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Food & Rural Affairs

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Government Response to Stakeholders' Views on the Consultation on Transposing the Industrial Emissions Directive

December 2012



Llywodraeth Cymru
Welsh Government

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Introduction

- 1.1. This paper summarises the responses to the public consultation¹ on transposing the industrial emissions Directive² in England and Wales. This ran from 12 March to 6 June 2012 and centred around draft Regulations to amend the Environmental Permitting (England and Wales) Regulations 2010.
- 1.2. The consultation paper contained 22 questions, mostly on specific issues to do with the transposition and associated guidance. Responses were received from 89 organisations (listed at the end of this paper), 55 representing various sectors of industry, three from Government agencies and 30 from individual or groupings of local authorities. No respondent addressed all 22 of the questions: question 21 received the lowest number of responses whilst questions 8 received 42, the highest number.
- 1.3. Each of the questions is reproduced in *italics* below. It is followed by a summary of the responses and the response from Government.

¹ The consultation package is at <http://www.defra.gov.uk/consult/2012/03/12/industrial-emissions-1203/> .

² Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast).

The questions and responses

2. Please consider the draft amending Regulations as a whole and comment on any perceived deficiencies or uncertainties.

2.1. A few respondents called in various ways for a full consolidation of the EPR rather than amendments to EPR 2010.

2.2. A few local authority respondents said that the arrangements for coming into force were not clear. Another local authority considered that the clarity of the proposed Regulations in respect of waste incineration activities below the thresholds which would subject them to Chapter II of the Directive could be improved. That respondent went on to raise specific issues concerning a local air quality problem involving several facilities, some regulated by the Environment Agency as either IPPC or waste installations, with the other facilities regulated for air emissions by the local authority. Defra is aware of that issue and is encouraging the regulators to work together using the sufficient powers they have.

2.3. One industry respondent questioned how the Article 21(3) requirements in respect of permit reconsideration applied and went on to express concerns about how Articles 15(3) and (4) would be applied, presumably not fully content with how these issues were already addressed in the draft “Part A” guidance which formed part of the consultation package. Two other industry respondents expressed concern about the lack of BREFs or other information on BAT for the “2015 activities³” and consequent uncertainties about regulatory requirements.

2.4. One industry respondent was concerned by the lack of mention of Article 36, on carbon capture and storage, in the draft Regulations, evidently being unaware that this has been implemented through the existing consenting requirements of the Electricity Act 1989 (for existing installations) or the Planning Act 2008 (for new installations). However, DECC is currently drafting Regulations⁴ to provide explicit transposition of this Article, which originated in the “carbon capture and storage” Directive⁵.

2.5. One industry respondent questioned the use within the draft Regulations of the expressions “combustion plant” and “combustion activities”, perhaps not understanding fully the interplay between those in the Directive itself. Another questioned the various expressions of “thermal input” and raised other detailed

³ The “2015 activities” are those which were not subject to the IPPC Directive. Existing installations carrying them out do not need a permit until 7 July 2015.

⁴ The Large Combustion Plant (Electricity Generating Stations) (Carbon Capture Readiness) Regulations 2012.

⁵ 2009/31/EC.

points in the draft Regulations. Other respondents raised very detailed drafting points.

2.6. In the light of these responses, **Defra and the Welsh Government will consider strengthening formal guidance and other means of communication in order to address the expressed uncertainties**, and will adjust the amending Regulations as appropriate in the light of detailed drafting comments. Defra is conscious of the need to keep the possibility of consolidating the Regulations under review, and is currently developing a work plan with the aim of producing a consolidated version as soon as practicable. However, **Defra and the Welsh Government will in any case produce an unofficial consolidated version in early 2013 ready for the coming into force of the transposing Regulations.**

3. Do you have any concerns about the proposed replacement Schedule 8?

3.1. No significant concerns were expressed about the replacement Schedule (which concerns “Part B” activities which are not subject to the Directive), although a very few respondents pointed out the need for clarity on how it relates to activities carrying out only activities using solvents or to small waste incineration plants. These concerns will be addressed in a separate short explanatory document for incorporation into the General Guidance Manual⁶ for local authorities.

4. We shall be grateful for comments on the form and content of the draft guidance which accompanies this consultation.

4.1. Several respondents expressed general content with the draft guidance. They and a few others made helpful suggestions for improvement, particularly concerning the guidance about Articles 15(3) and (4). These concerns will be addressed when the guidance is finalised.

