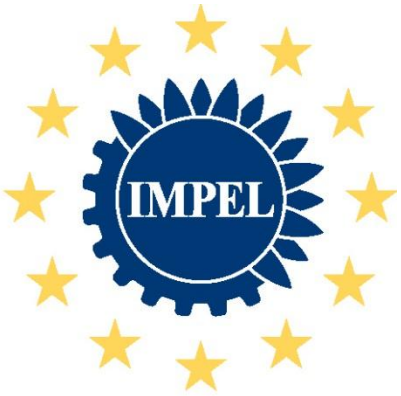
Industrial Emissions Directive (IED) – the transition to IED permits and how to deal with substantial change at a permitted facility

Final report: 31 October 2012



European Union Network for
the Implementation and Enforcement
of Environmental Law

Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the EU Member States, acceding and candidate countries of the European Union and EEA countries. The association is registered in Belgium and its legal seat is in Bruxelles, Belgium.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

During the previous years IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, e.g. the 6th Environment Action Programme and the Recommendation on Minimum Criteria for Environmental Inspections.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on both technical and regulatory aspects of EU environmental legislation.

Information on the IMPEL Network is also available through its website at:
www.impel.eu

Title of the report: Industrial Emissions Directive (IED) – the transition to IED permits and how to deal with substantial change at a permitted facility	**Number of the report:** 2012/10
Project Manager: Donal Grant, Environmental Protection Agency	**Report adopted at IMPEL General Assembly:**
Author: Donal Grant, Environmental Protection Agency	**Number of pages:** 26 **Report:** 20 **Annexes:** 6
Project Team: Donal Grant Frank Clinton Mary Turner	

Executive Summary:

This report documents the progress and findings of an IMPEL project which engaged with key stakeholders involved in environmental regulation across Europe. The participants were nominated by their country's IMPEL Co-ordinator and were required to have experience of environmental permitting and the provisions of the Industrial Emissions Directive.

The focus of the project was to address the questions posed in the Terms of Reference, namely:

"*How will IED permits differ from the types of permits currently being prepared by Member State regulators?*" (Under IPPC, WID, LCP, etc.), and

"*How are we to deal with substantial changes at permitted facilities?*".

The main forum for discussion was a workshop held in Wexford, Ireland on July 17th and 18th and the outcomes of that workshop inform the recommendations of this report.

The principal recommendations from the project are outlined in Chapter 4 of this report.

Table of Contents Page No.

1. Introduction

Industrial Emissions Directive (IED)

The Industrial Emissions Directive (Directive 2010/75/EU) entered into force on 06th January 2011. The purpose of the Directive is to revise and merge seven separate existing European Directives that relate to emissions to the environment from a variety of different industrial activities. Its aim is to achieve significant benefits to the environment and human health by reducing harmful industrial emissions across the EU, in particular through better application of Best Available Techniques. The IED has to be transposed into national legislation by Member States by 07th January 2013.

The seven existing pieces of legislation being replaced by the IED include the following:

- Directive 96/61/EC (codified as Directive 2008/1/EC) concerning integrated pollution prevention and control (IPPC) which sets out the main principles for the permitting and control of installations based on an integrated approach and the application of best available techniques (BAT) which are the most effective techniques to achieve a high level of environmental protection, taking into account the costs and benefits; and

- sectoral Directives which regulate the emissions from installations in certain industrial sectors; these Directives define specific requirements (including emission limit values and monitoring provisions) for certain pollutants for the installations concerned; the Directives are those relating to large combustion plants (LCP) (2001/80/EC), waste incineration (WI) (2000/76/EC), and activities using organic solvents (SE) (99/13/EC) and waste from the titanium dioxide industry (78/176/EEC, 82/883/EEC, 92/112/EEC).

The IED is basically the successor of the IPPC Directive. Operators of industrial installations carrying out activities covered by Annex I of the IED are required to obtain an integrated permit from the authorities in the EU countries. About 50,000 installations are covered by the IPPC Directive and Annex I to the IED will cover some new activities which could result in the number of installations rising slightly.

According to the European Commission, the IED places emphasis on several core principles of effective permitting, namely (1) an integrated approach, (2) best available techniques, (3) flexibility, (4) inspections and (5) public participation.

> **Integrated approach** means that the permits must take into account the whole environmental performance of the plant, covering e.g. emissions to air, water and land, generation of waste, use of raw materials, energy efficiency, noise, prevention of accidents, and restoration of the site upon closure. The purpose of the Directive is to ensure a high level of protection of the environment taken as a whole.
>
> Should the activity involve the use, production or release of relevant hazardous substances, the IED requires operators to prepare a baseline report before starting an operation of an installation or before a permit is updated having regard to the possibility of soil and groundwater contamination, ensuring the integrated approach.
>
> **Best Available Techniques (BAT):** BAT conclusions (documents containing information on the emission levels associated with the best available techniques) shall be the reference for

setting permit conditions. To assist the licensing authorities and operators to determine BAT, the Commission organises an exchange of information between experts from the EU Member States, industry and environmental organisations. This work is co-ordinated by the European IPPC Bureau of the Institute for Prospective Technology Studies at the EU Joint Research Centre in Seville (Spain). This results in the adoption and publication by the Commission of the BAT conclusions and BAT Reference Documents (the so-called BREFs).

