**Questionnaire on the IPPC-directive for the annual conference in Stockholm 2009**

**The Netherlands**

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1. How many IPPC-plants are there in your country?

There are about 3500 IPPC-plants in the Netherlands (both agrarian and non-agrarian).

2. In what way are questions concerning the application of the IPPC-directive brought to court (litigation, application for a permit, appeal of a permit decision, application for a summons, criminal offence)?

The first way questions concerning the application of the IPPC-directive are brought to court is by appeal against a permit decision. The court-system in environmental cases in the Netherlands is that these appeals are brought before the Department of Jurisdiction of the Council of State in one instance. This means that a question about the application of the IPPC-directive may reach the court in last instance in our country rather quickly. According to the Netherlands constitution direct applicable international law has priority over domestic law. This means that an according to Netherlands law an appellant may invoke a direct applicable paragraph of an European directive in an appeal before a Netherlands court.
The second way is by appeal against an administrative enforcement decision or in a criminal procedure.

3. Which authority (authorities) issues permits according to the IPPC-directive? How far has the integration according to the directive reached? Can, in your country, one authority issue an IPPC-permit comprising the total environmental impact of the polluting activity (water, air, land, waste etc.) or does the company (applicant) has to send applications to different authorities.

IPPC-permits are granted by the provincial boards (college van Gedeputeerde Staten) or the municipal boards (college van Burgemeester en Wethouders) in the Netherlands. The governmental decree on Installations and permits environmental protection regulates which board is competent for which plant. One may say that in general the provincial board is competent for the bigger plants. So most of the IPPC-permits are granted by the provincial boards. However the local boards are in general competent for the applications for agrarian plants (intensive pig and poultry farming plants). The IPPC-permit covers the total environmental impact of the activity except the discharge of polluted substances on surface water. For this discharge a separate permit is required. The waterboards or the minister of Traffic and watermanagement are competent to grant permits for this discharge; the minister is competent for the discharge in national surface waters, the waterboards for the discharge in other waters. So an IPPC-plant that cause air pollution, noise and discharges polluted substances in surface water needs two separate licenses according to two different acts, the general Environmental Management Act and the Act on waterpollution. The general Environmental Management Act contains provisions to coordinate the application and granting of these two licenses.

4. Which authority or court hears appeals against IPPC-permits? What competence does the authority of court has to change/amend a permit? Can it for example decide about new or changed conditions? Can it just withdraw the permit or parts of the permit?

The court that is competent to hear appeals against IPPC-permits is the Department of Jurisdiction of the Council of State. This court is an administrative court that may be compared with the Conseil d'Etat of France. The Netherlands Department of Jurisdiction of the Council of State has four chambers, for physical planning law, for environmental law, for higher appeal and for migration law. The chambers for physical planning law and environmental are competent in one instances; the other chambers are higher appeal chambers. However, for environmental law this system will change soon. A law is accepted by parliament that will integrate the building permit and the environmental permit into one document. It will also introduce an appeal in two instances against a decision to grant or refuse such an integrated permit; appeal will be on the courts in first instance and a higher appeal on the Department of Jurisdiction of the Council of State. Although, according to this new law the permit for the discharge of polluted substances on surface water still keeps separate and will not be part of the new integrated permit. It is expected that the new system will come into force on januari 1th 2010.
The Department of Jurisdiction has only a restricted competence to amend or change a permit. The first competence of the court is to completely or partly nullify the decision to grant or refuse a permit. After a nullification the administrative organ has to take a new decision taking into account the court's decision. In most cases the court lacks sufficient information to decide by itself what a new permit has to content. In some cases the administrative organ admits that it made a mistake and both parties agree on what has to be done. In such a case this could be done by the court itself. However, the question always remains whether third parties involved agree with this solution. There is a tendency in the Department of Jurisdiction to do more by itself, but this possibility is restricted by the need of the Department for sufficient information and the condition not to pass by third parties involved.
The Department as an administrative judge always decides ex tunc. This means that it considers whether the administrative organ took the right decision according to the circumstances at the moment of the decision. So a court may not decide upon new or changed conditions at the moment of the courts decision.
The Department may not withdraw the permit or parts of the permit, it may only nullify the decision partly of completely. Nullification means that the decision is considered not to have been taken.

5. Who – in addition to the operator of plant – can bring a case concerning IPPC-matters to the court by appealing against an IPPC-permit? What about for example people living in the neighbourhood, NGO's and authorities of different administrative levels (local, regional, national). What kind of obstacles are there for them to bring a case before the court; for instance different kinds of procedural costs.

