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PROGRAMME FOR CENTRAL AND EASTERN EUROPE, CAUCASUS AND CENTRAL ASIA**

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GUIDING PRINCIPLES OF EFFECTIVE ENVIRONMENTAL PERMITTING SYSTEMS

Fifth Joint Meeting of the Task Force for the Implementation of the Environmental Action Programme for Central and Eastern Europe (EAP Task Force) and the Project Preparation committee (PPC)

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This document was presented and discussed at the last EAP Task Force meeting in Berlin on 21-22 September, 2006. It was agreed that the category of the document (either I or II) will be determined after the Agenda of the Belgrade Ministerial Conference and main documents were identified.

ACTION REQUIRED: *the Task Force is invited to:*

- 1) endorse this document, subject to written comments to be provided to the Secretariat by 30th March, 2007; and*
- 2) agree on the appropriate category (I or II) of this document for submission to the Belgrade Ministerial Conference.*

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English - Or. English

PREFACE

Environmental permitting is a key instrument for reducing industry's environmental impacts, facilitating its compliance with environmental requirements and promoting technological innovation. The goal of protecting the environment as a whole has led most OECD countries to introduce integrated permitting systems for large industrial installations. Modern permitting systems combine discretionary powers of regulators with transparency and broad public participation.

Many transition and emerging economies are now exploring possibilities of progressively moving toward an integrated permitting system that would replace the current cumbersome and ineffective multitude of permits and licenses for air emissions, water abstraction, wastewater discharges, waste generation, storage and disposal, and other environmental impacts. The countries of Eastern Europe, Caucasus, and Central Asia (EECCA) plan to use the approach of the European Union's Integrated Pollution Prevention and Control (IPPC) Directive (96/61/EC) as the principal benchmark for this purpose. However, each country will need to devise permitting systems that best suit its legal and institutional arrangements and social, economic and environmental priorities.

This document presents the key principles of improving environmental permitting systems by introducing integrated permitting for large industry and simplified permitting for small and medium-sized enterprises. It is based on the comprehensive "Integrated Environmental Permitting Guidelines for EECCA Countries" prepared and published, as is this document, under the auspices of the EECCA Regulatory Environmental Programme Implementation Network (REPIN). REPIN is part of the Environmental Action Programme (EAP) Task Force, for which the OECD Environment Directorate serves as Secretariat.

The Guidelines, which include strategic and procedural advice for environmental authorities, were a result of two year-long collaboration with EECCA country officials and experts supported by governments of Sweden, the Netherlands and the Czech Republic as well as the European Commission.

The purpose of the "Guiding Principles of Effective Environmental Permitting Systems" is to:

- create a reference that will help governments to identify key features of an effective and efficient permitting system;
- generate high-level political and institutional support for permitting reform in individual countries;
- guide the gradual transition to a new environmental permitting system; and
- facilitate international cooperation on environmental permitting.

CONTENTS

DEFINITIONS..... 4

1. EVOLUTION OF ENVIRONMENTAL PERMITTING..... 5

2. FUNDAMENTALS OF A PERMITTING SYSTEM..... 6

3. PERMIT REQUIREMENTS 8

4. PROCEDURAL ASPECTS OF PERMITTING..... 11

5. TRANSITION TO AN EFFECTIVE PERMITTING SYSTEM 13

DEFINITIONS

Best Available Technique (BAT) is a concept introduced by the European Union's IPPC Directive (96/61/EC) and is defined as follows: "*Technique*" means both the technology and the way the installation is designed, built, maintained, operated and decommissioned. "*Available*" means techniques developed on a scale which allows them to be used in the relevant industrial sector, under economically and technically viable conditions. "*Best*" means most effective techniques for achieving a high level of protection of the environment as a whole.

Emission (Effluent) Limit Value (ELV) is a figure specifying the concentration or load of a pollutant allowed to be emitted or discharged to the environment from a specific installation in a given period of time or per unit of production.

Environmental Quality Standard (EQS) is a measure of the state of a specific environmental medium, in regard to a specific pollutant, representing an upper limit of acceptability designed to protect human health or the ecosystem.

General Binding Rule (GBR) is a set of standard minimum requirements stipulated in a statutory document, covering operational aspects of an installation that regulators must take into account in setting permit conditions.

Installation means a stationary technical unit where one or more activities are carried out on the same site and that could have a negative environmental impact. Several "technical units" on the same site should be considered as one installation if one of the activities is directly associated with the other or both units are served by the same activity (located on the same site). *Existing installation* is an installation that has been legally operating at any time before the submission of the current permit application. Other installations are considered to be *new installations*.