Flexibility: The IED contains certain elements of flexibility by allowing the licensing authorities to set less strict emission limit values in specific cases. Such measures are only applicable where an assessment shows that the achievement of emission levels associated with BAT as described in the BAT conclusions would lead to disproportionately higher costs compared to the environmental benefits due to the geographical location, the local environmental conditions or the technical characteristics of the installation.

The competent authority shall always document the reasons for the application of the flexibility measures in the permit including the result of the cost-benefit assessment.

In addition, Chapter III on large combustion plants includes certain flexibility instruments (Transitional National Plan, limited lifetime derogation, etc.)

Inspections: The IED contains mandatory requirements on environmental inspections. Member States shall set up a system of environmental inspections and draw up inspection plans accordingly. The IED requires a site visit shall take place at least every 1 to 3 years, using risk-based criteria.

Public Participation: The Directive ensures that the public has a right to participate in the decision-making process, and to be informed of its consequences, by having access to

(a) permit applications in order to give opinions,

(b) permits,

(c) results of the monitoring of releases and

(d) the European Pollutant Release and Transfer Register (E-PRTR). In E-PRTR, emission data reported by Member States are made accessible in a public register, which is intended to provide environmental information on major industrial activities. E-PRTR has replaced the previous EU-wide pollutant inventory, the so-called European Pollutant Emission Register (EPER).

There are a number of key dates whereby certain aspects of the IED must be implemented into the national permitting regimes of each Member State. It is the presence of these dates, and the relatively short timeframes between the IED coming into force and the need for implementation, that has prompted the Environmental Protection Agency in Ireland to propose this project. The key dates for implementation are outlined in the table below:

06th January 2013	MS must have fully transposed the IED and it shall apply to all new installations.

06th January 2014	Installations that were permitted under the previous Directives (IPPC, LCP, etc.) are subject to IED.
06th July 2015	Existing installations, newly prescribed under Annex 1, must comply with IED.
01st January 2016	Large Combustion Plants must comply with requirements of Chapter III and Annex V of IED.
30th June 2020	Transitional National Plans for LCPs must be completed.
31st December 2023	The Limited Lifetime Derogations for LCPs must end.

2. Project Exercise

The EPA attended the IMPEL Cluster 1 meeting in Paris on 12th/13th October 2011 to present the terms of reference (see Annex 1) for the proposed project. The proposed project received significant support at the 9th IMPEL General Meeting in Warsaw, Poland on 24th/25th November 2011, and it was approved as an IMPEL project to commence in 2012. Once IMPEL had committed to funding the project, the EPA began the task of developing the project structure and getting the right people involved from each Member State. The first steps involved contacting all IMPEL co-ordinators, outlining the scope and timeline of the project and asking them to nominate a suitably qualified person(s) to participate in the project on behalf of their MS.

The criteria for determining a suitably qualified person included:

Extensive knowledge and experience of permitting under IPPC, WID, LCP, etc.

Familiarity with the provisions of the Industrial Emissions Directive,

Experience working with their European counterparts,

A willingness to get involved in all aspects of the project,

Good command of English, the project language.

The national co-ordinators were further asked to circulate the information to any other regulators, policy-makers, etc., in their MS that they felt might be interested in participating in the project, or might be interested in the outcomes of the project and workshop. By the end of March, a list of nominated representatives to participate in the project had been put together from the responses received by the EPA. These participants occupied a wide range of positions within their respective organisations and all had experience of environmental permitting and were familiar with European legislation and the provisions of the IED.

In the period leading up to March 2012, the EPA had been developing an imaginary permitted scenario, based on an actual IPPC licence that had been granted to a power generating station in Ireland in 2005. The purpose of the scenario was to get the participants of the project to open their thought processes to the various aspects of IED that differed from the IPPC Directive. The 'notional' permit for the power plant was accompanied by an Inspector's Report that provided additional details on the environmental performance of the operation, the activities at the installation, some historical context, and the compliance of the operator with various pieces of European legislation. Additional documents that were sent to the participants included a letter from the permit holder outlining a number of proposed changes to operations at the installation, and a spreadsheet of the Articles in Chapters I and II of the IED that differ from the provisions of the IPPC Directive and that may require transposition into national legislation.

There were two main aims to the project exercise:

1. To document the changes that each Member State will make to their permitting systems to accommodate the provisions of Chapter 1 and Chapter 2 of the IED.

2. To determine how MS address the issue of substantial change at permitted facilities, now that 'substantial change' has been redefined by the IED.

Part 1 of the project was aimed at addressing the issues that may be faced by regulatory bodies in implementing the requirements of the IED into the permitting regimes of the Member States.