5. Are you content with the proposal not to transpose the option for a single permit to cover several parts of an installation operated by different operators? If not, can you demonstrate from a real example that allowing a permit to cover several parts of an installation operated by different operators will reduce overall regulatory burden whilst maintaining the environmental protection required by the Directive?.

5.1. Nearly all the 38 respondents were content. Of the four not content, one industry organisation foresaw a situation where the major operator at an installation might wish to outsource an activity (perhaps only temporarily) but to retain all legislative control, taking as an example the conduct of a secondary process by a contractor. But the respondent appeared not to recognise that, to retain all legislative control,

⁶ At <http://www.defra.gov.uk/industrial-emissions/las-regulations/guidance/> .

the 'major operator' would in any case have to be the sole permit holder. Another industry respondent also addressed contracted activities within a large installation, but in effect supporting the permitting approach which is already in place for the sector concerned.

5.2. A public body respondent cited two examples where it thought that a single permit covering several operators might 'provide a more consistent joined-up approach'. One of these concerns a large facility where there are concerns about environmental impacts – not all of which are from activities subject to the Directive - extending over a wide area. The respondent itself recognises that, with several local authorities therefore having an interest, a single permit may not be feasible and that is also Defra's view. Another is about a large manufacturing installation in England, in respect of which Defra is aware that the Environment Agency is already leading taking appropriate action within the current permitting framework. Another industry respondent also speculated, without providing a definite example, that a single multi-operator permit might encourage effective co-operation between the operators.

5.3. In view of the large measure of support for the proposal not to transpose this option and the lack of any persuasive evidence to the contrary from the Defra and the small number of respondents who disagreed, Defra and the Welsh Government have therefore not included this option in the Regulations laid before Parliament and the National Assembly for Wales.

6. Do you agree with our proposed transposition of Article 7(c) concerning incidents and accidents? If not, why not?

6.1. Of the 41 responses to this question, 13 disagreed. But several of these appeared not to understand that Article 7(c) has to be transposed for all the activities it covers, irrespective of their views about its possible impacts or the improbability of the circumstances it addresses ever arising. Concerning enforcement, however, other disagreeing respondents from industry recognised that enforcement action can already be taken where the regulator considers a breach of a permit condition likely, thus further reducing the possibility of an incident or accident arising. A few of these respondents appeared not to recognise that the proposed transposition will incorporate the existing right to appeal over enforcement action.

6.2. One industry respondent expressed concern about the wording of the proposed regulation, perhaps not realising that the wording was substantially copied from Article 7(c). That and another industry respondent asked who would bear the responsibility if the specified 'measures necessary to limit the environmental consequences of the incident or accident' proved ineffective. The answer is that, just as the regulator would be responsible for issuing the notice, so it would be responsible for doing so in a manner which is effective; the operator would have the right of appeal if it felt the measures were excessive or poorly targeted.

6.3. Defra and the Welsh Government are therefore proceeding to transpose Article 7(c) in the manner proposed. Operators should bear in mind that they should strive to carry on their activities in a manner which as far as possible removes the need for the regulatory provision ever to be exercised.

7. Are you content with the proposed way of transposing the Article 9(2) option not to apply energy efficiency requirements to EU-ETS installations? What guidance on that issue do you consider Ministers should issue?

7.1. Eight of the 30 respondents were not content – one solely because the regulation lacked clarity, apparently overlooking the intention for Ministerial guidance to be produced. Another was concerned by lack of clarity, although recognising that guidance would be forthcoming. Others, all from industry, disagreed in that they felt that energy efficiency requirements should be maintained for installations producing electricity or heat, but appeared to recognise that the envisaged guidance might address that concern.

7.2. Defra and the Welsh Government will therefore transpose Article 9(2) in the manner proposed. The associated guidance is envisaged in early 2013.

8. Is the “Part A” guidance concerning Articles 15(3) and(4) (setting emission limit values where there are BAT conclusions and derogation from that requirement) clear and sufficient?.

8.1. This was a particular question about a component of the guidance. As in the response to question 34.4, respondents expressed general content. They and a few others made helpful suggestions for improvement, particularly concerning the guidance about Articles 15(3) and (4). These concerns will be addressed when the guidance is finalised.

9. Do you consider that, in particular sectors, further use of standard rules could be made? (See paragraph 19.1.).

9.1. Of the three “no” responses, one said it was not aware of any opportunities. The two others, from local authorities, said the current standard rules developed by the EA are difficult to use or inflexible.

