



22 April 2008

Position paper on the Commission proposal for an Industrial Emissions Directive (recast of the Integrated Pollution Prevention and Control Directive) COM(2007)844 final – 2007/0286 (COD)

Executive Summary

The undersigned industry sectors, represented by the IPPC Alliance of Energy Intensive Industries (hereafter called the Alliance, representing 12 industrial sectors providing direct employment with over 7 200 000 million jobs across the EU), play an important role in moving towards a more sustainable society by innovative developments and optimised materials that reduce the environmental impact of products during their whole life-cycle. To accomplish this, industry needs legal certainty and stability, with its investment cycles being taken into account and encouragement being given to innovation and investment in Europe. This is important in order to effectively face global competition.

The Alliance fully supports the fundamental principles of the existing IPPC Directive as an efficient tool to reduce emissions in a balanced way, by applying Best Available Techniques or equivalent, while taking into account economic considerations, environmental objectives (including cross-media effects) and local conditions in a balanced manner.

The implementation period for the IPPC Directive has just recently come to an end (30 October 2007), meaning that an assessment of its effectiveness and a revision of the IPPC Directive, in particular relative to its fundamentals, are premature and inconsistent with the Commission's Better Regulation principles. We believe that the review studies carried out are based on far too short an experience to justify its conclusions, particularly such a radical revision of the IPPC Directive. Efforts should rather be focused on improving and facilitating the implementation of the existing Directive.

The Commission's "recast" of the IPPC Directive seeks to modify the very essential elements of the existing legislation and considerably disrupts the spirit and legal stability of IPPC. The most important issues of concern raised by the Commission proposal are:

1. The IPPC Directive has, and must maintain, its integrated approach based on the environmental impacts on all media, technical characteristics, geographical location, local conditions, cross-media effects and cost effectiveness.
2. Emission limit values should be based on emission levels associated with Best Available Techniques taking into account the emission fluctuations inherent in the processes.
3. The Commission alone should not select the BATs : This should be the task of the groups of experts (the Commission Technical Working Group) in charge of the drafting of the BAT reference documents (BREFs).
4. Industry expertise involvement is needed for an installation not or insufficiently covered by the BREFs
5. Soil: Provisions need to be aligned with a risk-based approach and in line with current national provisions
6. Comitology: Due to the adaptation of the technical sections, the Comitology Committee should provide for stakeholder consultation, not neglect the expert contribution of other stakeholders. Furthermore, decisions should be made subject to an impact assessment.

**Position paper on the Commission proposal for an Industrial Emissions Directive
(recast of the Integrated Pollution Prevention and Control Directive)
COM(2007)844 final – 2007/0286 (COD)**

Introduction

The IPPC Alliance would first like to recall the key principles of the original 1996 Directive on Integrated Pollution Prevention and Control (IPPC), whose full implementation date for both new and existing installations was fixed at 30 October 2007. Its objective is to reach a high level of environmental protection according to the following principles:

- An **integrated approach** by considering the emissions from an installation into the different environmental media (air, water and land).
- The **setting of the permit conditions** (essentially Emission Limit Values) based on the performance that can be achieved when applying the Best Available Techniques (BATs)¹.
- Flexibility** by taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions.

Due to the very recent implementation (30 October 2007) the Alliance is of the opinion that the existing IPPC Directive 96/61/EC, has not yet demonstrated its full potential in terms of emission reductions. We believe it is essential to have more experience before significant conclusions are drawn about its workability, consistency and efficiency.

The Commission's proposal is based on a study carried out on the EU situation at the end of 2005 highlighting certain shortcomings, such as the fact that the BAT reference documents (BREFs) are not taken into account to the extent expected by permitting authorities, and that authorities are not rigorous enough when setting BAT-based emission limit values (ELVs).

These shortcomings can be partially explained by the fact that the first round of BREFs was only completed in 2006 and that not enough time and resources have been dedicated at Member State (MS) and operator level to assimilate the BREFs. This is of major importance, since the BREFs are only available in English.

The Alliance supports the idea of clarifying the role of the BREFs and making sure they are properly used in practice (e.g. ensuring capacity building on the side of the permitting authorities). However, we are of the opinion that, since a large part of the problem clearly lies in implementation, it is necessary to **improve the implementation, but not to radically change the fundamentals of the Directive**. Providing appropriate time for implementation and a good basis for assessment is key from a better regulation perspective.

¹ **Best Available Techniques (BATs)**: they are the most effective techniques in achieving a high level of global environmental protection; they can be implemented in the relevant sector under economically and technically viable conditions, taking into account costs and advantages.