The project took the following general form:

- Ireland prepared an 'imaginary' permitted scenario.
- This scenario covered a permitted facility which, on foot of a proposed substantial change, is required to seek a permit (review) under IED.
- The participants were asked to consider the scenario (a power plant) and document the permit conditions their MS would have applied to the activity before the IED came into force (pre-IED), as well as the permit conditions that would be applied by their MS now to fulfil the requirements of the IED (post-IED). The IED Permit Conditions spreadsheet guided them to specifically consider the Articles in Chapters I and II of the IED that require transposition to national legislation (i.e. the articles that differed from the IPPC Directive). The IED Permit Conditions spreadsheet was developed based on the *Transposition Checklist for Directive 2010/75/EU* developed by the European Commission.
- To facilitate completion of the IED Permit Conditions spreadsheet, an imaginary power generating permitted scenario in Ireland was also provided. Full details of the power plant activity and its associated emissions were provided in the Inspector's Report.
- The answers which the participants provided may be based on this power plant scenario or on a similar scenario in their own country. The participants were asked to ensure, insofar as it is possible to do so, that the answers they provided in the IED Permit Conditions spreadsheet reflected the permit conditions which are used/will be used in their MS.
- All the responses were cross-circulated to all participant MS through the IMPEL Basecamp website upon completion. A section has been set up on Basecamp for this project, where documents can be uploaded and viewed.

Part 2:

The participants were also provided with a letter from the permit holder proposing a number of changes to the activities at the power plant.

They were asked to address the following questions:

- Does your MS consider the change(s) to be a 'substantial change' within the meaning of the IED? Please provide rationale as appropriate.
- How would any such change(s) be incorporated into the permit, if considered necessary?

It was hoped that the responses received from the participants would be used to form part of the discussions during the proposed workshop in July. Only a limited number of responses (7) were received from the participants and it was decided by the project team that the responses received would not be suitable for the discussions we envisaged at the workshop. The responses were still circulated to each of the individual participants and placed on the project section of Basecamp.

3. Project Workshop

The ultimate aim of the project exercise was to get the participants into the right frame of mind for the discussions at the workshop and for them to have read and thoroughly understood the provisions of the IED before attending the workshop. The EPA hoped that each participant would have undertaken to examine the steps their organisation would have to take in order to implement those new provisions of IED into their permitting regimes. The EPA had identified from early-on in the project that the main focus of the workshop would be on discussing permit conditions (both pre- and post-IED) and the subject of substantial change at a permitted facility in light of the amended definition for substantial change in the IED.

The workshop was scheduled for 17th and 18th July 2012 and it was decided to hold it in Wexford, Ireland, close to the headquarters of the EPA. By the end of June the EPA had a list of participants for the workshop that included representatives from Austria, Czech Republic, Denmark, Finland, Hungary, Ireland, Netherlands, Norway, Spain, Sweden, United Kingdom. Prior to the commencement of the workshop, all of the participants were sent a copy of the agenda and a request that they familiarise themselves with the provisions of Article 14 of the IED and with the conditions and schedules of the 'notional' permit that was circulated during the project exercise earlier in the year.

The agenda for the workshop focussed on what the EPA considered to be the most relevant and pressing elements of the IED that may impact on the permitting regimes of the environmental regulators. The agenda covered the following topics:

IED & BAT Conclusions,

Enforcement Issues for MS,

Permit Conditions,

Reconsidering and Updating of Permit Conditions,

Substantial Changes at Permitted Installations.

Note of IMPEL workshop on the Industrial Emissions Directive held on 17th & 18th July 2012 in Wexford, Ireland

The agenda and list of participants is attached as Annex 2

1. **Welcome address.** Laura Burke, Director General, Environmental Protection Agency.

Laura outlined the common aims of the participating organisations, and all environmental regulators across Europe in relation to the implementation of IED, and the implications for permitting authorities in its transposition into national legislation. Laura also highlighted the fact that the purpose of the workshop was for everyone to learn from each other and that it was to their own benefit for each person present to participate fully in the discussions. She re-iterated that the EPA do not have all the answers to problems that may be posed at the workshop and that the collaborative efforts of all countries present will be needed to identify solutions to potential problems. She highlighted that we should take the opportunity to work together and learn from our considerable combined experience of similar situations when European legislation changed the landscape of environmental regulation.

2. **Introduction & Agenda.** Donal Grant, Inspector, Environmental Protection Agency.

Donal presented a short session on the role and structure of the EPA in Ireland, its different functions and the link between the EPA and the provisions of IED. He followed this by briefly introducing the Directive and its provisions, the main chapters and the various annexes, and the different timelines for implementation of the provisions. Most of the participants confirmed that they were familiar with the content of the IED.

Donal talked about the agenda for the 1 ½ days of the workshop and what his vision was for the format the workshop would take, and the nature of the debates that would take place. He stated that the purpose of having a workshop format was to help discussions, get consensus on issues or problems, draw some conclusions, and perhaps get some new ideas for dealing with EU-wide problems with universally applicable solutions.

Each representative was then asked to introduce themselves to the group, giving their name, their role within their organisation, and their link to IED and environmental permitting.

3. **IED & BAT Conclusions.** Seán O'Donoghue, Inspector, Environmental Protection Agency.

Seán outlined some of the requirements of the IED, focussing on those articles that related to the publication of BAT Conclusions as Implementing Decisions, and the use of BAT Conclusions as the reference for setting permit conditions. At the end of his presentation, Seán posed some questions to the group in order to start the discussions:

What will be the impact on permitting / permit conditions of the publication of implementing decisions and the binding nature of the BAT Conclusions?

How will each MS be affected by the timing of BREF reviews, the subsequent publication of implementing decisions and the need to review permits?

Is there still a requirement for national BAT Guidance?

How will MS use the derogations under Art 15 of the Directive?