Integrated Environmental Permit is a written authorisation to operate an installation, according to pertinent legislation, subject to conditions covering all of the installation's known environmental impacts that are considered significant by the permitting authority.

Integrated Pollution Prevention and Control (IPPC) is a concept that includes measures and procedures to prevent (wherever practicable) or minimise environmental impacts from industrial installations so as to achieve a high level of protection of environment as a whole.

Operator means a natural or legal person who is the owner or the manager of the installation and has the authority and ability to ensure compliance with the permit. If two or more operators run different parts of an installation, they should obtain separate permits.

Statutory ELVs are emission limit values stipulated in a statutory document (usually, in secondary legislation). Statutory ELVs may be generic or industrial sector-specific and represent minimum requirements (the least stringent ELVs) that may be set in installation-specific permits. Statutory ELVs are based on the state-of-the-art techniques at the time of their promulgation.

1. EVOLUTION OF ENVIRONMENTAL PERMITTING

1. The overall goal of environmental permitting is to protect human health and the environment by defining (in a transparent, accountable manner) legally binding requirements for individual sources of significant environmental impact.
2. Single-medium permitting – the traditional regulatory approach – derives from the way that environmental regulation developed as specific environmental problems (for air, water protection, waste management, etc.) needed to be addressed. As a result, an operator of an industrial installation may be required to obtain a large number of environmental authorisations from a variety of separate authorities that do not necessarily operate in a coordinated or cooperative way.
3. In this form of control, the limits for environmental impacts of installations are set so as to protect the environmental medium (water, air or land) into which they discharge to a defined level represented by an environmental quality standard. Under a single-medium permitting system, polluting substances may be transferred from one environmental medium into another. Also, dilution and dispersion of releases to the environment in order to solve a local environmental quality problem may lead to environmental harm at greater distances. The consequent need to view the environment as a whole and to minimise pollution through optimal design and operation of an installation has led to the emergence of an *integrated approach to environmental regulation*.
4. Integrated permitting means that emissions to air, water (including discharges to sewer) and land, as well as a range of other environmental effects (the use of energy, water and raw materials) must all be considered together. It also means that regulators must set permit conditions so as to achieve a high level of protection for the environment overall. Integrated permitting is based on the concept of “Best Available Techniques” (BAT) which balances the benefits to the environment against the costs to the operator and emphasises pollution prevention rather than end-of-pipe control.
5. Integrated permitting was introduced in Sweden in 1969, in Denmark in 1972, and in the United Kingdom in 1990 before being mandated across the European Union in 1996 by Directive 96/61/EC on Integrated Pollution Prevention and Control (IPPC). The basic principles of IPPC were laid out in the OECD Council Recommendation on Integrated Pollution Prevention and Control C(90)164 of 1991.
6. In the EU, integrated permitting in general, and the BAT approach in particular, targets large and complex installations described in the IPPC Directive as having “significant potential for pollution,” including trans-boundary pollution. At the same time, small and medium-sized enterprises are usually regulated through simpler permitting schemes as their environmental impact is lower.

2. FUNDAMENTALS OF A PERMITTING SYSTEM

Principle 1: Permitting of All Stationary Sources of Significant Pollution

7. All stationary pollution sources with significant environmental impact¹ must be required by law to obtain an environmental permit as a precondition to their operation. The provision of environmental permits to industrial installations is a fundamental element of the regulatory process addressing pollution. A coherent permitting system is also necessary to ensure that economic competition at both domestic and international levels remains fair under environmental regulations and that economic development proceeds in a sustainable way.

Principle 2: Differentiation of Regulatory Regimes for Major and Minor Pollution Sources

8. Major pollution sources, to be defined in the national legislation, should be subject to *integrated environmental permitting* on a case-by-case basis, where all environmental aspects are considered simultaneously, pollution prevention rather than end-of-pipe control is a fundamental principle, and site-specific issues are taken into account. The BAT concept suggests that the environment is a disposal route of last resort, to be used only to the extent that it is not practically and economically feasible to do anything else.

9. Small and medium-sized enterprises (SMEs) should be subject to a *simplified regulatory regime* as these businesses pose a lower environmental risk, and case-by-case permitting would impose a disproportionately heavy burden on them, as well as on the regulators. There are various options to simplify the regulatory regime that may ensure appropriate control of environmental impacts and at the same time allow environmental authorities to devote more of their effort to the regulation of bigger installations with a greater potential environmental impact. These include permitting based on general binding rules (see Principle 13) and registration (see Principle 14).

Principle 3: Appropriate Permitting Authority

10. It is essential to define in the law the administrative level to conduct permitting of certain categories of facilities: national or regional level for large industrial installations subject to integrated permitting, and regional or municipal level for small and medium-sized installations. “One-stop shopping” systems, where the applicant deals with one designated competent authority that ensures coordination with all other stakeholder agencies, should be encouraged. It increases the consistency and predictability of the permitting process and reduces the administrative burden on both government and industry.