9.2. Of the 20 respondents answering yes, a few added the qualification that they saw limited scope and one, representing a group of local authorities, advised proceeding with caution. A few others in favour emphasised the need for consultation, which of course is already a statutory requirement. A few other local authorities considered that a standard rules approach may be useful for activities using solvents, rather than a registration procedure (see section 17 below): Defra and the Welsh Government will work with LAs to consider this further. More

generally, **Defra and the Welsh Government will encourage the regulators to press ahead with the development of standard rules, in continued and developing consultation with the industry sectors concerned.**

10. Do you currently envisage it being necessary to strengthen existing site condition reports? If so, in what way or ways, and at what cost? (See paragraph 20.3.)

10.1. One local authority and one industry response cited difficulties with a particular site which suggested a need for strengthened site reports and a review of the relevant regulatory guidance. Another industry response also mentioned the need for a review of guidance and expressed anxiety about site condition reports for installations becoming newly subject to this requirement. This respondent also thought it not possible to update a site condition report, and another expressed similar concerns. That is not correct: it is open to operators to submit an updated report to the regulator at any time and this will be taken into account when eventually an application for permit surrender is made. However, in respect of an uncertainty expressed by another industry respondent, provided the regulator considers the initial site condition report to be adequate, there would be no requirement for update so long as the installation remains without significant change.

10.2. The majority of respondents appeared content with their current situation concerning site condition reports. However, in periodically reviewing permits, regulators will need to consider in each case whether the site condition report remains adequate.

11. Do you have views on how regulators can encourage the development and application of emerging techniques? (See paragraph 21.2.).

11.1. A wide range of views was apparent in the 36 responses to this question. A few local authorities expressed the need for caution. One commented 'it is felt that regulators must be wary encouraging emerging techniques.... The onus should be on the operator to either use the prescribed technique or provide robust evidence that their chosen technique is equivalent....The encouragement of emerging techniques could results in inconsistency across the sector and increase financial burden on industry.' . Another wrote ' [we are] not sure local authority Regulators should be expected to do this as [they] are no experts. Perhaps this role should be carried out by the Environment Agency who have [*sic*] far more expertise and experience.'

11.2. A few industry responses also sounded notes of caution. One commented that 'regulators should maintain the principle of being technology neutral and consider the potential impacts of any new technologies in the same robust manner as they do for existing technologies'. Another considered it not 'an appropriate

function for the regulator to encourage the development or application of emerging techniques beyond those identified in the [relevant] BREF.'

11.3. Perhaps with concerns about inconsistency in mind, two industry response said that the process for developing emergency techniques should be conducted at sector level with the trade associations fully involved.

11.4. One industry response called for concerted action: 'we consider it important to promote opportunities for research activities and demonstration plant through environmental regulation derogations, supported by a knowledge exchange strategy that encourages, among other things, data sharing, collaborative research and training.' Funding was called for by another operator: 'the Government should arrange for funding streams to be set up for capital investment programmes where payback periods are greater than say 5 years. The funding should be allocated on a sector basis and be administered by sector trade associations or organisations.'

11.5. Several industry responses said that regulatory constraints must not prevent the development and application of emerging techniques. There were calls for the regulator to work constructively with operators and for simpler permitting. One commented that 'regulators should take a sensible and welcoming approach to permit applications for emerging techniques, comparing their safety, associated emissions, and possible cost benefits to current processes to form an overall view.' Another went further: 'one possible solution would be to have a permit condition for innovation and emerging technologies which could be added to a permit when requested by the operator. This condition [could] allow a continuous development working relationship with the Regulator within clearly stated boundaries so that operators can develop ideas and concepts in a way which is monitored so that environmental protection is safeguarded, and all parties can learn from the experience.' A few respondents expressed the need for guidance on how to demonstrate the equivalence of emerging techniques to existing BAT.

11.6. **Defra and the Welsh Government will encourage the regulators to take these points into account.** The regulatory framework already allows considerable flexibility for the development and application of emerging techniques so long as there will be no significant diminution in environmental protection. The amendments necessary to transpose the industrial emissions Directive will not impair that flexibility. In consultation with the regulators and operators, Defra and the Welsh Government will consider the need for further guidance and how that should be met, taking into account also the European Commission's progress with the guidance that Article 27(2) of the Directive obliges it to produce.

12. Do you have any uncertainties about which waste management activities are now subject to IPPC requirements? If so, how would you like them remedied? (See paragraph 22.4.).