In relation to the requirement for national BAT Guidance, the UK view is that it will not maintain national guidance documents. The UK is however, planning to produce horizontal guidance across all sectors in relation to constructing an argument for proposing derogations for certain industries. This proposal is still only at the planning stage. The UK acknowledges that for other countries, where English is not the principle language, it may be more important to translate the implementing decisions into national guidance.

A general discussion on the potential impacts of the publication of implementing decisions on BAT Conclusions ensued. Austria stated that it currently employs ordnances that apply to certain industries. These ordnances set out general rules that apply to operations at permitted installations. There may be a number of problems though with the implementation of legislation across different regions within the country as the current system has led to differences between regions on the requirements contained in their ordnances.

The UK stated that it is currently developing a plan for the iron and steel industry to address the issue of compliance with the requirements of the implementing decision for BAT Conclusions for iron and steel. The UK intends putting the onus on industry to either comply with the requirements of the implementing decision or put forward a convincing argument to apply for a derogation. The UK hopes to review all iron and steel permits within twelve months and use the exercise as a learning curve for future review campaigns.

In the UK, industry has been very involved in the process of developing the BAT conclusions and there is a further push to get industry more involved in the BREF process. SEPA believes that the European Commission is pushing for the BAT AELs to be as stringent as possible. The problem is that; if only a few industry representatives are involved in the BREF process, the BAT AELs will tend to be stringent and favour the larger, more established operators. That will leave a situation where the majority of small operators, with fewer resources for abatement, are applying for derogations. If the majority of operators in an industrial sector cannot comply with the BAT AELs then the AELs may have been set too high. This may lead to a significant disparity in compliance with BAT conclusions between stronger and weaker economies within the EU.

Finland raised what it believes to be a major concern for its permitting regimes. Finland currently sets ELVs in permits based on mass emission values, such as kg/year or kg/month. Now the BAT AELs are being published in concentration limits, such as mg/m^3. It is going to be a difficult task to go through all permits and determine which ones are compliant with the BAT AELs and which permits will need to be reviewed.

4. **Enforcement Issues and Implications for OEE.** Caoimhin Nolan, Inspector, Office of Environmental Enforcement (OEE), Environmental Protection Agency.

Caoimhin outlined the role of the OEE and the risk-based enforcement system it operates in Ireland. He highlighted the national enforcement plan that fed into the local or sectoral enforcement plans at ground level. He also highlighted some of the potential problems that may cause enforcement challenges once the IED comes into force. These potential problems were

posed to the group during the presentation to promote discussions and get the opinion of the participants on potential problems they envisage in their jurisdictions.

The discussions started with the interpretation of the term *immediately* in Article 8(2) of the Directive which states that '*In the event of a breach of the permit conditions… the operator immediately informs the competent authority'*. All participants agreed that this can be difficult to achieve in reality, particularly in emergency situations where operators may push the environmental regulator down the list of contact priorities, after emergency services, local authority, etc.

Another issue raised by the group related to Art. 22 of the IED which addresses site closure and baseline reporting. One potential loophole for operators that was discussed was in relation to landfills. For example, for existing installations that already have soil/groundwater contamination present, and that do produce a baseline report by virtue of having their permit updated for the first time after 7 January 2013, there is a danger that under Art 3 (first para.), the site would only be required to be returned to the state that pertained at the time of the baseline report (e.g. already contaminated).

The remainder of the session focussed on Article 23 on environmental inspections. The definition of environmental inspection includes: "*All actions, including site visits, monitoring of emissions and checks of internal reports and follow-up documentation, verification of self-monitoring,……"*

The discussions centred on occasions when a site visit also encompasses monitoring by the competent authority, and/or checks on internal documents, etc. Will MS regard these as multiple "Environmental Inspections" on the same date? No definitive conclusions were reached during this discussions and it was clear that most MS are unsure how these requirements will be addressed.

The group also discussed how MS propose to maintain records of certain "environmental inspections" such as reviewing monitoring reports or other documents provided by operators? This issue was further complicated by Art 23(6) and 24(3) of the IED, which do not oblige competent authorities to prepare an external report for operators/the public on "inspections" – only for site visits.

5. **Permit Conditions.** Aoife Loughnane, Inspector, Environmental Protection Agency.

This was the first of three sessions dedicated to the discussion of permit conditions, and the requirements of Article 14 of the IED. Aoife acted as a facilitator for the session, highlighting the various sub-articles in turn and directing the discussions that ensued. The first sub-article to be discussed was article 14(1)(a) which requires the competent authority to set emission limit values for the control of polluting substances from installations. Variations in the way emission limit values are applied were evident from the discussions. While some countries specified ELVs in the permits on a case-by-case basis taking a holistic approach to the assessment, others set ELVs in the permits based on the BAT AELs listed in the BREF documents. Austria was the only country present at the workshop that sets ELVs in regional ordnances for each industrial sector and all permit holders must comply with the ELVs in the ordnance(s) that are relevant to their activity. The UK stated that it operates a system of Standard Rules Permits whereby, for

particularly low risk activities that require a permit, a template permit with standard conditions and ELVs can be given to an operator, at a reduced cost by comparison to a bespoke permit. The ELVs in these permits are set so as to not cause any impact on the receiving environment.

One of the significant problems faced by most countries is in the area of public access to the assessment process when ELVs are not being set on a case-by-case basis. When ELVs are being applied to permitted operators through the use of ordnances or other 'standard' sets of ELVs, the public can only have a chance to consult at the development of the ELVs. Very often this can lead to the public missing out on the opportunity to comment on entire permit applications altogether as the process is streamlined.

