

Industrial Pollution Control Regimes

1. Background

Pollution from industrial installations in England and Wales has been controlled to some extent for over 150 years. The Pollution Prevention and Control (England and Wales) Regulations 2000 (the “PPC Regulations”) were introduced under the Pollution Prevention and Control Act 1999 and built on existing systems. The PPC Regulations replaced the pollution control regimes called Integrated Pollution Control (IPC) and Local Air Pollution Control which had been set up under Part I of the Environmental Protection Act 1990 (EPA 1990).

The PPC Regulations also transposed the Integrated Pollution and Prevention and Control Directive (now Directive 2008/1/EC) – the “IPPC Directive.

The primary aim of the IPPC Directive is to ensure a high level of environmental protection and to prevent and where that is not practicable, to reduce emissions to acceptable levels. Separate legislative provisions are in place to transpose the IPPC Directive in Scotland, Northern Ireland and the offshore oil and gas industries.

In England and Wales the PPC Regulations are replaced from 6 April 2008 by the Environmental Permitting Regulations 2007 (the “EP Regulations”). These new Regulations bring together the PPC and Waste Management Licensing Regulations into one new regulatory system. Apart from combining the two sets of Regulations there have been no major changes to the PPC aspects. A permit issued under the PPC Regulations will in future be regarded as having been issued under the EP Regulations.

2. The PPC Regulations

The PPC Regulations introduced three separate, but linked, systems of pollution control and these have been continued in the EP Regulations.

- Integrated Pollution Prevention and Control (IPPC), which covers installations known as A(1) activities, which are regulated by the Environment Agency;
- Local authority Integrated Pollution Prevention and Control (LA-IPPC) which covers installations known as A(2) activity, which are regulated by local authorities; and
- Local authority Pollution Prevention and Control (LAPPC), which covers installations known as Part B activity also regulated by local authorities.

Where an installation includes A(1) and also A(2) or Part B activities then generally it will be regulated by the Environment Agency;

Operators of installations carrying out activities that fall within the Regulations are required to hold an operating permit. The operating permit will specify the conditions under which the specified activity can be carried out. Part A(1) and A(2) activities, through being subject to the IPPC Directive, may have emission limits and other permit conditions in relation to releases to air, water and land, waste minimisation, energy efficiency and site restoration. Part B activities are regulated only in respect of releases to air.

Regulators must set permit conditions which are based on the use of the 'Best Available Techniques' (BAT), which balances the cost to the operator against benefits to the environment.

Part B installations regulated under LAPPC, do not come under the scope of the IPPC Directive. As with A(1) and A(2) installations Regulators must set permit conditions which are based on the use of 'Best Available Techniques' (BAT) for emissions to air.

3. Charging Schemes

Regulators have to recover the costs of their IPPC related work from permit holders. This follows Government policy and ensures a fair allocation of costs. It also promotes the 'polluter pays' principle. Two separate but related sets of charging arrangements apply to IPPC installations:

- charges for Part A(1) installations set and operated by the Environment Agency under Section 41 of the Environment Act 1995 and approved by the Secretary of State; and
- charges for Part A(2) installations set by the Secretary of State under Regulation 22 of the PPC Regulations and operated by local authorities.

Within this overall arrangement, different charges are payable at different regulatory stages. They will also vary across installations and sectors. An operator must pay a charge when submitting any application. The regulator must receive this before the application can be considered duly made. If the regulator judges that an application is not duly made, it shall return the charge to the applicant.

Operators must pay subsistence charges to support the regulator's ongoing costs for such things as checking monitoring data or carrying out inspections. If an operator fails to pay a subsistence charge, the regulator may revoke the permit. Self-monitoring will be at the operator's expense. The regulator will only charge separately for any additional monitoring by its contractors where it is directly and solely attributable to a specific installation.