

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

### **1) How many IPPC – plants are there in your country?**

There are 3097 IPPC – plants in Poland (according to the register kept by the Minister of the Environment).

### **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 summons, criminal offence)?**

The issues concerning application of the IPPC-directive are brought to the administrative court as a litigation upon prior lodging of an appeal of an IPPC decision. Moreover, they can be subject of criminal proceedings in the event of an offence against the environment.

### **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?**

According to the IPPC-directive, the authority responsible for implementation of provisions resulting from the IPPC-directive, specified by the legal provisions of a Member State, is the authority competent to issue an IPPC-permit.

The main act of the national law in the sphere of the environmental protection is the Act – Environmental Protection Law. Article 378 of the Act – Environmental Protection Law defines the competent authorities in relation to the IPPC-permit.

The competence of authorities to issue the IPPC-permit depends on the type of a project and localization of an IPPC-plant.

- a) Regional Director of Environmental Protection is the competent authority in reference to projects and events on the enclosed area.
- b) Marshal of the Voivodship (self-governmental body of a highest level) is the competent authority in the affairs related to:
  - 1) projects and events on the premises of plants, where the plant is planned, which is qualified as an enterprise that might have a significant impact on the environment in the understanding of Act of 3 October 2008 about popularisation of information about the environment and its protection, public participation in the environmental protection and assessment of impact on the environment;

- 2) a project that might always have a significant impact on the environment in the understanding of Act of 3 October 2008 about popularisation of information about the environment and its protection, public participation in the environmental protection and assessment of impact on the environment, implemented on the areas other than those specified in point 1).
- c) Staroste(self-governmental body of a middle level) is the competent authority to issue an IPPC-permit concerning other projects.

In Poland one authority issues an IPPC-permit in the sphere of impact of a project on the whole environment. The company (the applicant) does not send applications for issuance of an IPPC-permit to several different administrative authorities.

- 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?**

Appeals against the decision about IPPC-permits are heard by the Self-Government Board of Appeals (Samorządowe Kolegium Odwoławcze). The entities authorized to lodge appeals are parties of the administrative proceedings, even if they have not taken part in the pending proceedings and ecological organizations having the rights of a party. According to Article 28 Code of Administrative Procedures (kpa), a party is everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest.

The rights of the authority to issue a decision have been specified in Art. 138 Code of Administrative Procedures, based on which the authority may:

1. Uphold the appealed decision,
2. Reverse a decision in part and in this scope adjudicate about the essence of the matter,
3. Reverse an entire decision and in this scope adjudicate about the essence of the matter,
4. Reverse a decision in full or in part and in this scope discontinue the proceedings in the authority of first resort,
5. Discontinue the appeal procedure,
6. Revoke the appealed decision and remit the case for re-examination to the authority of first resort.

In the event a decision or a provision is issued by the Self-Government Board of Appeals in first resort, a claim should be preceded by an application for re-examination of the case, else it will be rejected by the court. If a party does not agree with the decision of the Self-Government Board of Appeals, it can bring a case before the court. Decision issued by the Self-Government Board of Appeals is subject to control by the Administrative Court after

lodging an appeal against decision by the parties of the proceedings. A claim should be submitted to the locally appropriate Administrative Court through the Self-Government Board of Appeals that has issued the decision. There should be an instruction related to submission of a claim in the decision of the Self-Government Board of Appeals. A party has 30 days to submit the claim, commencing on the day of delivery (announcement) of the decision by the Board. Submission of a claim itself does not result in a stay of enforcement of the decision. A party may submit an application for such a stay of enforcement of the decision together with the claim.

The administrative court decides a case with a judgment, if it accepts a claim and then it:

- 1) reverses a decision in full or in part,
- 2) states the invalidity of the decision.

In such a case the court usually specifies which legal regulations have been violated by the authority and brings the case before the court for re-examination. If the court dismisses a claim, it shall justify the judgment on request of a party within 7 days of the day of pronouncement of the judgment by the Voivodeship Administrative Court.

**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?**

Act of 3 October 2008 on popularisation of information about the environment and its protection, public participation in the environmental protection and assessments of impact on the environment regulates the issues of public participation in the procedure concerning issuance of IPPC-permits. Everyone is admitted to take part in the procedure concerning issuance of an IPPC-permit, regardless of his/her nationality and origin, place of residence and direct profits or loss resulting from the conduct of proceedings. Everyone has the right to express his/her comments and submit motions, take part in an open administrative session, if the authority decides to carry it out, yet he/she does not have the right to appeal against the administrative decision, since this right is vested only to the parties. According to Article 28 Code of Administrative Procedures, the party is everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest.