1. INTEGRATED APPROACH AND FLEXIBILITY: LOCAL CIRCUMSTANCES MUST BE TAKEN INTO ACCOUNT

The approach in the present IPPC Directive is based on the sound principle that improvements at industrial site level should be based on BAT and take account of local environmental circumstances and technical characteristics (Art. 9 of the original 1996 Directive)².

No two installations are identical, even when producing the same product, since local conditions, e.g. raw materials, are always different. Even the single objective of ensuring a high level of protection for the environment as a whole will often involve making “trade-off” judgements between different types of environmental impacts, and these judgements will often be influenced by local considerations³.

The Alliance agrees that there is a need for transparency on how the ELVs in a permit have been established in relation to BAT. The validity of accounting for local, site-specific factors should remain (in the new Art. 16), but this should be documented and justified by the permitting authorities, given their local knowledge and familiarity with the installation.

BREFs cannot address all possible operating conditions, some of them imposed due to local particularities, which might lead to different cross-media effects and which deserve individual assessment by competent authorities in order to achieve an integrated protection of the environment. Consequently, the emission levels associated with BAT (BAT-AELs) in the BREFs cannot be prescribed as ELVs for an entire sector, but must remain as guiding references to be considered together with local conditions.

2. SETTING EMISSION LIMIT VALUES (ELVs): ELVs WITHIN THE RANGE OF BAT AELs DO NOT ALLOW FOR FLUCTUATIONS THAT ARE INHERENT TO THE PRODUCTION PROCESS. BREFs ARE DOCUMENTS SUITABLE FOR DERIVING, BUT DO NOT PROVIDE ELVs

The Commission proposal (Art. 16.2) requires the setting of ELVs that do not exceed the emission levels associated with BAT (BAT-AELs) as described in the BREFs.

If ELVs cannot exceed the BAT-AELs, the BREFs would in practice become legally binding documents, which they were never meant to be⁴. The upper end of the BAT-AELs range would *de facto* become EU-wide minimum emission standards.

Rather than helping and facilitating matters for permitting authorities, it will not be possible to implement the proposal in practice, because the ELVs to be used in permits are fundamentally different from BAT-AELs, as:

- ELVs take account of short-term fluctuations and should never be exceeded
- BAT-AELs represent average emission levels achievable during a substantial period of time in normal operating and/or design conditions (well-proven technology)
- BAT-AELs are levels that an operator can expect to achieve when using the BAT, and are appropriate reference points to assist in the determination of permit conditions

² "Emission limit values shall be based on best available techniques, taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions".

³ For example, a plant situated at a location with water scarcity issues cannot be treated the same way with regards to e.g. water consumption as a plant located to a big river or a sea with no water scarcity issues – processes need to account for the local environmental conditions in an integrated environmental manner.

⁴ While the BAT reference documents do not set legally binding standards, they are meant to give information for the guidance of industry, Member States and the public on achievable emission and consumption levels when using specified techniques (BREF outline and guide).

- BREFs do not specify ELVs

A clear illustrative explanation with more details on the above can be found in the Technical Annex to this position paper.

Consequently, the BAT-AELs are not, and can never be, suitable for use as ELVs. BREFs and BAT-AELs are suitable for deriving ELVs, but do not provide or constitute ELVs.

3.PRESERVING THE QUALITY OF THE SEVILLE PROCESS

The BAT-based permit conditions principle currently relies on the outcome of the exchange of information organised by the Commission (the so-called Seville process), and involves all relevant stakeholders. The technical expertise of industry has proven to be of great value in this process, as attested by the content of the final documents.

The current Commission proposal (Article 29) no longer considers that BAT is defined under the Seville process, which has so far been a cornerstone to the successful operation of the Directive. Without the technical expertise of industry and its experience in operating BAT, the Seville process and the BREF-making exercise would be seriously undermined.

The result of the exchange of information must remain a consensus reached by all stakeholders involved, and the final endorsement of the BREF must remain a collective exercise. ***We therefore urge the European Parliament and the Council to maintain the valuable BREF-making process as it is now. We strongly insist that the technical working group, composed of Member States, the Commission, industry and NGOs, must be the body discussing the entire content of the BREFs, including the conclusive chapter on BAT and BAT-AELs.***

4.INDUSTRY'S INVOLVEMENT FOR AN INSTALLATION NOT OR INSUFFICIENTLY COVERED BY A BREF

Where an installation is not or is insufficiently covered by a BREF, the new proposal (Art. 15.4) requires that the Competent Authority (CA) alone determines the BAT. The IPPC Alliance believes that the CA needs the technical expertise and the collaboration of the relevant industry stakeholders. ***We therefore propose that the operator and the CA agree together on the emission levels corresponding to the BAT.***

5.SOIL AND GROUNDWATER REQUIREMENTS

Regarding requirements on soil and groundwater monitoring, the type and frequency of monitoring should be determined locally by the Competent Authority (CA) in cooperation with industry in order to ensure that local conditions are taken into account.

