
June 2013

To Incorporate a Partly New Environmental Regulation – IED in Sweden

The EU Directive on Industrial Emissions (2010/75/EU) (“IED”) entered into force on the 7th of January 2011 and should have been implemented in the national legal orders by the 7th of January 2013. Changes in the Swedish Environmental Code (“Environmental Code”) were implemented before the transposition period expired, while the six new regulations were published on the 8th of May, and will enter into force on the 18th of June 2013. Below is a brief description of the significance of the IED, and some of the changes that the IED has given rise to in the Swedish legal system; changes that affect around 1,100 plants in Sweden.

1. The significance of the IED

The IED replaced seven previous EU directives, namely the IPPC Directive (2008/1/EC), the Directive on Large Combustion Plants (2001/80/EC), the Directive on Waste (2000/76/EC), the Directive on Organic Solvents (1999/13/EC) and three directives for the production of titanium dioxide (which is not produced in Sweden).

The concept of binding BAT conclusions and the requirement of baseline reports on industrial installations are the main new features with the IED. The binding BAT conclusions, so called BAT-AEL (“Best Available Technique - Associated Emission Levels”), are conclusions with associated emission levels that may not be exceeded. The set range of emission levels are determined by the best available technique and the highest emission limit accepted by the EU during normal operations. BAT conclusions without emission levels are more general, and are only to be used as references in relation to the establishment of permit conditions. Industrial installations governed by the IED (“IED-installations”) shall follow both types of BAT conclusions no later than four years after the EU’s publication of the conclusions, whereas the conclusions apply immediately as references. The conclusions apply to either the main activities (main conclusions) or the side activities (side conclusions) and are listed in industry specific BAT reference documents (“BREF”). EU’s aim is to update the BREFs every eight years. To the extent there are no new BAT conclusions published by the European Commission, BAT reference documents in relation to the IPPC, ie previously applicable, should be applied as a reference. At this stage, new BAT conclusions have been published for iron and steel production, for the manufacture of

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glass (including glass fiber and mineral wool), for the tanning of hides and skins, and for the production of cement, lime and magnesium oxide.

The aim with the requirement of baseline reporting is to control pollutants in soil and groundwater. The operator of an IED- installation shall establish a report with the state of soil and groundwater contamination in connection to the permit application, or when an activity that requires a permit is covered by the main conclusions for the first time and there is no previous baseline report established for the IED-installation. The baseline report affects the liability assessment in relation to remediation of contamination at the closure of IED-installations.

2. Changes applicable to Swedish activities

Sweden chose to implement the IED through a number of changes in the Environmental Code and through six new regulations. The aim was to create a more comprehensive framework without comprising a requirement to review existing permits. As mentioned above, the regulations enter into force on the 18th of June 2013. BAT conclusions, in Sweden called the conclusions on best available technique (swe: slutsatser om bästa tillgängliga teknik), are implemented in the Swedish system through general regulations, and are thereby made legally binding. It should be noted that IED's term best available technique is not per definition equivalent to the requirements of the best possible technique as set out in the Environmental Code. The IED is a minimum directive where Member States may impose more stringent conditions. This is why the requirements in the Environmental Code may be more far-reaching and comprehensive.

In order to meet the IED's requirement to return the site of operation to the state described in the baseline report upon cessation of the activity, stricter rules regarding significant pollution have been introduced. Instead of requiring the operator to return the site to a reasonable extent upon cessation, the liable operator is now required to return the site to the condition shown in the baseline report to the extent it is technically possible. It should be emphasized that it is the latest operator of a business, in which a baseline report once has been established, that is obliged to follow the above mentioned rule of remediation. This requirement applies even if the business no longer fall under the IED, i.e. is no longer classified as an IED-installation. Furthermore, it should be mentioned that the rules under the IED and the Environmental Code in regard to remediation can be simultaneously applicable, as different rules may apply to different parts of an operation or installation site. Further, focus on precautionary and preventive measures has increased in the permitting process, in order to prevent or limit damage to human health and the environment.

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The new regulations have similar topics as the directives that were replaced by the IED, and the chapters of Directive itself. The regulations¹ are:

- The Industrial Emissions Regulation (SFS 2013:250)
- The Environmental Assessments Regulation (SFS 2013:251)
- The Regulation on Large Combustion Plants (SFS 2013:252)
- The Regulation on the Incineration of Waste (SFS 2013:253)
- The Regulation on the use of Organic Solvents (SFS 2013:254)
- The Regulation on the Production of Titanium Dioxide (SFS 2013:255)

Once the BAT conclusions have been published by the EU, the conclusions are adopted by the Environmental Protection Agency or the Swedish Board of Agriculture. The conclusions are introduced in Chapter 2 of the Industrial Emissions Regulation, and more sections will be added concurrently with the publication of new BAT conclusions. BAT conclusions can also be used as a reference in other permit processes where the use of best available technique is required under the Environment Code. The requirements for baseline reporting are also to be found in the Industrial Emissions Regulation, and periodic checks are introduced, which require operators to monitor groundwater and soil for relevant hazardous substances within four years of the publication of the main conclusions. Thereafter, the monitoring should take place every five or every ten years.

Parts of the Appendix to the Regulation of Hazardous Activities and Health Protection (SFS 1998:899) ("FMH"), such as activity codes and requirements regarding permits and notification, have been moved to Chapter 2 of the Regulation of Environmental Assessments. Upon this transfer, some changes were made in terms of volumes and types of activities relating to the different codes. The Environmental Assessments Regulation also constitutes a simplification of the amendment procedure of permits where it is now sufficient to notify the supervisory authority about changes that do not conflict with existing conditions. The FMH-Regulation will still regulate some activities under a duty to report, and their requirements for the operation, as well as permit requirements for activities that use hazardous substances. Also, two additional activities are governed by the IED, namely the preservation of wood and wood products with chemicals and the production of wood panels.

Through the regulations, emission standards have become more stringent for large combustion plants in district heating plants, in power plants, in heat and power plants as well as for waste incineration in regard to the emission of nitrogen oxides, sulfur oxides and dust from co-incineration plants. The regulations on volatile organic compounds, VOCs, mainly remain the same.

¹Please note that there is no official English translation of the regulations at this stage.

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3. As an Operator, what Measures Should I Take?

Operators engaged in hazardous activities are obliged to acquire knowledge regarding the impact that the IED and the new regulations could have on their activities. The initial question is whether the operation is conducted at an IED-installation and/or if the operation is affected by the partially revised activity codes? In this case, the transitional provisions must be taken into account in order to ensure that the new regulations are complied with in a proper way and at the right time. This is particularly important in relation to the requirement of baseline reporting. As an operator, one should also be aware of what BAT conclusions that applies to the activity, or that may be used as references. These may be several in numbers. Both the industry-specific conclusions (vertical) and the more general conclusions (horizontal) can be simultaneously applicable and the BAT conclusions relate to either main or side activities.

Please contact the Environmental Team at Delphi to ensure how your business is affected by the changes in relation to the implementation of the IED.



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