- 12.1. Seemingly overlooking both EA and European Commission guidance⁷ on the matter, one industry respondent asked for clarity on what is meant by ‘capacity per day’.
- 12.2. An industry respondent expressed concern about on farm composting and anaerobic digestion, claiming that genuine farm activities for production of soil improvers and providing nutrients for agricultural crops should be excluded from IED permitting. But there can be no doubt that, above the specified relatively high capacity thresholds, these activities are subject to Chapter II of Directive, irrespective of the merits and purpose for which they are carried on. In similar vein, another respondent claimed it was unclear as to whether the Directive applies to Materials Recovery Facilities (MRFs), particularly those that treat commercial and industrial waste. But here again, the thresholds are clear and the only question to be addressed is whether an installation has the capacity to exceed the relevant treatment threshold.
- 12.3. An industry respondent expressed concern about temporary storage of hazardous waste- the activity described at point 5.5 of Annex I of the Directive. But the linkage there to other points in section 5 of Annex I is clear and it would be very unlikely that the activities of the sector concerned would breach the thresholds. Another response from industry sought clarification on the distinction between recovery and disposal activities in points 5.3(a) and (b).
- 12.4. Respondents in various ways lamented the fact (for it is that – there is no discretion in the matter) of the inclusion of the subjection of waste activities if they are above the relevant Annex I threshold even though they currently enjoy “waste exemptions” under the transposition in E&W of the Waste Directive. Defra and the Welsh Government recognise that there may be uncertainty as to which installations are affected, but that can only be addressed on an installation-specific basis.
- 12.5. Another industry respondent appeared not to realise that point 6.11 of Annex I of the Directive has been inserted expressly to deal with what are sometimes referred to as “orphan” waste water treatment works. And another one, in asking about the status of “end-of-waste” materials and “by-products” in respect of the Directive’s application to waste treatment, appeared not to realise that, by definition, these materials are not waste.
- 12.6. Two industry respondents appeared uncertain about the applicability of Chapter III on large combustion plants to landfill gas engines. Chapter III would apply only if such engines, each with an individual rated thermal input of 15 MW or more and in aggregate exceeding 50 MW, were discharging through a common stack. Similarly, point 1.1 of Annex I would apply only if the aggregate rated thermal input of any landfill gas engines on the site of the installation (the landfill in

⁷ At http://ec.europa.eu/environment/air/pollutants/stationary/ippc/pdf/capacity_guidance.pdf .

to use the heat thus generated. However, the possibility that flaring might fall within point 5.1(b) or point 5.3(a)(ii) would need to be considered on an installation-specific basis.

12.7. A local authority response called for 'a clearly presented and workable interpretation of the waste management activities subject to IPPC requirements' and went on to enquire about the status of open windrow composting, Household Waste Recycling Centres (HWRCs) and Local Authority Collected (LAC) waste streams (eg tyres, parks waste, rubble) stored in separate bays. Another local authority response called for a formal Memorandum of Understanding from the EA on the interface between waste and LAPPC.

12.8. Two industry respondents called for a sector guidance note to define clearly the interpretation and regulation of all aspects of the obligations of the Environmental Permitting Regulations upon waste water and water treatment activities.

12.9. From these responses, it is evident that there are several misunderstandings and uncertainties about the coverage of waste management activities by the Directive. **Defra and the Welsh Government have determined that none of these needs to be further addressed within the transposing Regulations. Defra and the Welsh Government will discuss with the Environment Agency the provision of further guidance along the lines suggested by some respondents.**

13. Do you agree with the assignment of the wood preservation activity as described in the Directive to local authorities?

13.1. All 15 responses to this question agreed and so the Regulations laid before Parliament provide this assignment. Defra and the Welsh Government are pleased to note that the wood preservation sector is very active in promoting a code of practice which, until such time as a BREF is finalised (which is unlikely to be until 2017) should serve as a sound basis for regulators' determination of BAT.

14. Do you have any comments about the assignment of local authorities as regulators for all waste incineration and co-incineration activities which are below the capacity thresholds in Annex I of the Directive?

- 14.1. Nearly all the 17 respondents to this question said they had no comments or offered supportive comments.
- 14.2. However, two respondents, whilst supportive in principle, expressed some concern about local authorities' capacity to deal with these plants, one claiming that local authorities might need to engage the services of consultants, with attendant costs which might not be fully covered by permit charges. Another respondent went further, commenting that Environment Agency regulation is important in ensuring public confidence in the control of these plants.
- 14.3. Defra and the Welsh Government point out that, in exceptional circumstances, it would be open to the LA to seek a Direction from the appropriate authority, transferring regulation to the Environment Agency so that the latter's in-house expertise could be brought to bear. Through its Local Authority Unit, the Environment Agency is in any case able to provide advice to any local authority which seeks advice.
- 14.4. **The Regulations laid before Parliament and the National Assembly for Wales therefore assign local authorities as regulators for all waste incineration and co-incineration activities which are below the capacity thresholds in Annex I of the Directive.**

15. Do you agree with the proposal to remove BAT requirements from incineration and co-incineration installations not subject to IPPC? What environmental consequences and compliance cost savings may arise?

