

EU FORUM OF JUDGES FOR THE ENVIRONMENT

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

General questions about the implementation and application of the IPPC-directive and the role of the courts
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1. How many IPPC-plants are there in your country?

There are a total of 380 IPPC-plants in Norway (According to numbers given by The Norwegian Pollution Control Authority – SFT – August 2009).

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)?

Parties that hold a legal interest may bring to court the question of the legality of a permit issued by the relevant Norwegian authority. In such a case a court may find the permit invalid. The Court, however, is not authorized to revoke or invalidate a permit ex officio.

Civil law proceedings are effectuated following a writ of summons initiated by the plaintiff. As a main rule, criminal law proceedings are effectuated following a decision by the prosecuting authority. The administrative law proceedings are in Norway basically considered as ordinary civil law proceedings, but the plaintiff will in these matters have to have used his right to file an administrative complaint before bringing the case to court.

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 (the applicant) have to send applications to different authorities?

Permits according to the IPPC-directive, implemented in Norwegian legislation by the Pollution Control Act and Pollution Regulations are issued by the Norwegian Pollution Control Authority (SFT). A permit comprises the total environmental impact of the polluting activity, and the company is therefore only required to send one application.

SFT is a government agency (directorate) and reports to the Norwegian Ministry of Environment. The agency manages and enforces i.a. the Pollution Control Act and relevant regulations. The agency grants permits, establishes requirements and sets emission limits, and carries out inspections to ensure compliance.

4. Which authority or court hears appeals against IPPC-permits? What competence does the authority or court have 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?

According to the Pollution Control Act section 85, the permits issued by the SFT may be appealed to the Norwegian Ministry of Environment. (The Public Administration Act chapter IV includes provisions on the administrative procedure). The Ministry has the full competence

to change, amend or withdraw a permit in accordance with the provisions laid down in the Pollution Act and relevant regulations. As a main rule, however, the permit cannot be changed to the disadvantage of the appealing part.

If the question of the legality of the permit is brought to court, the court's competence is limited to finding the permit invalid, as described under question 2.

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

Any party that holds a legal interest may bring to court the question of the legality of an issued IPPC-permit. To hold legal interest, there is a general prerequisite that the plaintiff must establish a genuine need for having the claim determined as stated against the defendant. Further, it must be established a specific and practical interest for the plaintiff in the outcome of the case.

The right of organizations, associations and certain public bodies to bring action in their own name on behalf of their members/target group has been developed through case law. It follows from the doctrine that the right of the organization is independent of the rights of its members. Accordingly, the organization may bring action even if no single person has standing.

NGO's that promote specific rights or interests may bring action for the protection of those rights or interests. It is a condition that the action falls within the object of the organization and that the organization is a natural representative of that interest. An action brought by an organization established for the purpose of bringing a specific action, will be dismissed.

According to the outcome of the court proceedings, the plaintiff may have to bear the procedural costs of the case, i.e. the court fee. If the plaintiff is not represented by a lawyer, the court fee has to be paid at the latest when the application for a summons is submitted to the court.

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?

Appendix II to the Regulations relating to pollution control includes a definition of the term "Best available techniques", and has a list of different relevant issues to be taken into consideration when an application for an IPPC-permit is processed. Further, it is underlined that when determining what is the best available technique in each separate case, the likely costs and benefits of a measure and the principles of precaution and prevention is to be taken into account by the authority.

In addition, it follows from Appendix II to the regulation that the BREF-documents shall be used as an aid for determining the best available techniques in each emission permit.

7. Is there a time limit for the IPPC-permit, or is the permit valid for ever? Is the permit holder obliged to apply for a new permit after a certain time period? 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?

In general, there is no time limit for an issued IPPC-permit, and the holder is not obliged to apply for a new permit after a certain period. It follows however from section 18 of the Pollution Control Act that SFT may amend the permit or issue a new permit to replace the existing one when the underlying conditions for the acceptance of the permit has been changed. Further, it follows from section 36-12 of the Regulations relating to Pollution Control (Pollution Regulations), that the competent authority shall on its own initiative periodically reconsider the permit – i.a. in the light of the development of the best available techniques.

8. Is the choice of the localisation of an IPPC-plant considered in the same process as 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?

No. The localisation of an IPPC-plant is not decided as part of the processing of applications pursuant to the Pollution Control Act. According to the SFT, an IPPC-permit will not be issued if the localisation of the plant has not yet been established. An application regarding the localisation of the plant will be considered by the competent planning and building authority.

9. Are the EIA-directive (Council Directive of 27 June 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?

No. The EIA-directive (amended by directive 97/11/EC) is implemented into Norwegian legislation by the Act on Planning and Building. Where an impact assessment is required due to the EIA-directive, however, a summary of the impact assessment, including a list of the key options that have been assessed by the applicant, shall be included in the application for an IPPC-permit.