11. The designated permitting authority may need to establish a dedicated *environmental permitting department* to exchange information and coordinate decisions between different internal units and communicate with the regulated community and other competent authorities. The permitting function of an environmental authority should be institutionally separated from its inspection and enforcement functions.

¹ National legislation must define the notions of “significant environmental impact” and “major pollution sources” to enable classification of installations based on the extent of their (potential) environmental impact.

Principle 4: Public Participation and Access to Information

12. The public should be given an opportunity to comment on permit applications before the competent authority reaches its decision and have access to the permit-related information after the permit has been awarded. For the purpose of consulting the general public, it is appropriate to maintain a *permit register* accessible to the public, where applications and, eventually, permits would be placed, subject to consideration of commercial confidentiality or national security.

Principle 5: Extensive Stakeholder Involvement

13. Permitting requires a transparent process for involving all institutional stakeholders. Stakeholder consultations should be part of both the development of the regulatory framework for permitting (procedures, rules and guidance) and the permit determination process itself. Depending upon the requirements of national legislation and institutional arrangements, the permitting authority need to consult other authorities with related responsibilities or interests (the environmental inspectorate, water and health authorities, sectoral ministries, local authorities, etc.). Permit registers and interagency electronic networks should be developed to facilitate such coordination.

Principle 6: Outreach to the Regulated Community

14. Environmental authorities should make substantial effort through trade associations, environmental and industry newspapers or journals, industry seminars, etc. to ensure that operators are aware of its obligations under the environmental law. The environmental permitting authority may hold pre-application discussions with the operator before it submits a formal application in order to clarify relevant requirements. Nevertheless, it is the responsibility of operators to know the law that applies to their activities and to understand whether they require a permit for operation of any installation. Ignorance of the law is no defence against legal enforcement action for operation without a relevant permit.

Principle 7: Close Interaction with Environmental Assessment (EA)

15. Both EA and environmental permitting follow legally binding procedures of identifying and analysing significant environmental impacts and making decisions related to an economic activity. However, EA is used not only for industrial installations (e.g., it covers infrastructure projects), applies at an earlier stage of project planning, and considers a wider range of alternatives and mitigation measures. EA and permitting should be applied so as to maximise their effectiveness and avoid overlap. This should be achieved through using EA findings in preparing and evaluating permit applications and including EA recommendations on mitigation measures in permit conditions.

3. PERMIT REQUIREMENTS

Principle 8: Clear and Enforceable Permit Requirements

16. A permit must contain conditions that are unambiguous and, most importantly, enforceable. The key to simple, effective and consistent permitting is to base permit conditions on statutory requirements and technical guidance that have been developed in cooperation with all stakeholders and are available to all, including the public.

Principle 9: Comprehensive Scope of an Integrated Permit

17. Integrated permit conditions should either confirm the operator's proposals or specify any further requirements. An integrated permit should contain conditions covering the following issues:

- (1) **Operational Matters.** Conditions related to operational matters must be based on BAT, as described in relevant technical guidance, and cover the use of raw materials and water; techniques for prevention and control of pollution releases; waste management; energy use and efficiency; emergency preparedness; self-monitoring systems; and site remediation after decommissioning.
- (2) **Emission Limit Values.** ELVs should be set based on the *combined approach* (see Principle 10) for emissions to the atmosphere, discharges to surface waters, to the sewer or wastewater treatment plant, and to the ground (unless the latter are banned by law).
- (3) **Improvement Programme.** When the permitting authority accepts an argument from the operator of an existing installation that it cannot afford an immediate move to a BAT, an improvement programme to achieve the BAT should be stipulated in the permit.
- (4) **Records.** A permit should contain conditions for making, keeping, and providing access to appropriate records, including monitoring results and a log record of any failures that had, or could have had, an effect on the environment.
- (5) **Reporting and Notifications.** The permit should specify reporting requirements for the installation, including parameters to report and frequency of reports, and arrangements for notifying the permitting authority about such events as exceedance of ELVs, accidents, temporary or permanent cessation of operations.
- (6) **Payment of Environmental Taxes and Charges** (if applicable). If the operator must pay taxes or charges for its polluting activities or the use of natural resources (including water abstraction), the requirements for making such payments should be specified as permit conditions.
- (7) **Validity and Provisions for Renewal and Variation.** The permit should specify the date of its entry into force and the validity period (in accordance with relevant legislation). It should also instruct the operator as to when he should apply for renewal or revision of the permit, and when the competent authority has a right to initiate its revision.