- 15.1. Twelve out of 14 respondents to this question disagreed. Seven of those disagreeing are local authorities who would regulate such plants (see section 14 above).
- 15.2. Some local authorities claimed that the lack of a BAT requirement would give nothing for operators to 'aim for' or regulators to 'regulate against'. However, it should be noted that the highly prescriptive requirements of Chapter IV manifestly provide plenty to achieve and enforce without, as an industry respondent pointed out, the added complexity of BAT assessments for what by definition are small plants.
- 15.3. One local authority questioned the removal of BAT requirements from these installations whilst retaining BAT for Part B activities which may present a lower environmental risk. Defra and the Welsh Government point out, however, that the requirements of Chapter IV of the Directive are tantamount to the prescription of BAT. Furthermore, although comparisons can validly be made with Part B regulation, the consultation did not address that topic, being concerned only with the transposition of the Directive in a manner which does not go beyond what the Directive requires for the various activities concerned.

- 15.4. The same local authority also claimed that there may be an increase in the number of such installations and expressed concern about possible impacts local air quality if there were no provision for setting ELVs tighter than those in the Directive. Another local authority response claimed that loss of the ability to set BAT-based permit conditions might lead to other environmental issues arising at the plants concerned, such as excessive noise or odour, which could then only be addressed through statutory nuisance provisions. Here again it must be borne in mind that the Directive already contains stringent limits based upon BAT.
- 15.5. One of the two industry organisations disagreeing appeared to do so only on the grounds of negligible cost savings. The other called for 'proportionate BAT' to be applied. But that response illustrates the reason for the proposal: there is no requirement in the Directive for a BAT assessment to be carried out. This in turn removes a burden in the development of small scale incineration plant, although designers and operators should readily appreciate the stringency of the requirements they face even so, particularly in respect of the monitoring requirements.
- 15.6. **The Regulations laid before Parliament and the National Assembly for Wales will therefore remain as drafted in respect of England and apply only the requirements of Chapter IV (and the associated Annex VI) of the Directive to waste incineration and co-incineration plants with capacities below the relevant thresholds set out in Annex I of the Directive.** However, the Welsh Government has taken the view that, given the strength of feeling in the consultation responses, the BAT provision should remain for installations in Wales. **Through a provision in the proposed Schedule 8, the BAT requirement remains for installations in Wales.**

16. Do you agree with the proposal to remove obligatory PCB and PAH monitoring from WI? If not, why not?.

- 16.1. Many of the 13 respondents agreeing with the proposal cited avoidance of unjustified monitoring costs as the reason for their support. Seven out of 20 respondents did not agree. Two pointed to public reassurance as a justification for maintaining this requirement. However, responses from two industry organisations, whilst supportive, also made the point that monitoring data already acquired could demonstrate that low emissions would justify discontinuation of the requirement.
- 16.2. A disagreeing response from industry raised the possibility that changing patterns in waste disposal might lead to more PCB precursors arising in the waste to be incinerated. Defra and the Welsh Government point out that the requirements in Article 52 of the Directive are designed to deal with that possibility.
- 16.3. Three local authority respondents expressed concern that it might be difficult for the regulator to insist on this type of monitoring if it were required. As the consultation paper pointed out, there should be no difficulty for installations also

subject to IPPC, for which the regulator is obliged to set monitoring conditions in accordance with the general principle that no significant pollution is caused (Articles 16(1) and 11(c)). However, for incineration plants operating below the IPPC threshold, the same obligation does not exist.

16.4. Therefore, particularly in view of that point, **the Regulations laid before Parliament and the National Assembly for Wales are such that PCB and PAH monitoring at the same frequency as the Directive requires for dioxins and furans remains obligatory except where the regulator is satisfied that the requirement can be lowered or dispensed with.** Regulators will be expected to consider data already acquired, along with other information about the operation, in reaching a view on whether to lower or dispense with the requirement in each case.

17. Do you consider that the introduction of a registration system for solvent activities would be worthwhile in the short and longer term? Can you suggest any alternative form of registration?.