According to the Netherlands general Act on Administrative Law only those who are directly interested in a decision may raise an appeal against the decision to the court. Until some years ago we had in our country in environmental cases the action polularis (everybody had the right of appeal). Nowadays the environmental legislation is brought under the general appeal-system of the Act on Administrative Law. One is considered to be directly interested as soon as one in any way may be influenced by the installation for

which the license is granted. So it depends of the seize and the character of installation whether the group of those who are directly interested will be big or small.
Among this group also belong NGO's. Whether NGO's are entitled to raise an appeal against an IPPC-permit depends of their statutory aim and their actual activities. Their statutory aim has to be sufficiently articulated, while the considered NGO also has to show actual activities to pursue its aim.
Also administrative organs may be directly interested in a decision. For instance the municipal board of a city in which a permit for an installation is granted by the provincial board may be considered to be directly interested in this decision.
There are in general some formal obstacles to bring a case to the court. First appeal has to be raised within the term for appeal. The general term is six weeks. Secondly one has to pay a fee of 150 euro for a natural person or 297 euro for others than natural persons. Thirdly, environmental decisions like permits are granted according to a procedure in which a draft-permit is published against which objections may be raised. One is only entitled to raise appeal against the decision when on has raised objections against the draft decision.

6. On what basis is decided what is considered to be the best available technique (BAT) in a certain case? What is the role of the BREF documents?

BREF documents are in fact decisive for the question whether a technique is a best available technique. In general administrative organs do not apply techniques that are more environmental friendly than those of the applicable BREF document(s). As soon as they would do so the applicant will raise an appeal. On the other hand as soon as they apply a technique as best available that is not mentioned in a BREF document one may expect appeals from direct interested third parties.
Problems may arise when more than one BREF document is applicable in a case. In general the newer document has priority over the older one. Problems may also arise when a BREF document is rather old-fashioned and a new one is in preparation. The Court will accept that an administrative organ applies the new draft BREF document, but in general administrative organs are not willing to do so. When they still apply the old document, this will also be accepted by the Court.

7. Is there a time limit for the IIPC-permit, or is the permit valid for ever? Is the permit holder obliged to apply for a new permit after a certain period of time? Can a supervisory authority issue injunctions which go further than the conditions of the permit as regards environmental matters? Under what circumstances can a supervisory authority request a review of the permit and its conditions?

Environmental permits are in general granted in the Netherlands without any time condition. Only permits for waste installation are granted for ten years. The general Act on Environmental Management offers a limited number of conditions under which a permit may be granted for a certain period of time, such as a permit for a temporary installation or a permit that is applied for for a certain period of time or when a time-period is required to develop better knowledge about the consequences of the installation for the environment.
So the permit holder is not obliged to apply for a new permit after a certain period of time.
A supervisory body in our country is not entitled to issue further injunctions than the conditions of a permit.
According to the general Act on Environmental Management an administrative organ is obliged to regularly consider whether the restrictions and the conditions of a permit still

satisfy taken into account the developments of technical possibilities to protect the environment and the developments with regard to the quality of the environment. The administrative organ is entitled on its own initiative to add restrictions to a permit or to change or supply permit-conditions or to add new conditions to a permit. Until shortly these obligation and competence were paper ones. Administrative organs where happy when they succeeded in timely deciding on permit applications. Nowadays some administrative organs have started to consequently meet this obligation and use the competence. Especially some bigger industrial plants in the Netherlands do not meet the requirements of best available techniques. For those plants the administrative organs try to adopt the applicable permits, although without an application this is not an easy job.

8. Is the choice of the localisation of an IPPC-plant considered in the same process s the IPPC-permit and the conditions for the permit? Or is the localisation decided in a separate process according to another legislation? In that case, which comes first, the decision on the localisation or the IPPC-permit?

The decision on the localisation of the plant and on the IIPC-permit follow different procedures. The localisation of a plant is a matter of physical planning. A plant may only be established on ground with a sufficient physical planning destination. These destinations are fixed in municipal destination plans. A building permit for a plant may only be granted as long as the plant will be established on ground with a sufficient destination. The granting of and IPPC-permit is a matter of environmental law. These where always separate decisions following separate procedures. Recently the general Act on Environmental Management is adopted in a way that a  not sufficient destination may be a ground to refuse an environmental permit.
In general the decision about the localisation comes first. Only for a certain plant on a certain place an IPPC-permit may be applied for. After the IPPC-permit is granted a building permit may be granted. Building permit and environmental permit are procedural linked to each other in the sense that an environmental permit does not come into force as long as the building permit has not been granted, while an application for a building permit has to hold up as long as an environmental permit has not been granted.
As said before according to new legislation the building and the environmental permit will be integrated into one document. This however does not change the fact that the decision about the localisation and about the IPPC-permit are separate decisions.

9. Are the EIA-directive (Council directive of june 27$^{th}$ 1985 on the assessment of the effects of certain public and private projects on the environment, 85/337/EEC) and the IPPC-directive implemented in the same legislation in your country, so that you in one single process get a permit that fulfils the demands of both directives? If not so, how is the EIA-directive implemented? For example in a special legislation, in planning and building legislation or otherwise?