Ecological organizations may lodge an appeal or a complaint about a decision requiring public participation even if they have not taken part in the proceedings about issuance of the decision (Article 44 Act about popularization of information about the environment and its protection, public participation in the environmental protection and assessments of impact on the environment). This regulation ensures proper transposition of Article 10a of directive

85/337/EEC regarding the necessity to ensure access to justice in matters related to the environment to all members of “the interested society“.

**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?**

The applicant should prove in his application for an IPPC-permit that the plant meets requirements of the best available techniques (BAT).

The definition indicates that keeping the limit emission values has the most important meaning for stating whether a given solution meets BAT requirements. Each technical or organizational solution that ensures keeping the limit emission values should be recognized as fulfilling BAT. The permissible emission values from the IPPC-plants are defined while taking into account the need to observe the emission standards as well as the general duty not to exceed the environmental quality standards out of the area, to which the operator of a plant has a legal title or out of the industrial zone, and in reference to noise emissions – out of the area of the limited use, if it has been established.

Limitation of requirements, concerning the IPPC-plants, to the abovementioned conditions would be equivalent to a lack of essential differences in comparison to other plants. It should be noted, however, that the issues mentioned in Art. 143 Act Environmental Protection Law are to be applied to all plants subject to obtainment of an IPPC-permit, i.e.:

- 1) use of substances of low hazard potential;
- 2) effective generation and use of energy;
- 3) ensuring rational consumption of water and other raw materials as well as other materials and fuels;
- 4) application of waste-free and low-waste technologies and the possibility of recycling of the arising waste;

and the argumentation used by the applicant in order to prove that he meets the abovementioned conditions should be based on the following information:

- 1) type, scope and volume of emissions;
- 2) application of processes and methods comparable to those applied effectively on the industrial scale;
- 3) application of scientific and technical progress.

Moreover, the Act Environmental Protection Law imposes an obligation to include the following aspects while defining BAT requirements for a given plant:

- 1) profit and loss account;
- 2) time necessary to implement the best accessible techniques to a given type of plant;
- 3) prevention of environmental risks caused by emissions, or their limitation to a minimum;
- 4) taking up measures to prevent serious industrial accidents or reducing the environmental risk caused by them to a minimum;
- 5) date of delivery of the plant to use;

- 6) information about the best accessible techniques, published by the European Commission based on Art. 16 clause 2 of the IPPC-directive.

These issues constitute an additional scope of requirements concerning IPPC-plants, although due to the fact that they have not been quantified, they constitute an area where the operator of a plant and the environmental protection authority have to come to a consensus in the course of the proceedings. From the practical point of view, it can be assumed that the requirements described in Art. 143 points 1-4 Act Environmental Protection Law as well as Art. 207 clause 1 points 1-4 have been included in reference documents published by the European Commission (so-called BREFs), referred to in Art. 207 clause 1 point 6. These documents contain specific quantitative emission parameters or volumes of raw materials and other materials consumption, as well as recommendations referring to application of particular technical and organizational solutions. Therefore, while proving the conformance of an application with BAT requirements one should include a comparison of the factual state of affairs with the provisions included in the reference documents. However, one should remember that information contained in BREFs constitutes a point of reference exclusively, and not unequivocal recommendations of solutions to be applied. All the more they cannot be treated as limit emission values, especially while taking into account the fact that the IPPC-directive forbids to recommend specified techniques or technologies and it orders to include technological characteristics of a given plant, its geographical location and local environmental conditions.

- 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?**

The IPPC-permit is issued for a defined period of time, yet not longer than for 10 years. The Minister of the Environment keeps a register of applications for IPPC-permits and the IPPC-permits issued. The Minister of the Environment may ask the Staroste or Marshal of the voivodeship for granting information or access to documents concerning issuance of IPPC permits. If an incorrectness in the scope of issuance of IPPC-permits by the Staroste is found, the Minister of the Environment makes an approach, which may include in particular a motion for statement of invalidity of the decision about issuance of an IPPC-permit.

If an approach is made, the Minister of the Environment shall have the right to be a party in the administrative procedure and the proceedings before the administrative court.

The authority proper to issue a permit at least every five years makes a review of an issued IPPC-permit. Moreover, issuance of an IPPC-permit is also reviewed, if there has been a change in the best accessible techniques, permitting a considerable reduction of emission volume without causing excessive costs, or it results from the need to adjust the use of the plant to changes in regulations concerning environmental protection. If the review shows a

need to change the content of an IPPC-permit, whose expiry period elapses later than in a year upon the completion of the review, the existing IPPC-permit shall be cancelled or limited without compensation.

