
September 2012

A better environment – reduced emissions – Industrial Emissions Survey SOU 2011:86

Background

Industrial activities are of great importance to Europe's financial wealth. Industrial emissions, however, cause environmental pollution and industrial emissions constitute a major part of Europe's total emissions to air, water and soil. Consequently, there is a need for regulation of industrial operations at an EU level. Partner Erica Nobel and associate Christina Hellström comment on the new legislation and the possible consequences thereof.

In view hereof the so-called IPPC Directive (Integrated Pollution Prevention Control) was adopted in 1996. The Directive aimed at providing an integrated approach by the EU's member states on prevention and reduction of emissions by regulation of environmental aspects. The Directive was based on several fundamental principles, one of which is the principle of Best Available Techniques (BAT). BAT should be the reference for setting permit conditions for environmentally hazardous activities. In order to determine BAT, the EU has worded specific documents for different industrial sectors, so-called BAT reference documents. Each specific document renders account for what is considered to be BAT for the respective industrial sector at the time of publication.

The new IED Directive

To improve the general framework for industrial emissions the European Commission submitted a proposal for a review of the legislation in force. In 2010 it resulted in the new Industrial Emissions Directive – the IED (Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control). The IED replaces the IPPC Directive as well as six other sector specific directives. The IED sets minimum standards only.

The IED shall be implemented in Swedish legislation on January 1, 2013 and covers approximately 1,100 plants in Sweden. The Industrial Emissions Survey has submitted a proposal for a new ordinance on industrial emissions and a number of amendments in the Environmental Code and the Ordinance on environmentally hazardous activities and health protection. Certain new provisions will be adopted, which are reckoned to have a significant impact on Swedish environmental legislation.

September 2012
**A better
environment –
reduced emissions
– Industrial
Emissions Survey
SOU 2011:86**

A strengthened application of BAT

Central to the new IED is that the BAT reference documents shall be the reference when setting permit conditions. The conclusions in these documents – the so-called BAT conclusions - will have an immediate impact when setting permit conditions for environmentally hazardous activities covered by the IED, as the competent authority expressly must take them into consideration when setting permit conditions. New provisions are suggested to be adopted in Chapter 16 of the Environmental Code. At present there are some thirty BAT reference documents and there is an ambition to update them no later than 8 years from publication of the previous version.

The emission limit values under normal operating conditions will be set in compliance with the BAT conclusions. As a main rule the competent authority should not set emission limit values which exceed the emission levels associated with the BAT conclusions.

However, exceptions can be made. If an exemption is applied, i.e. if less strict emission limit values are set, the reasons herefor must be clearly documented. Derogations from less strict emissions must also be notified to the European Commission. The competent authority may however grant conditions which are more stringent than the BAT conclusions.

The implementation of BAT conclusions - review and reconsideration

According to the IED the development of BAT shall be given consideration, which means that permit conditions should be reconsidered regularly and, where necessary, updated - in particular where new or updated BAT conclusions are adopted. Moreover, the competent authority is required, within four years of publication of new BAT conclusions concerning a plant's main activities, to ensure that all permit conditions concerning the plant in question are reconsidered and, where necessary, updated. According to the Industrial Emissions Survey approx. 150 Swedish plants will be affected yearly.

With such a large number of plants to be reconsidered or reviewed yearly, there is a risk of causing unnecessary burden on the authorities and affect the authorities' other duties. The Industrial Emissions Survey has therefore submitted a proposal that the BAT conclusions should be transposed to general binding rules, which will have immediate impact on concerned activities and thus apply instead of the permit conditions, where the BAT conclusions set more strict protective conditions. An individual reconsideration is consequently not necessary.

In sectors where general rules are not practicable, a new system of review and reconsideration of the IED installations is proposed. Within this system the operators will be assigned more responsibilities.

September 2012
**A better
environment –
reduced emissions
– Industrial
Emissions Survey
SOU 2011:86**

The Environmental Protection Agency and the Swedish Board of Agriculture shall, within their respective field of responsibility, ensure the surveillance of the work with BAT conclusions within the EU. When a new BAT conclusion is made public these authorities shall inform the supervising authorities (municipalities and county administrative boards). The supervising authority shall then immediately notify the concerned operators of their obligation to submit supporting documents to the authority. Within eight months of publication of a BAT conclusion, the operator shall provide data to the supervising authority demonstrating that the conditions in the permit are in compliance with the BAT conclusion. The supervising authority shall then within one year of publication of the BAT conclusion make a review of the permit condition and determine whether a reconsideration is necessary or not. The review shall result in a decision or an order with immediate effect.

Failing to submit documentation or submitting insufficient data, the operator will be imposed an environmental sanction fee.

If the supervising authority should consider reconsideration necessary, the operator shall apply to the competent authority for reconsideration within the time limit stipulated in the decision or the order from the supervising authority. Failure to apply may in extraordinary cases entail a prohibition against conducting the operations.

Cases and matters of reconsideration will constitute a category of its own at the competent authority. These cases and matters shall be expedited promptly and the review shall be restricted to cover matters related to relevant BAT conclusions only.

Baseline reports for IED installations

Another novelty in the IED is the baseline reports. For activities (IED installations) that may cause pollution the operator shall prepare and submit a baseline report before starting operation of an installation or before a permit is updated for the first time since the Directive has come into force. The report is not linked to the effective date of a new BAT conclusion. Instead, the report shall take into account information on present use and, where available, on past use of the site and of soil and groundwater contaminations, reflecting the conditions on the site at the time of the permit application or reconsideration. Upon definitive cessation of the activities, the operator shall determine the state of soil and groundwater contamination at the site of the installation. Where the installation has caused significant pollution of soil or groundwater the operator shall take necessary measures to address that pollution so as to return the site to the state according to the baseline report. This, however, will not limit other liabilities pursuant to Chapter 10 of the Environmental Code. Further applies that where the contamination of soil and groundwater at the site poses a significant risk to human health or the environment as a result of the

September 2012
**A better
environment –
reduced emissions
– Industrial
Emissions Survey
SOU 2011:86**

permitted activities carried out by the operator before the permit for the installation was updated, the operator shall take necessary actions at site closure. The result of the actions shall be that the site, taking into account its current or approved future use, ceases to pose such a risk. The concept “significant risk” is, however, not defined in the IED.

The wording of a baseline report and its more detailed content is still not clear, since the Commission has not yet worked out any guidelines. The Industrial Emissions Survey therefore regards it as difficult to foresee the consequences on the part of Sweden. However, it is clear that the Swedish regulations on liability for environmental damages in most respects are more stringent than the requirements in the IED. For this reason only minor amendments in Chapter 10 of the Environmental Code are proposed.

Conclusion

Significant changes will be made in Swedish environmental law during the beginning of next year. Taking into account the increased significance of the BAT conclusions, a Swedish participation in the European environmental work will be of vital importance. In view of the requirements of review and reconsideration, an active participation in the application process will be required on the operators’ part. Consequently it is essential for operators to start informing themselves about the work in progress within their respective line of business.



Erica Nobel,
Partner / Advokat



Christina Hellström,
Associate