The EIA-directive and the IPPC-directive are implemented in the same Act in the Netherlands, namely the general Act on Environmental Management. Granting a permit for an IPPC-plant for which decision an EIA has to be drafted, can take place in one single procedure. The procedure starts with a letter of notice in which the undertaker gives notice of his initiative to competent administrative organ. This organ issues directives for the drafting of the EIA. Once a draft EIA is published everybody can comment and the Advisory body on EIA gives advice on the draft. Then the final EIA is part of the application for the IPPC-permit. There is no separate possibility to go into appeal against the EIA. Appeal against the

decision to grant the permit may also cover appeals against the EIA in the sense that it is not correct and/or complete.

10. Suppose an existing IPPC-plant wants to double its production and that this will be done by duplication most of the process equipment. The plant will thus consist of an old and a new line of production, but some equipment that is necessary for environmental protection will be parted so that it is used by both lines. The application concerns only the increase of production (the new line) and not the whole production (both old and new line). How does the permit authority handle this situation? Does it issue a permit concerning only the increased production (the new line)? Or does it demand a new application concerning the whole production (old and new line)? Or what? (see article 12.2) This question can be considered in the light of the EIA-directive, which demands the assessment of a project as a whole (and no cutting of pieces of salami).

I suppose the permit authority will grant a permit for the new production line. According to the general Environmental Management Act we distinguish in the Netherlands between a permit for the establishment of a plant and a permit for the enlargement or the change of a plant. The permit authority is not entitled to grant another permit than the one that is applied for. In the Netherlands practice of permit-granting the application forms an important document. The permit authority is more or less depending of the application. It is not entitled to grant an other permit than the one that is applied for, it is also not entitled to grant a permit for an other plant than the one that is applied for and it is not entitled to prescribe conditions based on BAT, when the application contains measures that are less strict. In the last case the application should be refused.
I expect that the IPPC-directive requires a greater freedom and competence for the permit authority to met all the requirements of the directive. But in our country not all these requirements are deeply explored until now.
Only in a case in which for a certain plant already a number of licences has been granted and the total of the licenses offers an unclear system of regulation the permit authority may require that the applicant applies for a new overall permit. Once this permit is granted, it replaces all forgoing permits for the plant.

11. Can the permit authority decide on conditions based on BAT, even if the application only describes environmental protection measures that are less strict? How does the authority handle applications that are not based on BAT?

See the answer under 10.

12. If there are national general rules on emission standards that do not match BAT, how are they applied by the permit authority?

According to the general Environmental Management Act general for categories of plants rules may be issued that are necessary for the protection of the environment. An exemption has been made for IPPC-plants. The general rules may restrict themselves to certain categories of cases. According to these rules a permit for an individual plant is no longer required. General rules may also be issued for categories of plants for which a permit still is

required. The general rules for those plants cover in general only a certain element of the plant for example a combustion oven. For this group of general rules the BAT-principle is applicable. It is however possible that already existing general rules are in force that not meet the standard of BAT. A permit authority is not always aware of the fact that applicable general rules do not match BAT. In case it is, it should set aside these rules and apply individual permit conditions. If it does apply these general rules and in appeal there is a complaint about this application the Department of Jurisdiction of the Council of State will nullify the decision by arguing that these rules should not be applied because they brake the requirement of BAT of the General Environmental Management Act.

13. How does existing industries meet the demands of the IPPC-directive in your country? Who has the responsibility to make sure that the requirements are met? Is it the supervisory authority, the operator of the plant or someone else.? What are the consequences if an existing industry does not meet the requirements? Can it be closed? Or is a certain period excepted before measures are taken? How long?

I do not have general information about the level of being IPPC-proof in my country. It is known that a number of big industrial plants, like the chemical plant of Dow Chemical and some oil refineries of f.i. Shell on a number of points do not meet the requirements of BAT. These are all existing plant; so their time to adapt the plant to BAT has already passed. Adaptation will take place on moments in future when the plant is closed for maintenance and renewal. Closing on other moments will be far too expensive. Permit authorities tent to accept an adaption to BAT over five till six years. According to the Department of Jurisdiction the IPPC-directive does not offer such a possibility to postpone the adaptation to BAT for existing plants over the term of article 5 IPPC-directive.
The operator of the plant is in the first place responsible to meet the requirements of BAT. If he fails, the supervisory authority which is in the general the same authority as the permit authority, has to take action. Until now few enforcement actions for not meeting BAT are reported. In theory a plant may be closed for not meeting BAT. In practice this will nearly never done. Enforcement takes place by using a penal sum in the sense that the operator gets the order to apply provisions so that he meets BAT; if he neglects this order a penal sum may be confiscated for every day he neglects or every time he neglects.

