

## Reform of the Environmental Permitting System for industrial installations

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Law 5/2013, of 5 June (hereinafter, the "Law"), has introduced important changes to the granting of environmental permits applicable to large industrial installations.

The "Integrated Environmental Permit", as it is called by Spanish Law, was introduced and regulated by Law 16/2012, which implemented Council Directive 96/61/EC concerning integrated pollution prevention and control (the "IPPC Directive").

The industrial installations that require this permit are listed under Annex 1 of the Directive, which includes, among others, combustion installations, industrial plants that manufacture and transform metals, industries involving minerals and chemicals, waste-management plants and a series of other specific industrial activities. In general, it is necessary for industries to exceed the production or performance thresholds that are established under said Annex (in Spain, this permit is applicable to upwards of 6,100 industrial installations).

In short, Law 16/2012 implements the so-called "integrated system" for controlling pollution, whereby only a single permit is necessary to control all the emissions of a facility that could possibly pollute the atmosphere, water or soil, which is something that will be advantageous for the environment. As the Directive says, different approaches to controlling emissions

into air, water or soil separately may encourage the shifting of pollution from one environmental medium to another rather than protecting the environment as a whole. Furthermore, processing the relevant permits becomes more streamlined and expeditious.

Given that the IPPC Directive was replaced by Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control), the Law was enacted with the purpose of partially incorporating the Directive's new provisions. This process of reforming the laws to include the provisions of the new Directive will be completed when the new Royal Decree on Industrial Emissions is enacted; the draft bill of this Royal Decree is currently in progress<sup>1</sup>.

Among the novelties that the Law introduces into the integrated environmental permit system the following are most noteworthy:

1. The permit ceases to have a temporary nature and becomes permanent (until now, it had to be renewed, at the request of the facility's owner, every eight years). The possibility for an ex officio revision by the competent authority will continue to be applied when any of the circumstances established under Law 16/2002 arise.
2. The Law introduces measures aimed at expediting and simplifying the procedure for

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<sup>1</sup> The draft bill of the Royal Decree on Industrial Emissions, which implements Directive 2010/75/UE, is currently subject to public perusal and it can be consulted on-line at the MAGRAMA website: [http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/participacion-publica/pp\\_2012\\_rd\\_emisiones-industriales.aspx](http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/participacion-publica/pp_2012_rd_emisiones-industriales.aspx)

the granting of permits, such as: (i) it is no longer necessary to apply for a new permit when substantial changes have been made to the installations, from now on it will be sufficient to request an amendment to the existing permit under a summary procedure; (ii) the competent authority must grant the permit within a 9 month period as opposed to the previous 10 month term (as previously, the permit will be considered as rejected if within said term no response has been received by the competent authority); (iii) when the installations reduce their production or capacity to levels that do not reach the thresholds established under Annex 1, the installations will no longer be subject to the integrated environmental permit system (in such cases, the necessary permits by sector will be applicable with regard to: emissions, waste and/or discharge management).

3. The Law allows for a single integrated environmental permit to be obtained for the various parts of a industrial facility that are located on the same premises, even if such parts are operated by different title-holders/ owners (until now, it was required that there be a sole owner).
4. The Law reinforces the implementation of the "Best Available Techniques" (BAT) to determine the emissions levels for industrial facility emissions. This is one of the main novelties that the Industrial Emissions Directive introduced because, up until now, the Member States were allowed broad discretion by taking the BAT into consideration when granting permits. The BAT, as they appear in the Best Available Techniques (BAT) Reference Documents, known as BREFs, published by the Commission, are limited to merely providing reference information.

From now on, competent authorities shall ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the decisions on "BAT conclusions". These 'BAT conclusions' refer to the document, approved by the European Commission, that contains the parts of a BREF laying down the conclusions on best available techniques, their description, information to assess their applicability and the emission levels associated with the best available techniques.

As the emission levels associated with the best available techniques as laid down in the decisions on "BAT conclusions" set a permissible range, the Law recognises the possibility for the authorities granting the permit to take into account diverse criteria when deciding each case (such as the technical characteristics of the installations, the nature of the emissions and the possible transfer from one medium to another, etc.).

Exceptionally, the competent authorities are allowed to deviate the emission limit values of the permit from the emission levels associated with the "BAT Conclusions" in order to take into account certain specific circumstances, where the application of emission levels associated with the best available techniques would lead to disproportionately high costs compared to the environmental benefits.

The Law establishes that within a four-year period from the time the Commission approves the "BAT Conclusions" for a certain activity, the permits for the referred installations must be subjected to a review process and, if necessary, the adaptation of any conditions related to the permit, in order to guarantee compliance with the emission limit values under normal operation. At the time the revision is carried out, the competent authority will also verify if the facility meets all terms and conditions established under the permit.

5. New requirements have been introduced to protect soil and underground water. Namely, where the activity involves the use, production or release of relevant hazardous substances and with regard to the possibility of soil and groundwater contamination at the site of the installation, the operator shall prepare and submit to the competent authority a baseline report before starting operation of an installation, and, after the definitive cessation of activities, where the installation has caused significant pollution of soil or groundwater compared to the state established in the baseline report, the operator shall take the necessary measures to return the site to that state.
6. Finally, with regard to the updating of the existing environmental authorisations, any installations whose permit do not include the explicit requirements that are listed under

the First Additional Provision of the Law must be adapted to these provisions prior to 7 January 2014; these explicit requirements include, among others, the drafting of the aforementioned baseline report, or the measures envisaged in the event of any incidents or accidents. This provision of the Law,

in addition to complying with the adaptation period established under the Directive, also allows for the adaptation of existing permits (which were granted under the original wording of Law 16/2002) to the new permanent permit system, thus making it unnecessary to apply for their renewal.

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