17.1. Nearly all the 30 responses from local authorities put, in various ways, the following case taken from one of them:

[operators] find the permit a clear instruction on how to comply with the regulations. [Small business operators] are easily confused on what is required. They benefit from regular inspections which enable them to gain clarity on their requirements. The [proposed] registration is vague at best on what is required and they would need to rely more on the regulator for guidance....It is a shame to remove a system that currently benefits both the operator and regulator'.

17.2. Some local authority respondents thought that the proposal might make life a little easier for the operator but felt that it would help neither the regulator nor the environment. Defra and the Welsh Government point out that the proposal would be neutral in terms of environmental protection from solvent emissions: whether by registration or through a permit, operators would be obliged, upon pain of enforcement action, to comply with the Directive's requirements.

17.3. Other local authorities considered that a further simplification of the permitting system might benefit both the operator and the regulator whilst maintaining environmental protection.

17.4. Some local authority respondents considered that the enforcement arrangements under a registration were unclear, pointing out that the proposed enforcement arrangement would be reactive rather than pro-active. Defra and the Welsh Government agree with that view to the extent that the registration scheme as drafted would not give the regulator the option of taking enforcement action if a breach of permit condition is likely.

17.5. Other local authorities considered the current permitting arraignments to provide a level playing field: the introduction of a registration scheme could (they said) result in discrepancies in inspection and charging. One local authority pointed out that registration would require no consultation with the public or other agencies. Others considered that local authorities would still have to provide written advice or guidance to the operator, which would have a resource implication to the regulator. On the other hand, other local authorities said that operators might incur additional costs through seeking consultancy help. One of the few responses from an industry organisation made much the same point.

17.6. Another industry organisation wrote that ‘the introduction of a registration scheme instead of the current permitting scheme for solvent activities would not be worthwhile in the short term, and is unlikely to be significantly beneficial in the longer term, due to the extensive work, both for the operator and the regulator in demonstrating and assessing compliance against a simple registration’. Similar sentiments were expressed by other industry respondents.

17.7. One industry operator organisation, which in fact does not encompass many solvent-using activities, simply responded ‘yes’ to the registration proposal. Another, with a greater practical interest, also initially provided a very brief supportive response, subsequently qualified to “yes in principle” but recognising several unspecified disadvantages.

17.8. Given the lack of support from operators and the opposition from the local authority regulators who would have to administer the registration scheme alongside the current permitting requirement, Defra and the Welsh Government consider that the registration option in the Directive, although superficially attractive, should not be provided. **The Regulations laid before Parliament and the National Assembly for Wales therefore do not include the registration option.** However, Defra and the Welsh Government will explore with local authorities how further simplification can be made in the current permitting requirement and the associated inspection and reporting procedures.

18. Do you agree with the proposal to remove BAT requirements from solvent activities? In What are your views on the environmental consequences and compliance cost savings which may arise?

18.1. Twenty-two of the 31 responses to this question were from local authorities. All disagreed with the proposal.

18.2. Several of these disagreed because it appeared that control would be lost over what the respondents described as directly associated activities such as odour, smoke and particulates. Some of these respondents took as an example a metal coating process which includes sanding and shot blasting and which may produce large concentrations of particulates. However, in this example, the activity

would remain a Part B activity under Section 6.4 of Schedule 1 (the activity description in paragraph (a) specifically mentions particulate matter).

- 18.3. These respondents also expressed concern about the loss of control of nitrogen oxide emissions. However, it is unlikely that such emissions from installations carrying out only solvent activities will be comparable with those from installations which would also be regulated as Part B installations.
- 18.4. Under the proposal, as some respondents pointed out, nuisance from solvent-only activities arising from anything other than non-compliance with solvent requirements would entail recourse to a separate regulatory regime and would amount to reactive rather than proactive regulation. However, it is apparent that instances where such recourse might be necessary are few: the annual “statistical Survey” of industrial pollution control by local authorities showed that, across all activities at some 18,400 installations, 103 enforcement notices and 16 prohibition notices were issued in 2010/11, with nine prosecutions, of which only one was explicitly about odour⁸.
- 18.5. Three local authorities appeared to think that removal of the BAT requirement from installations carrying out only solvent activities would leave nothing to ‘inspect against’ other than documentation. Whilst any inspection clearly must involve consideration of documentation, its purpose is to establish whether legal requirements in respect of emissions control are being met and to initiate enforcement action if they are not. Removal of the BAT requirement means that inspections of such installations will be more sharply and efficiently focussed upon matters concerning use of solvents.
- 18.6. Other respondents suggested that there may be scope for further reducing or simplifying permit conditions not related to solvent emissions (the consultation paper noted that some reduction has already been made). These respondents also suggested the retention of a standard condition relating to odour in solvent-only permits. However, control of solvent usage in accordance with the Directive’s requirements should help ensure the absence of odoriferous emissions from those substances.
- 18.7. One local authority considered that retention of BAT would aid operators because, in meeting BAT requirements specified by the regulator, ‘they are afforded a level of protection against nuisance actions generally’. Without them, the respondent continued, ‘industry would need to determine their *[sic]* own compliance options costing significantly more than implementation of BAT’. However, compliance with permit conditions does not necessarily afford protection