14. Which authority is supervising IPPC-plants? How often do inspections take place? What enforcement policy do they have(warning, injunction, sanctions and so on)? Which sanctions can be applied in case of violation?

In the Netherlands the permit authority is also the authority that is responsible for enforcement. This authority has all the competences it needs to check the plant also from the inside, to take samples and to ask for information. The enforcement authority has in case of violation of the rules two administrative sanctions, namely the already mentioned penal sum and the competence to do by itself what the operator has failed to do or to remove what has been placed illegal. Especially the competence of a penal sum is often used. In many cases the operator reacts already on the announcement of a draft penal sum.
I do not have general information about the numbers of inspection. The frequency of inspection differs from authority to authority and from category of plants to category. In some municipalities every plant is inspected every two or five years; other authorities react mainly on complaints and don not have a regularly inspection scheme.

Criminal sanctions are regularly applied although they are not always effective. In a number of cases the penalties are too low to have a real effect.

An example

1. A tannery is a plant that belongs to category 8 of the Governmental decision on plants and permits environmental protection. According to this category the provincial board is competent to grant a permit for certain plants to which tanneries do not belong. This means that the municipal board is competent.

2. The application will include an EIS when it relates to the establishment, the enlargement or the chance of a tannery that produces a discharge of 1000 or more inhabitant-equivalents of discharge. In this case an investigation should take place whether for the tannery an EIS should been made because of the extra ordinary circumstances under which the activity takes place. The limit of over 1000 inhabitants equivalent discharge is a limit according the Netherlands governmental decision on EIS. According to the EIS-directive there is no limitation in the amount of the discharge for the establishment of a tannery.

3. The permit authority will not try to integrate the localisation of the plant in the same process as the IPPC-questions. As explained before the undertaker of the plant is free to locate the plant on ground with a suitable destination according to the municipal destination plan. Once the location has been chosen, an application for an IPPC permit will be done; after the IPPC-permit is granted a building permit may be granted.

4. There are certainly procedural costs for the tannery operator. He has to fulfil an application and the needed reports on investigations f.e. in noise, in soil protection, in air pollution and possible he has to draft an EIS. For a IPPC-permit no fee is required, but for a building permit a fee is required mostly related to the building costs.

5. In general permit authorities are rather reluctant in asking many other authorities advice about the application. Often the fire brigade is consulted about aspects of external safety and fire protection. The Inspectorate of the ministry for the Environment has the legal competence to advise on every application for a permit. In practice the Inspectorate seldom does. When a plant is located near to the municipal border the board of the other municipality will get the possibility to advice. A municipal board has also the legal opportunity to advice on an application on which the provincial board is competent for a plant within the municipal borders.

6. Public participation is guaranteed by law. A decision on an application for a permit will be made according a procedure regulated in de general Act on Administrative law. According to this procedure a draft-permit will be published. In the local press an announcement will be made of this publication. Everybody has the right for a period of six weeks to comment on the draft. The public authority is obliged by law to react on the comments. This is normally done in the considerations of the decision to grant or refuse the permit. When anybody asks for a public hearing about the draft decision it will be hold.

7. Conditions concerning the tanning technology (clean production):

may be done by the permitting authority, but will often be done in the application; mostly the application is part of the permit.

Conditions concerning the cleaning technology (end of pipe solutions)
yes

Limit values for water pollutants
yes but mostly in a separate permit granted by the waterboard.

Limit values for air pollutants
yes

Conditions concerning solid waste
it depends; when the solid waste is stored in the plant itself yes; when it will be transported outside the plant this will be described in the application.

Limit values for noise
yes

Limit values for energy consumption
no; for the bigger plants an energy report is required while the operator has to draft and execute a saving program under approval of the permit authority.

Conditions concerning transports to and from the plant
may be done, f.e. obligatory transportways to and from the plant and a general limit for noise for traffic to and from the plant

Conditions about what chemicals that are not be used
No, these chemicals are either excluded by legal regulation or the application contains a description of the chemicals that will be used.

Conditions concerning the control of discharges
Yes

Can the setting of conditions be postponed in the permit
Yes, under certain conditions; f.i. the operator has to draft a saving or a discharge program; this should be approved by the permit authority and the
approval takes place under certain conditions.

Can stricter conditions than what is stated in the BREF-document be set?
In practice no; see above.

8. The maximum discharge of chromium to water from the tannery will first depend of the application. When the application meets emissionstandards for chromium there will be no problem in granting the permit. If not, the permit may be refused. In setting a maximum the quality of the water in which the discharge takes place will be taken into account. Water quality in the Netherlands in general is not very good. It is expected that we will not meet the conditions of the framework water directive in 2015.

9. Only those who have a direct interest in the decision to grant or refuse a permit may appeal against the decision to the Department of Jurisdiction of the Council of State.

End of the questionnaire