Another issue that was raised, and was a common theme over the course of the two days, was the potential for ELV ranges to be published in implementing decisions, and whether these ranges should be brought into the permits or whether competent authorities should pick a value from the range and apply that value in the permit.

The second sub-article to be discussed in this session addressed the protection of soil and groundwater. This requirement is similar to the IPPC Directive except with the additional emphasis on soil protection. Most countries were comfortable with this requirement as in most cases it is either already being addressed, or else it will tie in with the requirements of Article 16 on monitoring requirements for soil and Article 22 on baseline studies. The requirement for periodic monitoring of groundwater and soil in article 16 is not currently enforced by any of the countries present at the workshop and it is something that may have to be addressed in permit reviews.

6. **Permit Conditions.** Ann Marie Donlon, Inspector, Environmental Protection Agency.

Ann Marie acted as facilitator for the first of the afternoon sessions on permit conditions. The session followed on from the permit conditions session before lunch and started with a discussion on Article 14(c) of the IED and the monitoring requirements to be included in permit conditions. The Scandinavian countries all use mass emission limits in their permits instead of concentration limits. They are all working separately to develop a methodology for dealing with this problem within their own jurisdiction. Their main problem will be in the implementing decisions, which may publish the BAT AELs as concentration values rather than mass emission limits. Finland stated that it will try to get mass emission limits included in the implementing decisions or else it will turn the onus back onto industry to demonstrate their compliance with the new emission limit values. The monitoring requirements that may be included under article 14(c) are potentially very different depending on whether the permit (or ordnance/standard conditions) specifies mass emission limits or concentration limits.

The UK stated that in the recent past it has been moving towards mass emission limits as it believes such limits to be a better measure of the polluting potential of an operation. The UK also envisages the same problem as Finland in that the implementing decisions may set ELVs as concentration limits and therefore continuous monitoring may become the norm in their permits.

Article 14(1)(d) outlines the obligations on permit holders to submit certain data to the competent authority regularly, and at least annually. The discussion demonstrated the variety of different approaches taken by each MS towards compliance assessment. Most competent authorities, including Ireland and Sweden include conditions in the permits that requires the permit holder to submit regular (often annual) reports to the competent authority to demonstrate their compliance with the permit conditions and ELVs. The UK has online access to the monitoring data of the permit holders and can use that data to evaluate whether the data is representative and in compliance with the ELVs set in the permit. Other countries, including the Netherlands, do not ask the permit holder to submit information, only to have it available onsite in the event of a site inspection by the competent authority.

Article 14(1)(f) requires that permit conditions be included for measures other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations. This is *de facto* included as a requirement for permit holders in Ireland by excluding start-up and shut-down periods in the interpretation of monitoring results.

During discussions, most participants agreed that the definition of 'other than normal operating conditions' may cause a problem as there will be a wide variety of different interpretations of what are considered abnormal conditions. Ideally, the BREF documents should set out the parameters of what constitutes 'other than normal operating conditions' in order to guide permit writers.

It was agreed that one measure that could be adopted is for a register of all abnormal operations to be developed for different industries. This should help to ensure uniform application of the requirements of the Directive across all MS. Any such register would be a non-exhaustive list of potentially abnormal operations and would be suited to the BREF process as the descriptions of the different BAT can include references to potential abnormal operating conditions.

Article 14(1)(f) of the Directive provides for conditions on the minimisation of long-distance or trans-boundary pollution. The group discussed this provision at length as it generates a lot of debate among neighbouring countries on the European mainland. As Ireland only has one border it is not a well-defined subject and specific measures to reduce trans-boundary pollution are not included in most permits. A positive example of co-operation on trans-boundary pollution involves Germany and the Netherlands who have a national agreement that protects the Rhine, and more specifically, drinking water abstractions from the Rhine basin.

The assessment of the downstream impacts of emissions to the receiving environment forms an integral part of any permit application. This is particularly relevant to discharges to surface waters, where trans-boundary pollution is easiest to quantify. The provisions of the Water Framework Directive (WFD) take into account the cumulative impact of discharges to individual water bodies however the extended dates (e.g. 2021, 2027) by which some water bodies must achieve good water status may impact on the ability of competent authorities to manage potential trans-boundary pollution.

7. **Permit Conditions.** Donal Grant, Inspector, Environmental Protection Agency.

The final session of the day focussed for the most part on Article 14 (3) and the requirement that *BAT conclusions shall be the reference for setting permit conditions*. The session was facilitated by Donal Grant. The general focus of the discussions centred on how each MS planned to ensure compliance with the BAT conclusions contained in the implementing decisions. Several MS, including Austria and the UK will put their own interpretation of the implementing decisions into guidance notes or general ordnances and will place the onus on the operators to comply with their legislative requirements, rather than writing specific conditions for each BAT conclusion. The Netherlands raised the question of the interpretation of the term 'reference' in the text of the Directive. Can it be seen as guidance, rather than strict adherence to the text of an implementing decision? The potential exists for this interpretation to be made by a judge during legal proceedings as the wording is somewhat ambiguous.