10. Suppose an existing IPPC-plant wants to double its production and that this will be done by duplicating 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 environment 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 light of the EIA-directive, which demands the assessment of a project as a whole (and no cutting of the salami!).

According to the Pollution Control Act, a new application for an IPPC-permit is required when substantial changes regarding the emissions from the IPPC-plant will take place. In

general, in such a case, the SFT will issue a new permit where both the new and the old line of production will be taken into consideration. Certain conditions may apply only to the new part of the plant, however, but this will be considered individually in each case.

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

According to the Pollution Control Act section 11 and the Regulations relating to pollution control section 36-8, the SFT shall - when processing applications for permits and determining the conditions attached to them - base its decision i.a. on the fact that all appropriate preventive measures are taken against pollution, in particular through application of the best available techniques, cf. Appendix II to the regulation. This will apply also to applications where the techniques for preventing or limiting pollution and the harmful effects of pollution included in the application, are not based on BAT.

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

As to our knowledge, there are no such general rules in Norway.

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 time period accepted before measures? How long? (See article 5.)

When an IPPC-permit is issued, the responsibility to make sure that the requirements are met lies with the operator of the plant. If an existing industry does not meet the requirements, the SFT may impose a pollution fine payable to the state, cf. The Pollution Control Act section 73.

The pollution fine becomes effective if the person responsible fails to meet the deadline for remedying the matter set by the pollution control authority. A pollution fine may also be imposed in advance and in such cases becomes effective from the date when any contravention starts. It may be decided that the pollution fine shall continue to be effective for as long as the unlawful situation persists, or that it is payable each time contravention takes place.

In serious cases of transgression, the SFT may press criminal charges, cf. The Pollution Control Act chapter 10.

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

SFT is responsible for supervisory activities pursuant to the Pollution Control Act. It is not possible on a general bases to state how often inspections will take place, but according to information given by the SFT, the frequency of inspections rely in part on the risk-potential of

the actual IPPC-plant. For IPPC-plants considered to represent a high risk to the environment, inspections will be carried out on an annual basis.

As described under question 13, the SFT may impose a pollution fine or press criminal charges against the enterprise responsible for an eventual contravention.

An example

A new tannery is going to be built in your country. The tannery will have a production that exceeds 12 tonnes per day and is thus an IPPC-plant.

1. What kind of authority or authorities (local, regional, central) will handle (examine, review) the application and issue the permit?

The Norwegian Pollution Control Authority (SFT) – when it comes to the application for an IPPC-permit.

2. Will the application include an EIS according to the EIA-directive?

Not necessarily. Please refer to question 9 above.

3. Will the permit authority/authorities try the localisation of the plant in the same process as the IPPC-questions?

No. Please refer to question 8 above.

4. Are there any procedural costs for the tannery operator?

No. (Not for the administrative procedure).

5. Does the permit authority normally ask other authorities on different administrative levels in the permit process for their opinion on the application?

Not if the competence to process the application lies fully within the relevant authority's area.

6. How does the permit authority ensure public participation? Can for example people state their view in writing, by e-mail, in a public hearing or otherwise?

According to the Regulations relating to pollution control section 36-6, in cases that involve activities covered by Appendix I (the tannery in the example is included, cf. the appendix nr. 6.3) and in other cases that can be of significant importance to an undetermined group of people, the SFT shall, before an administrative decision is made, give the public an opportunity to submit an opinion within a set time limit, which shall not be shorter than four weeks. If the urgent granting of a permit is required out of consideration for the environment, for the need for a solution to an acute problem or for significant social interests, a shorter time limit may be set.

Advance notification to the public shall be made through the channels suitable for drawing the attention of the public to the case. Relevant documents shall be made available in ways suitable for providing the public with the opportunity to examine them. The expenses associated with such notification shall be covered by the applicant or the permit holder.

7. The permitting authority will issue the permit on certain conditions. Mark with an X the in the table what kind of conditions that might be laid down. And please make good use of the “remark”-column, with for instance examples of conditions!

Kind of condition	Yes	No	Remark
conditions concerning the tanning technology itself (clean production)		X	
conditions concerning the cleaning technology (end of pipe solutions)		X	
limit values for water pollutants	X		
limit values for air pollutants	X		
conditions concerning solid wastes	X		
limit values for noise	X		
limit values for energy consumption	X		
conditions concerning transports to and from the plant	X		
conditions about what chemicals that are not to be used in the production	X		
conditions concerning the control of discharges	X		

Other questions	Yes	No	Remark
can the setting of conditions be postponed in the permit?	X		
can stricter conditions than what is stated in the BREF-document be set?	X		

8. If the permit authority wants to prescribe a condition on the maximum discharge of chromium to water from the tannery, on what basis is the level of the discharge decided?

Please refer to questions 6 and 11 above.

9. Who can appeal the permit and to whom?

Please refer to questions 4 and 5 above.