⁸ See Table 1a of the document at

<http://archive.defra.gov.uk/environment/quality/pollution/ppc/localauth/pubs/reports/documents/manage-sum-annexb-2011.pdf> .

from statutory nuisance legislation⁹ and ultimately it remains for each operator to reach its own decisions about how best to conduct its operations whilst respecting its neighbours' needs.

- 18.8. One of the very few responses from industry said only that 'the removal of BAT from the dry cleaning sector.... is likely to have a neutral effect on the environment, as those companies currently failing to make accurate returns at present, will continue to do so, whereas responsible companies in the sector will continue to behave in a responsible manner'.
- 18.9. Another industry response expressed its belief that 'the small cost implication of solvent activities working to BAT is a worthwhile expense to demonstrate best practice and control environmental consequences'. However, many of the installations represented by that respondent would in any case remain subject to BAT requirements through operating Part B activities.
- 18.10. Another industry response did not agree with the removal of BAT, saying this could create situations where operators of installations carrying out solvent activities along with other permitted activities would have to meet BAT requirements whilst installations carrying out only solvent activities would not. This is of course correct: that situation would arise but simply as a consequence of the presence within the installation of the other activities, not because of a differential approach to the solvent activities themselves.
- 18.11. The other two industry responses simply said "we agree" with the proposal.
- 18.12. Whilst noting all the points advanced against the proposal, Defra takes the view that, as a matter of principle, the transposition and implementation of the Directive's requirements in respect of activities using solvents should no longer be used as a means of imposing additional regulatory requirements, unconnected with the Directive's purpose, upon the operation of installations at which only those activities are carried on. The purpose of the EU legislation is 'to take preventive action against the use of organic solvents and to establish a requirement to comply with emission limit values for organic compounds and appropriate operating conditions' (recital 35 of the Directive). The long-established suit of Part B activities addresses at national level activities which may give rise to other forms of pollution: any modification of that is outside the scope of the transposition of the Directive.
- 18.13. **The Regulations laid before Parliament and the National Assembly for Wales therefore remain as drafted in respect of England and apply only the requirements of Chapter V (and the associated Annex VII) of the Directive to installations at which only activities subject to those requirements are carried out.** A provision makes conditions in existing permits which go beyond those requirements cease to have effect from the coming into force of the

⁹ See Case No: A1/2011/1250 in the Court of Appeal (Civil Division), 19 March 2012.

Regulations. However, the Welsh Government has taken the view that, given the opposition expressed in the consultation, BAT should be retained for installations in Wales. **Through a provision in the proposed Schedule 8, the BAT requirement remains for installations in Wales.**

19. Have you any comments upon the proposed means of incentivising permit applications in respect of “2015 installations”? Can you suggest any non-regulatory means by which the flow of permit applications to the Environment Agency can be spread?

19.1. Twenty-two respondents had comments. Many suggested that reduced permit application charges for early application might be appropriate, but that would leave other permit holders in effect subsidising the new entrants. Guidance and awareness-raising amongst operators were identified as other non-regulatory means and the Government will encourage the Environment Agency in that regard. The Regulations laid before Parliament and the National Assembly for Wales retain the device for incentivising early applications which was proposed in the consultation. However, the Welsh Government will consider further the possibility of introducing an enforceable statutory deadline for permit applications and may propose a further amendment in respect of Wales accordingly.

20. Do you consider that any of the “legacy” activity descriptions proposed in Appendices C and E for deletion or adjustment should in fact be retained? If so, please provide reasons.

21. Do you agree that the retention of the “legacy” descriptions tabulated in Appendix D is justified? Have you any evidence which either supports or refutes the need for retention?

21.1. Ten of the 15 respondents to the first and 12 of 14 respondents to the second of the question above agreed. Highly specific points raised by those not fully agreeing have been addressed in the Regulations laid before Parliament and the National Assembly for Wales.