The chair made the point that from the discussions, it appeared that most MS will adopt the BAT AELs strictly into the permits/ordnances but that the BAT conclusions may not be implemented so strictly and that some flexibility in wording may occur. The participants agreed that most MS will be comfortable with the general BAT conclusions but the more prescriptive and specific aspects to the BAT conclusions (e.g. the use of bag filters), may cause some difficulty for the competent authority. It was also agreed that there was a need for a lot more engagement with all stakeholders to ensure that the BAT conclusions being published in the implementing decisions are being addressed correctly by both the competent authorities and the permit holders.

8. **Reconsidering and Updating Permit Conditions.** Caoimhin Nolan, Inspector, Office of Environmental Enforcement (OEE), Environmental Protection Agency.

Caoimhin gave a presentation on the provisions of Articles 20 and 21 of the IED in relation to changes by operators at installations and reconsidering and updating of permit conditions by the competent authority. Coming from an enforcement perspective, Caoimhin outlines the current system in place in Ireland for agreeing changes to a permit between the permit holder and the competent authority. Most permits have a get-out clause (usually condition 1.2 or 1.4 in Irish permits) that will allow changes to certain conditions of the permit with the written consent of the competent authority. If the operator is proposing a change that cannot be agreed under these conditions of the permit then the EPA will inform the permit holder that they must apply to the EPA for a technical amendment to their permit or a full review of their permit, depending on the nature of the proposed change. As the initial point of contact, the OEE would usually refer to the original permit application and the supporting documentation submitted by a permit holder before deciding whether they can agree to a change under the conditions of the existing permit.

OEE also needs to consider the 'softer' issues such as competition – are the changes giving one particular installation an advantage over others. The limited public participation in the agreement of changes to permit conditions between the competent authority and the permit holder is also a concern.

One of the major challenges that now confront the OEE is how consistent they have been in agreeing changes to permits over the years. OEE has difficulty in tracking changes made to permits over the years and to help address this problem they have recently developed a more standardised procedure whereby permit holders apply to the EPA for changes to their permits.

Most of the participants then gave an outline of how they manage such changes to the permits in their jurisdiction. Like Ireland, most countries have a hierarchy of procedures for making changes to permits. Some are provided for in legislation, while other changes can be agreed without undue formality.

9. **Substantial Change at Permitted Installations.** Pat Byrne & John McEntaggart, Inspectors, Environmental Protection Agency.

Pat and John continued on from the discussion prompted by Caoimhin by providing the group with information on the next stage of making amendments to permits. Like all the MS present at the workshop, in Ireland, if a permit holder wishes to make a substantial change at the installation, they must apply for a full review of their permit. Pat outlined the changes to the wording of the definition of substantial change from the 2008 IPPC Directive and the IED. In essence the discretion of each competent authority to determine what they consider a substantial change has been removed and Ireland has a concern that this may lead to decisions being challenged and being left to the Commission to determine what constitutes a substantial change. The question was put to the participants as to what criteria MS currently use to decide the defining line between what they would consider to be a substantial or non-substantial change.

In the UK (SEPA) a lot comes down to the individual Inspector's knowledge and the level of information provided by the operator. It is essentially a judgment call on the part of the Inspector based on the best knowledge available to them. SEPA has a guidance note, entitled '*PPC Technical Guidance Note 3: Identifying 'Substantial Change',*' which Inspectors use in making a determination on what constitutes a substantial change at a permitted installation. Leighanne Moir agreed to circulate the document to all participants after the workshop for their information. The document was subsequently sent to Donal Grant, who circulated it to all participants and made it available on the project's IMPEL Basecamp website.

The situation in the Netherlands is different from that in other countries. The Dutch competent authority does not differentiate between a substantial or non-substantial change. Any changes to the permit are added to the existing permit however after several changes the overview can become cluttered to the operator, the competent authority and the public. When an operator wants further changes to the permit, the competent authority can decide that the whole permit has to be rewritten from scratch. The operator makes an application for a new permit. Therefore it provides the competent authorities all necessary information. This new permit comes in place of the original permit and all of the changes that were made to it.

Most other countries operate a similar procedure to Ireland, whereby the onus is on the operator to convince the competent authority that what is being proposed is not a substantial change.

In Ireland there are three separate mechanisms by which a permit can be changed. Firstly by agreement between the operator and the competent authority (in Ireland's case, the OEE). If that is not feasible the permit holder must apply to the EPA for a technical or clerical amendment to the conditions of the permit. This does not incur a monetary charge nor does it allow for any public participation. If the proposed change is considered by the EPA to be a substantial change then the permit holder must apply to the EPA for a full permit review which warrants a substantial fee and includes full public participation in the review process. The EPA would like to have a provision in legislation for conducting limited reviews to permits that allows for a change only to certain specified aspects of a permit and does not require a full review procedure.

John outlined a couple of scenarios for the group to discuss, and to get their opinion on whether they believed the proposed changes would be considered substantial changes in their jurisdiction. The first scenario was the imaginary permitted scenario circulated to the participants at the beginning of the exercise. The proposed change related to the treatment of bottom ash from the power generating station before landfilling the ash. This is considered a new activity under the IED and therefore the EPA in Ireland would consider it to be a substantial change. Most participants agreed that they would consider it a substantial change and that a full permit review would be required for the installation. The second scenario outlined a chemical installation that is seeking permission to increase the flow rates at two emission points out of a total of ten emission points on the site. In Ireland it would be considered a substantial change but some other countries disagreed and stated that it may be an amendment rather than a full review, depending on the overall mass emissions from the installation.