**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 localization decided in a separate process according to another legislation? In that case; which comes first, the decision on the localization or the IPPC-permit?**

Selection of localization of an IPPC-plant/plant is not considered in the procedure about issuance of an IPPC-permit. Localization of an IPPC-plant is decided in a separate administrative process. A localization decision is issued before obtainment of an IPPC-permit. One can apply for issuance of an IPPC-permit as early as at the moment of commencement of the execution of an investment, i.e. upon obtainment of a building permit. An application for issuance of an IPPC-permit may be submitted before obtainment of a permit for use.

**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?**

The procedures based on the directive 85/337/EEC and the IPPC-directive are two separate procedures. The process based on the directive 85/337/EC is completed with issuance of a decision on the environmental conditionings. The process based on the IPPC-directive is completed with issuance of an IPPC-permit. If a project consists in construction of a plant where a IPPC-installation is to be used and at the same time it is a project that may always have a considerable influence on the environment or that may have a considerable influence on the environment that is qualified as a project subject to assessment of the environmental impact, then there have to be a process conducted concerning issuance of a decision about environmental conditionings in relation to such a project. A copy of the decision on environmental conditionings or a copy of an application for issuance of a decision about the environmental conditionings is one of the attachments to the application for an IPPC-permit. It must be stressed that the process about issuance of an IPPC-permit has to be carried out with public participation, which ensures transposition of Art. 10a of the directive 85/887/EEC concerning the need to ensure all members of “the interested society” an access to justice in matters related to the environment. This way the demands of both directives are fulfilled in the process of issuance of an IPPC-permit. At the same time, it has to be stressed that a building permit must be proceeded by issuance of a decision about the environmental conditionings.

**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 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 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!)**

Doubling of production through duplication of the process equipment results in a change of essential conditions of an IPPC-permit. Before introduction of any important changes in an IPPC-plant, the plant operator shall be obliged to notify the authority competent to issue a permit for the proposed changes and submit an application for a change of the issued IPPC-permit. The authority competent to issue an IPPC-permit shall issue a decision about an IPPC-permit including the whole production line (old and new production line). In the process of issuance of an IPPC-permit or a decision about a change of an IPPC-permit concerning a significant change of the plant, the administrative authority shall ensure a possibility of public participation based on the principles and according to the procedure specified in Act of 3 October 2008 about popularization of information about the environment and its protection, public participation in environmental protection and assessments of impact on the environment (Polish Bulletin of Law Acts Dz. U. from 2008 No. 199 item 1227).

### **An ex ample**

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?**

According to Act of 3 October 2008 on popularization of information about the environment and its protection, public participation in environmental protection and assessments of impact on the environment, a tannery building is a project that may have a considerable influence on the environment. According to Article 378 of the Act – Environmental Protection Law, Staroste is the competent authority to issue an IPPC-permit concerning exploitation of the tannery. The authority competent to issue an IPPC-permit provides the Minister of the Environment with an electronic version of the application for issuance of an IPPC-permit.

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

According to Act of 3 October 2008 on popularization of information about the environment and its protection, public participation in environmental protection and assessments of impact on the environment, a tannery building is a project that may have a considerable influence on the environment. If the project may have a considerable influence on the environment that is qualified as a project subject to assessment of the environmental impact, then there have to be a process conducted concerning assessment of the environmental impact being a separate proceedings in relation to the proceedings concerning issuance of IPPC-permit. The proceedings concerning assessment of the environmental impact is completed with issuance of a decision on the environmental conditionings. A copy of the decision on environmental conditionings or a copy of an application for issuance of a decision about the environmental conditionings is one of the attachments to the application for an IPPC-permit.

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

The permit authority will not try the localisation of the plant in the procedure about issuance of an IPPC-permit.

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

The operator of the tannery should pay registration fee. The amount of the registration fee can't exceed 3000 EUR. The registration fee should be paid when the IPPC-permit are going to be changed because of significant changes in the plant. In this case the registration fee amounts 50% of the registration fee. The evidence of the paid registration fees is one of the attachments of the application for the IPPC-permit.

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

Receiving information and instructions from other authorities on different administrative levels may be helpful in the procedure about issuance of the IPPC-permit. The co-operation is not formalized and should be based on full exchange of data and information even if law doesn't require such consultations.

The application for the IPPC-permit with the standpoint of the department conducting the proceedings should be delivered to other departments to receive their opinion (if it is necessary because of structure of the competent authority). It is possible to address other departments of the authority if the case concerns the specific installation.