Considering the importance and variability of local conditions, it would not be appropriate for the Commission to determine EU criteria for a standard monitoring frequency.

We thus propose to delete the reference to a fixed period of 7 years (in current Art 17.2), and that a case-by-case approach based on risks be adopted.

Upon cessation of activity, national legislation should be applied to ensure that the site is appropriate for the purpose of its use. If there is a need for remediation, measures should be tailored to the current or intended future use and a concrete risk for human health and the environment. ***Consequently, we cannot support the requirement that "...the operator shall***

remediate the site and return it to the initial state” (see Art. 23.3), but propose instead a risk-based approach, i.e. that the site does not pose any significant risk to human health and the environment taking into account the intended future use as well as applying national liability regulations. We propose to have the Competent Authority make sure that the appropriate responsible (operator, owner or landlord) is designated at local level and according to national laws.

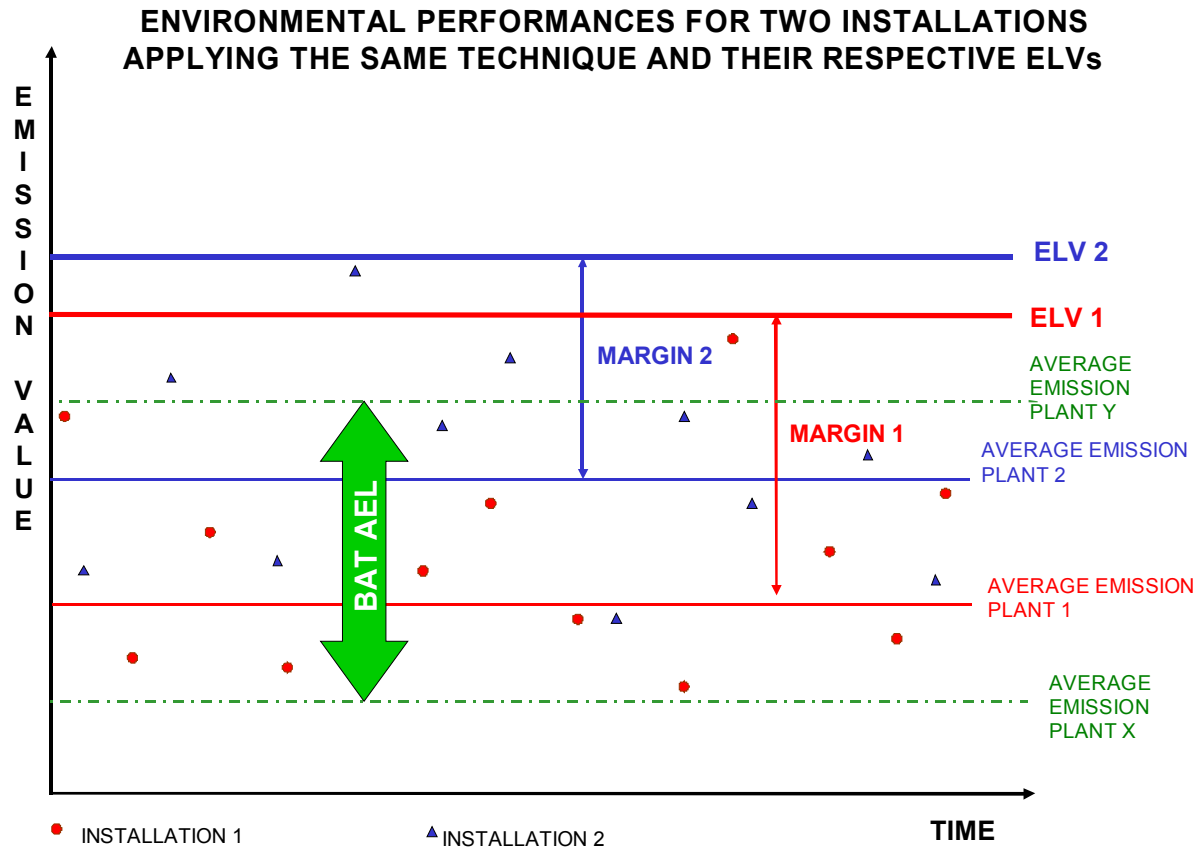
6.COMITOLGY PROCEDURE

The proposal introduces several issues that will be covered by a Comitology procedure with scrutiny, such as criteria for derogations, measures related to monitoring requirements, site closure and remediation, inspections, emerging techniques and adaptation of Annex V to VIII (see Articles 16.3, 17.2, 23.2, 25.4, 30 and 68).