The workshop was closed by Donal Grant who outlined his intention to compile a report on the project and the proceedings of the workshop and circulate it to the participants. He also asked any participants who had provided details of any guidance documents or reports that they had mentioned over the course of the workshop, to circulate those documents to the group.

4. Recommendations

The recommendations outlined below have been developed primarily from the discussions at the workshop. While they are presented below as opportunities for further IMPEL projects (in 2013 or beyond) they are equally applicable within individual Member State jurisdictions. The recommendations also serve as relevant questions that each competent authority must ask itself in determining its preparedness for integrating the requirements of the Directive into its permitting regime.

1. **Concentration Limits Vs. Mass Emission Limits:**
   Develop a project to look at the potential differences for environmental regulators of prescribing concentration or mass emission limits in the BREFs and implementing decisions. This issue arose several times during the discussions and there are strong arguments to be made for both approaches to environmental regulation. There is also a wealth of knowledge among the competent authorities of using both approaches, and their experiences would be important in developing a more uniform application of emission limit values in IED permits across the EU.

2. **Changes to Permit Conditions:**
   There are a number of different mechanisms for making changes to permits (both substantial and non-substantial changes) in each jurisdiction and it appears from the workshop that the possibility of discussing common templates for standard rules would be welcomed. The systems for making changes to permits in place in those countries represented at the workshop showed surprising variations and there are merits to each of the systems. If the best parts of each of those systems could be brought together, a uniform approach among competent authorities should be welcomed by industry. This is equally applicable among regional permitting authorities within the same country that have different approaches to reviewing or amending permits.

3. **Other than Normal Operations:**
   During the discussions it became clear that there are differences between the competent authorities on the interpretation of what is considered '*other than normal operating conditions*'. One measure that could be adopted is for a register of all abnormal operations to be developed for different industries, either at an IMPEL level, or during the BREF review process for inclusion in the BREF documents. This should help to ensure uniform application of the requirements of the Directive across all MS. Any such register would be a non-exhaustive list of potentially abnormal operations and would be suited to the BREF process as the descriptions of the different BAT can include references to potential abnormal operating conditions.

4. **Adoption of Implementing Decisions:**
   The potential exists for the development of a long-term IMPEL project to look at how MS are going to adopt the implementing decisions into national policy/guidance/legislation. According to the European Commission, one of the problems identified in the review of the IPPC Directive in 2007 was insufficient implementation of BAT leading to limited progress in the prevention

and reduction of industrial emissions and to distortion of competition due to large differences in environmental standards. This was one of the driving forces behind the development of the IED and with significant changes in the requirements surrounding BAT conclusions, now may be the ideal time to begin to examine how the implementation process could be streamlined across the EU.

Annex 1 - IED Permitting Project Terms of Reference.

IED PERMITTING
TERMS OF REFERENCE

1. Project details

Name of project	***Industrial Emissions Directive (IED)- the transition to IED Permits and how to deal with substantial change at a permitted facility***
Date of version	*2011-10-06 – if possible, to be presented to Cluster 1 meeting, Paris, Oct 12th & 13th*

2. Scope

2.1. Background	On 6 January 2011 the Industrial Emissions Directive entered into force, and its provisions listed in Article 80(1) have to be transposed into national law within two years. Under the IED it is possible that for many industrial sectors reviews of existing permits will be required in order to address the requirements of the BAT Conclusions in the relevant BREF (Article 3(11) and 3(12)). Under existing Directives, Member States implement various systems to deal with changes taking place at facilities. These changes are made to permits in various formats and guises including, agreed changes to Permits, variations to Permits, Technical Amendments to Permits and so on. Article 20 of the IED deals with changes by operators to installations and Article 63 deals with Substantial Change to existing installations. These provisions will require a new approach by Member States in how to decide if a full review of a Permit is required or is a more informal change approval system is adopted.
2.2 Directive/Regulation/ Decision	IED: 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).
2.3 Article and description	Article 80(1) (general implementation) Article 3(11) and 3(12) (the BAT Reference document (BREF) and the BAT Conclusions).
2.4 Link to the 6th EAP	Article 3 of the "Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme" states: 'promotion of improved standards of permitting, inspection, monitoring and enforcement by Member States; — a more systematic review of the application of environmental legislation across the Member States'.
2.6Objective (s)	To organise an exercise for Member States(MS), which will focus on the changing requirements for the development of Permits under the new provision of the IED. The key questions will be: "*How will IED Permits differ from the types of permits currently being prepared by Member State Regulators?"* (under IPPC, LCP, WID, etc), and "*How are we to deal with substantial changes to permitted facilities*?" • Ireland will prepare an 'imaginary' permittable scenario. • This scenario will cover a previously permitted facility (IPPC, WID & LCP) and this facility will now, on foot of a proposed substantial change, be required to seek a permit (review) under IED. • The Lead MS will prepare the scenario. • The Lead MS will present the problem as a proposal for a substantial change and will confront the MS regulator with the question as to whether this change / substantial change requires the facility to seek an IED Permit or reviewed Permit. • The Lead MS will prepare the IED Permit application. The permittable scenario will be kept simple but will be based on a BREF document finalised under the IED with BAT Conclusions. • The participant MS Regulator will outline his/her rational on how the "substantial change" problem was addressed.