**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 Act of 3 October 2008 on popularisation and its protection, public participation in the environmental protection and assessment of impact on the environment,



the permit authority ensures the possibility of public participation in the procedure concerning issuance of IPPC-permit or decision about change of IPPC-permit concerning significant change of the installation.

Before issuance of the IPPC-permit the permit authority is obliged to announce the following information:

- 1) instituting the proceedings concerning assessment of the impact on the environment
- 2) instituting the administrative proceedings
- 3) the subject of the decision that will be issued
- 4) the authority competent to issue the IPPC-permit and the authorities competent to issue opinion and adjustments
- 5) the possibilities to become acquired with the necessary documentation and the place where the documentation is available
- 6) the possibilities to make objections and comments;
- 7) the means and the place where comments and motions should be submitted, indicating 21-days public inquiry period;
- 8) the authority competent for investigation of comments and motions;
- 9) where appropriate, the date, the time and the place of an open administrative session
- 10) where appropriate, the procedure of transnational impact on environment.

The displaying of the notice takes place by:

- announcement of information in residence of the competent authority (for instance on the board) or at the place where operation is planned;
- publication in the press or in the normal manner standing in the given place (when residence of the competent authority is located in other gmina than gmina competent locally with regard for the subject of the notice);
- putting information on the web-site of the competent authority if the authority has such web-site.

The society may submit motions and comments in writing, orally to the record by means of electronic communication.

According to Code of Administrative Procedures and Act – Environmental Protection Law (article 32, section 1, point 2) the administrative authority may decide about the open administrative session.

The open administrative session should be conducted if:

- the authority expects some social protests;
- local society expresses opinion and views actively;
- installation has significant impact on the local environment and it is controversial.

Distinctive features of an open administrative session during the proceeding concerning the issuance of the IPPC-permit are as follows:

- a formalized part of the administrative proceedings (kpa)
- enable exchange of opinions;
- enable common discussion about comments and motions of the society;
- give opportunity to negotiate standpoint.

The permit authority is the competent authority to:

- investigate motions and comments;
- include in the reasons for the decision the following information about:
  - public participation in the proceedings,
  - the manner and scope of taking into account comments and motions notified.

During this stage of the proceeding the parties of the administrative proceedings should be identified. According to Code of Administrative Procedures, the party is everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest. According to law the authority conducting the administrative proceedings is responsible for notification of all parties of the proceedings.

The interested parties should be individually notified in writing about the instituting the administrative proceedings concerning issuance of the IPPC-permit. In the situation of the numerous number of the parties, notification about decisions and other actions of the administrative authority should be done by announcement in national press (article 49 of Code of Administrative Procedure). It should be underlined that procedural mistakes in this stage of the proceedings may be a reason of reversal of the decision because of formal requirements.

**7. The permitting authority will issue the permit on certain conditions. Mark with an X 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 condition!**

Kind of condition	Yes	No	Remark
Conditions concerning the tanning technology itself (clean production)	X		
Condition concerning the cleaning technology (end of pipe solution)	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 transport to and from the plant			It can be defined if it is necessary to ensure high level of environment protection as the whole
Conditions about the chemicals that are not to be used in the production	X		It can be defined if it is necessary to ensure high level of environment protection as

			the whole
Conditions concerning the control of discharges	X		It can be defined if it is necessary to ensure high level of environment protection as the whole

Other questions	Yes	No	Remark
Can the setting of conditions be postponed in the permit	X		Environmental Protection Law gives possibility to postpone the date of achievement of requirements arising from BAT in the form of compliance programme. A compliance programme is an agreed individual timetable that enables to run installation that can't meet requirements regarding BAT for the determined period. Requirements arising from BAT should be achieved by 1 January 2010.
Can stricter conditions that 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?**

The IPPC-permit can't be issued if exploitation of the installation may cause that quality standards of environment will be exceeded. The IPPC-permit defines quantity, state and composition of sewage if sewage is going to be discharged to water or soil. Discharge of chromium is prohibited and the level of the discharge of chromium to water can't be defined in the IPPC-permit.

**9. Who can appeal the permit and to whom?**

Appeal against the decision about IPPC-permit may be lodged by parties of the administrative proceedings, so everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest. Moreover, the appeal can be lodged by ecological organisation if it is justified by its statutory aims and even if it has not taken part in the proceedings concerning issuance of an IPPC-permit by the authority of first resort.

Appeal against the decision about IPPC-permit should be lodged to the Self-Government Board of Appeals. Appeal should be lodged to the appellate agency by the authority that issued decision in first resort.