We take the view that, irrespective of the procedure applied for the implementation of any such technical proposals - comitology or other - the structured and continuous dialogue with stakeholders that is so important for the IPPC directive today must not stop. In addition, decisions taken by comitology committees should be made subject to an impact assessment. ***If comitology procedure is the route chosen by the European institutions, industry calls for the systematic consultation of stakeholders to ensure that the structured and continuous dialogue with stakeholders is not disrupted.***

TECHNICAL ANNEX

Difference between an ELV and a BAT associated emission level



This figure represents the environmental performance of two installations (1 and 2) applying the same techniques, and shows the respective ELVs that apply to them. The BAT associated emission levels (BAT AELs) are to be found between the average performances of plants X and Y which are the plants having respectively the lower and higher emission levels across all plants considered in the BAT reference document for the appropriate industry sector (taking into account raw materials use, the difference of performance between new and existing installations etc.)

ELV (Emission Limit Value) means the mass, expressed in terms of certain specific parameters, concentrations and/or level of an emission, which may not be exceeded during one or more periods of time.








Emission values are shown as dots on the chart. The average emission level (e.g. Installation 1 in red) corresponds to the quantity of pollutants released over a given period of time. The operator has to make sure that emissions at any point in time are always lower than the ELV that has been fixed in the permit. Consequently, the ELVs must take into account the fluctuations inherent to the processes, which is the reason why a safety margin taking account of the fluctuation is needed when setting the ELVs.

The average emission levels (in red and blue in the chart) correspond to the environmental performance of two installations using the same technique but using different raw materials.

If we compare different plants using the same technique, a higher ELV ($ELV\ 2 > ELV\ 1$) can still result in an average emission level (average emission plant 1 and average emission plant 2) within the BAT associated emission levels (BAT-AELs).

The IPPC Alliance of Energy Intensive Industries

The IPPC Alliance of Energy Intensive Industries represent 12 industrial sectors providing direct employment with over 7 200 000 million jobs across the EU.

| Industry sectors | Contact details |
|---|---|
|  | Jean-Marie Demoulin Avenue E. van Nieuwenhuysse 4, Bte 1, 1160 Brussels Tel: + 32 (0) 2 676 74 94 – Fax: +32 (0) 2 676 74 32 E-mail: jm.demoulin@skynet.be |
|  | Jean-Marie Chandelle Rue d'Arlon 55, 1040 Brussels Tel: + 32 (0) 2 234 10 29 – Fax: + 32 (0) 2 235 02 48 E-mail: jm.chandelle@cembureau.eu |
|  | Teresa Presas Avenue Louise, 250 bte 80, 1050 Brussels Tel: + 32 (0) 2 627 49 11 – Fax: + 32 (0) 2 627 49 23 E-mail: t.presas@cepi.org |
|  | Rogier Chorus Rue de la Montagne 17, 1000 Brussels Tel: + 32 (0) 2 511 30 12 – Fax: + 32 (0) 2 511 51 74 E-mail: chorus@cerameunie.eu |
|  | Christoph Tamandl 43 Avenue des Arts, 1040 Brussels - Belgium Tel: +32 25 00 87 51 - Fax: +32 25 08 10 21 - www.ciaa.eu E-mail : c.tamandl@ciaa.be |
|  | Frédéric Van Houte Avenue Louise 89, 1040 Brussels Tel: + 32 (0) 2 538 44 44 – Fax: + 32 (0) 2 537 84 69 E-mail: f.van_houte@cpivglass.be |
|  | Corina Hebestreit Avenue de Broqueville 12, 1150 Brussels Tel: + 32 (0) 2 775 63 20/56 – Fax: + 32 (0) 2 770 63 03 E-mail: ecga@skynet.be |
|  | Mira Tayah Twin Gardens, 6th Floor, Rue des Deux Eglises 26, 1000 Brussels Tel: +32 (0)2 210 44 15 – Fax: +32 (0) 2 210 44 15 E-mail: m.tayah@ima-europe.eu |
|  | Inés van Lierde Avenue de Broqueville 12, 1150 Brussels Tel: + 32 (0) 2 290 32 02 – Fax: + 32 (0) 2 290 32 20 E-mail: vanlierde@euroalliages.be |
|  | Danny Croon Avenue Ariane 5, Bldg "Integrale" 3rd floor, 1200 Brussels Tel: + 32 (0) 2 738 79 45 – Fax: + 32 (0) 2 738 79 55 E-mail: d.croon@eurofer.be |
|  | Lynette Chung Avenue de Broqueville 12, 1150 Brussels Tel: + 32 (0) 2 775 63 12 – Fax: + 32 (0) 2 779 05 23 E-mail: chung@eurometaux.be |
|  | Corina Hebestreit Avenue de Broqueville 12, 1150 Brussels Tel: + 32 (0) 2 775 63 56 – Fax: + 32 (0) 2 770 63 03 E-mail: hebestreit@euromines.be |