	• The participant MS Regulator will then (in advance of a Workshop in Ireland in 2012) prepare the IED Permit and submit it to the Lead MS. • All the Substantial Change rational statements and all of the drafted IED Permits will be cross-circulated to all participant MS. • A workshop in Ireland in mid 2012 will provide a 2 day examination of the rational positions adopted by the participant MS Regulators on the substantial change issue and the drafted IED Permits will be analysed so that a 'best-practice' for IED permitting can be proposed. • A final report will be presented to IMPEL and subsequently published.

3. Structure of the project

3.1 Activities	In 2012: • Formation of a project group (internally in Lead MS) after the approval by IMPEL • Scenario circulated to all MS in March 2012. • All necessary information will be circulated by email & web facilities. • Interested MS to 'sign-up" by mid April 2012. • Rational on substantial change and draft IED Permit to be submitted to the Lead MS by end May 2012. • Workshop in Ireland in Mid July 2012 • Report to IMPEL by mid October 2012
3.2 Product(s)	• Report on the exercise on how to deal with the substantial change under the IED provisions, and how a Permit should look under the IED provisions.
3.3 Planning (Milestones)	See under "Activities"

4. Organization

4.1 Lead	Ireland
4.2 Project team	All from Ireland – no inter MS meetings in advance of the Workshop
4.3 Participants	All MS Permitting workers

5. Quality review

Quality review by Core Team and Cluster 1

- Discussion in Cluster 1 in spring 2012 on progress report. Mid-year 2012 General Assembly will be informed.
- Workshop at the IMPEL conference with international experts in this field
- Close cooperation with responsible Commission desk officers
- Discussion in Cluster 1 in autumn 2012 on final draft reports.

6. Communications

6.1 Dissemination of results	Report published on the IMPEL web-site and submitted to the authorities in the Member States and to the EU institutions.
6.2 Main target groups	IMPEL member countries Competent authorities on IED permitting Potential candidate countries for EU accession
6.3. Planned follow up	Any emerging problem (emerging from the IED requirements but as yet unforeseen) which come to light in this project could be addressed in a subsequent project

7. Project costs/Resources required

The project will involve the steps:

1) Preparation of scenarios, circulation to all MS (Ireland will bear this cost & no cost to IMPEL)
2) Workshop in Ireland in mid 2012

Travel and accommodation (Irish workshop):

27 Member State participants (1 only per MS)

27 x return flight to Dublin July 2012	= € 10,000
27 x Hotel Accommodation (2 nights)	= € 10,000

27 x Main Meal (2 days) Workshop housekeeping (venue & consumables)	= € 5,500 = € 5,000
Total provision by IMPEL	**= € 30,500**
Lead MS & host country will cover and incidental overhead costs.	

IED IMPEL Workshop

Whites Hotel, Wexford, Ireland

Workshop Agenda

Tuesday, 17th July 2012

8:30 – 9:00	**Registration**
9:00 – 9:10	Welcome address by Laura Burke (Director General, EPA)
9:10 – 9:40	Introduction & Agenda
9:40 – 10:20	IED & BAT Conclusions
10:20 – 11:00	Enforcement Issues for Member States:
	Compliance & Reporting
	Environmental Inspections
	Site Closure & Baseline Studies
11:00 – 11:20	**Coffee**
11:20 – 12:45	Permit Conditions
12:45 – 13:45	**Lunch**
13:45 – 15:15	Permit Conditions
15:15 – 15:35	**Coffee**
15:35 – 16:40	Permit Conditions
16:40 – 17:00	Review of Day's Proceedings

19:00 **Conference Dinner (Jacques Restaurant, Selskar Square)**

Wednesday, 18th July 2012

09:30 – 10:00	Reconsidering & Updating of Permit Conditions
10:00 – 11:00	Substantial Change at Permitted Installations
11:00 – 11:20	**Coffee**
11:20 – 12:30	Substantial Change at Permitted Installations
12:30 – 12:45	Summary of Workshop Proceedings
12:45 – 13:00	Closing Remarks
13:00 – 14:00	**Lunch**
14:00	***Bus Transfer to Dublin Airport***

IMPEL Delegates

Name	Country	Organisation
Angela Pérez	Spain	Regional Ministry of Environment of the Region of Madrid
Bálint Nőt	Hungary	OKTVF
Christoph Planitzer	Austria	Department of Environment
Eva Hrabovská	Czech Republic	Regional Office of Middle Bohemia (IPPC)
Gunn Sormo	Norway	Climate and Pollution Agency
Henry Hiltjestdam	Netherlands	Province Overijssel
Kari Kjonigsen	Norway	Climate and Pollution Agency
Kari Pirkanniemi	Finland	Regional State Administration Agency for Southern Finland
Leighanne Moir	United Kingdom	Scottish Environmental Protection Agency
Lívia Víg	Hungary	OKTVF
Martin Jenkins	United Kingdom	Environment Agency
Ruth Krogsgaard Sorensen	Denmark	Danish Environmental Protection Agency
Siv Hansson	Sweden	County Administrative Board
Stuart Huskisson	Ireland	Environmental Protection Agency