22. Do you agree with the proposal to end IPPC requirements for mobile plant?

22.1. Thirteen respondents agreed. Of the six which did not, three, all from industry, expressed concern that there might not be alternative means of regulation and that mobile plant might be developed to compete with fixed installations, although no examples were provided. Three other respondents were similarly speculative about new mobile plant, one exercising concern about possible use of mobile plant in proximity to sensitive natural sites.

22.2. Whilst noting these concerns, Defra and the Welsh Government point out that the Directive applies only to stationary technical units (Article 3(3)) and maintenance of a requirement in respect of mobile plants, which manifestly has been very little engaged, runs counter to the Government's wish not to embellish the Directive. Furthermore, Defra and the Welsh Government note European Commission guidance¹⁰ concerning the interpretation of "stationary" which indicates that, even if a plant is "mobile" in the sense that it is "transportable", its mode of use might be such as to lead the competent authority that it is in effect stationary. **Defra and the Welsh Government are therefore proceeding to end IPPC requirements for mobile plant.**

23. You are invited to respond to the questions which are contained in the draft impact assessment which accompanies this consultation.

23.1. Fifteen respondents did so, including (as expected) some major contributions from the power sector. Those responses have been reflected in the finalised impact assessment which accompanies this response to consultation.

Next steps

The draft amending Regulations, modified in the light of the consultation responses, were laid before Parliament and the National Assembly for Wales in December 2012. The guidance included in the consultation will be finalised in early 2013.

¹⁰ At

http://ec.europa.eu/environment/air/pollutants/stationary/ippc/pdf/installation_guidance.pdf

List of respondents

Association for Organics Recycling
Agricultural Industries Confederation
Agriculture and Horticulture Development Board
Anglian Water
<i>Anonymous</i> (one response)
Barnsley Metropolitan Borough Council
Birmingham City Council
British Coatings Federation Ltd
British Metals Recycling Association
Brent Council
British Ceramic Confederation
British Glass Manufacturers' Confederation
British Lime Association
British Poultry Council
Bury Metropolitan Borough Council
Cambridgeshire and Peterborough Pollution Group
Chemical Industries Association
Chartered Institution of Wastes Management
Confederation of Paper Industries (LATE)
David Bradshaw

Dudley Metropolitan Borough Council
E.ON UK
East Staffordshire Borough Council
EDF
Energy Power Resources Ltd
Energy UK
Environmental Services Association (LATE)
EUROMOT ¹¹ - the European Association of Internal Combustion Engine Manufacturers
Fibrecore
Friends of the Earth
Food and Drink Federation
Royal Borough of Greenwich
Health & Safety Executive
Health Protection Agency
Herefordshire Council (two separate responses)
INEOS
International Power
Johnson Cleaners
Royal Borough of Kensington and Chelsea Borough Council

¹¹ The European Association of Internal Combustion Engine Manufacturers

Kent Pollution Prevention and Control Group
Kernow Coatings Ltd
Lewisham Borough Council
Picon/FESPA
Marine Painting Forum (LATE)
<u>Martin Cranfield Associates Limited</u>
Merseyside Pollution Group
Merseyside and Halton Waste Partnership
Mineral Products Association
Midland Joint Advisory Council ¹²
National Pig Association
Natural England
Newham Council
National Farmers Union
Non Ferrous Alliance
Norfolk Environmental Protection Group
Oil Recycling Association
Prince Minerals Limited

¹² Midland Joint Advisory Council for Environmental Protection.

PyroPure
Rochdale Metropolitan Council
Rushcliffe Borough Council
Salford City Council
Sandwell Metropolitan Borough Council
Scottish Environment Protection Agency
Sellafield Ltd
Severn Trent Water
Sheffield City Council
SITA UK
Society of Motor Manufacturers & Traders
South Staffordshire Council
South West Water
SPI Lasers
Staffs Moorlands District Council
Surface Engineering Association
Tata Steel
Telford and Wrekin Council
Thames Water
Trade Car Parts Limited
UK Petroleum Industries Association

United Utilities
Vehicle Builders and Repairers Association Ltd
Viridor
Wakefield Metropolitan District Council
Walsall Metropolitan Borough Council
All-Wales Environmental Permitting Regulations Sub Group (Welsh local authorities)
Wessex Water
Wheelabrator Technologies Inc
Wood Protection Association
City of York Council
Yorkshire & Humberside Pollution Advisory Committee
Yorkshire Water