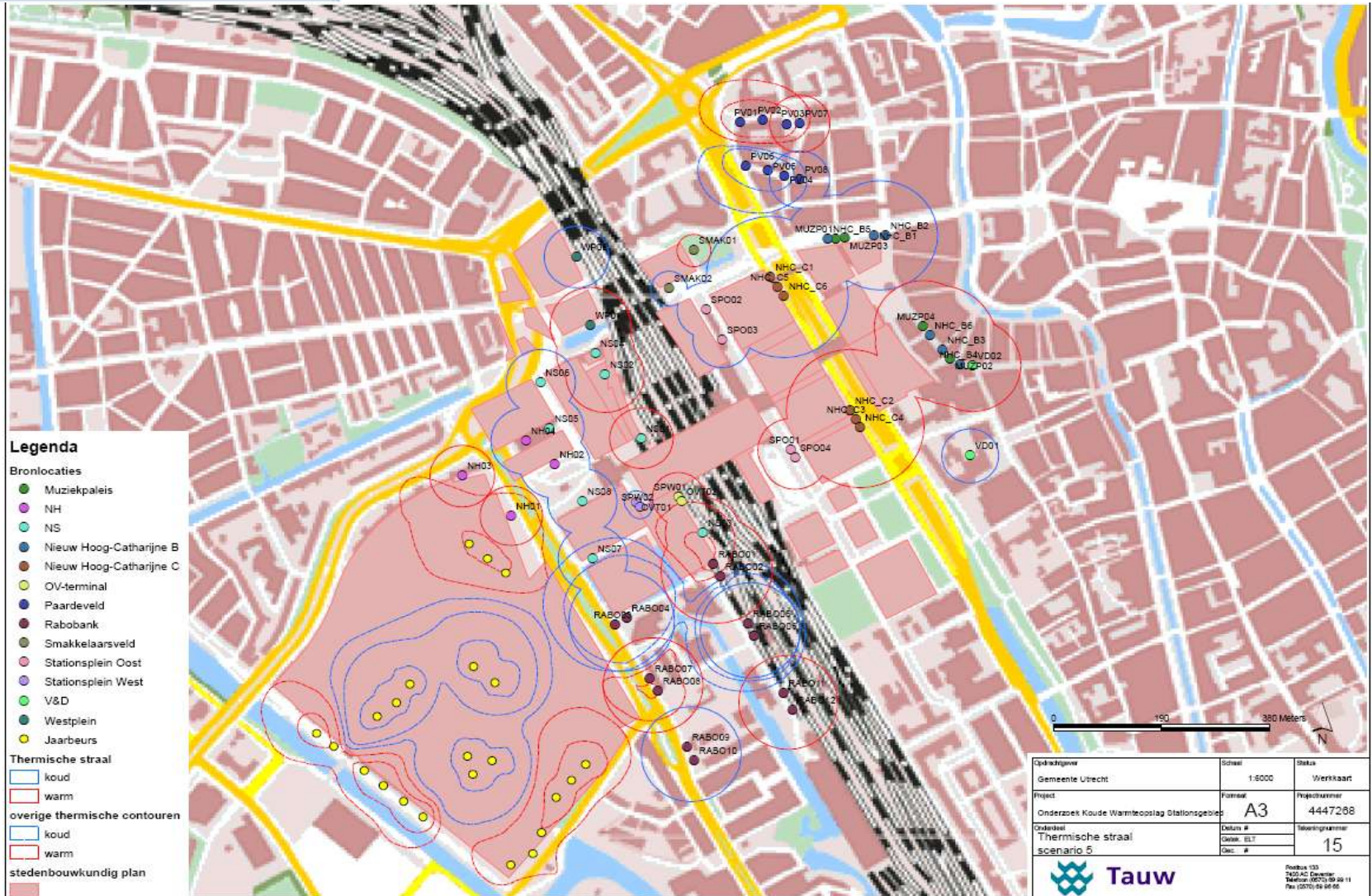
↓ 64
 ↑ 48
 112 Study Fase 2





Result in 30 years







Area orientated approach

- The area orientated approach is in case of large scale groundwater pollution a realistic, cost-effective approach.
 - combination with aquifer thermal energy storage (ATES) (WKO) makes it highly interesting and worth supporting
- The area orientated approach benefits from recent legislative initiatives.
 - Crisis- and recovery act
 - legislative proposal Area orientated approach (TK 32 712)



EU law and the area orientated approach

- Area orientated approach is not necessarily conflicting the Groundwater directive
 - Art. 6(3): member states may exempt from the measures required if they consider measures necessary to remove quantities of pollutants disproportionate costly.
- Exemption may only be used if Member States have established efficient monitoring of the bodies of groundwater concerned.
- Notification to the EU Commission is necessary



Financing the area orientated approach

- The polluter pays principle plays a minor role in the debate about financing the area orientated approach, if at all.
 - unjust towards those who have been confronted with liability claims or enforcement actions.
 - violation of a basic principle of EU-law?
- The area orientated approach would benefit from legal enforcement in single pollution cases.



Enforcement

- Enforcement in single pollution cases is poor.
 - no effective use of available tools;
 - public authorities are afraid of the financial consequences of the use of these tools;
 - no co-ordination between public authorities
 - no co-ordinated funding of test cases
- Poor enforcement in single pollution cases has a negative effect on negotiation position of public authorities in area orientated approach cases.



Pollution pays principle

- Strengthening negotiation position public authorities:
 - better enforcement in single pollution cases
 - try to cluster pollution cases present in areas designated for the area orientated pollution approach
 - start legal test cases
 - Does the encroachment doctrine prevent civil liability claims in this sort of cases?
 - co-ordinate legal actions with other public authorities
 - create a fund with other public authorities to finance legal actions



Concluding remarks

- The area orientated approach is worth supporting, but would benefit from legal enforcement in single pollution cases.
 - enforcement improves negotiating position public authorities;
 - a realistic approach should be taken;

Area orientated approach, yes. However a fuller application of the polluter pays principle is necessary.

- start coordinated test cases.

No successful negotiations without carrot and stick.