Principle 10: Combined Approach to Setting Emission Limit Values in Integrated Permits

18. Setting ELVs in integrated permits should be based on a combination of the environmental quality standards (EQS) approach and the technique-based approach. An EQS (for water or air) provides a minimum environmental requirement, and any ELVs set in permits should not cause the EQSs to be exceeded. The technique-based approach goes further, requiring better environmental performance through pollution prevention, if it can be achieved at a reasonable cost. Technique-based ELVs may be derived from a consideration of BAT for an installation, in accordance with the relevant technical guidance, or fixed in a regulation (statutory ELVs). Where compliance with an EQS requires stricter ELVs than would be derived from consideration of BAT, the EQS should take precedence and the stricter ELVs must be included in the permit.

19. The combined approach requires sound *management decisions* on the part of an environmental permitting authority, based upon careful case-by-case evaluation, to ensure that the ELVs that are ultimately included in an integrated permit satisfy both the BAT and EQS criteria and comply with any applicable statutory ELVs.

Principle 11: Availability of Technical Guidance

20. Consistency of approach to integrated permitting and to the setting of appropriate permit conditions depends on the availability of relevant technical guidance on what constitutes BAT. The operator in formulating his application and the regulatory authority in assessing it should both be informed by the same guidance on BAT. Without technical guidance, there would be substantial room for repeated disagreement between operators and regulators with respect to the identification of BAT, and judgements could vary widely between permitting authorities.

21. One useful source of such technical guidance is the European Union's BAT Reference Documents (BREFs), produced by way of a Europe-wide consultation process involving industry, EU Member State regulatory authorities, and relevant NGOs. The sector-specific BREFs cover technical and operational features associated with BAT for the sector, together with appropriate ELVs. There are also BREFs that address cross-cutting themes such as monitoring systems and economic and cross-media issues in integrated permitting. The EU BREFs may be translated into the national language and used directly or adapted to country-specific conditions and include locally available techniques to constitute a set of *national BAT guidance documents*.

Principle 12: Discretion of the Permitting Authority

22. Permitting authorities should be provided (in the legislation) with sufficient discretion to identify integrated permit conditions as there is no simple algorithm for determining BAT in any specific case, even in the presence of technical guidance. Informed judgement by experienced regulators is a crucial element of the permitting process. BAT guidance is neither prescriptive nor exhaustive, nor does it take account of local environmental conditions, so permitting authorities always have to make site-specific decisions. However, permitting officers must justify these decisions in writing.

Principle 13: General Binding Rules for SMEs with Significant Environmental Impact

23. Standard permit conditions can be stipulated for distinct categories of installations with similar production processes through so-called general binding rules (GBRs). GBRs should include both statutory ELVs based on "state-of-the-art" techniques for that category of installations and requirements for certain operational matters, as well as monitoring, record-keeping and reporting conditions. GBRs should also stipulate simplified application forms requiring operators to demonstrate compliance with the standard requirements.

The following criteria should apply before consideration is given to the use of GBRs:

- GBRs must cover a sufficient number of installations in a particular category to make the development of GBRs cost-effective (this is a matter of judgement by the regulator).
- The current status of technology and techniques in that category of installations must not be fast moving, as GBRs cannot be updated frequently.
- Installations must have a similar impact on the environment.

Principle 14: Registration of Installations with Low Environmental Impact

24. The preferred regulatory option for installations that intrinsically have no potential to cause significant environmental impact would be simple registration with local or environmental authorities, proving their low environmental impact. Such installations by their very nature have only negligible impact on environment and do not have to rely on pollution control measures to minimise that impact. Regulating them more extensively is unlikely to add benefit for the environment.

4. PROCEDURAL ASPECTS OF PERMITTING

Principle 15: Transparent Permitting Procedure

25. Developing and issuing an environmental permit should involve the following general stages:

- (1) *Pre-application activities*, focused on helping the applicant understand the nature of his obligations and general contents of an application.
- (2) *Preparation and submission of application by the operator*, following standard guidance and/or form.
- (3) *Initial check of application by the regulatory authority* to ensure that the application is valid, i.e., conforms to the legal requirements.
- (4) *Consideration of commercial confidentiality request* with respect to making public some parts of the application, to be justified by the operator and approved by the regulator.
- (5) *Consultation of the permitting authority with other authorities and the public* in order to gather facts and opinions that would contribute to the assessment of the application.
- (6) *Assessment of the application and determination of permit conditions*, using technical guidance and requirements of relevant legislation.
- (7) *Issuance or refusal of a permit*, subject to administrative and judicial appeal (see Principle 17).

26. It is important to set *time limits* for each stage of the procedure. Time limits will lead to reduced costs for applicants and make government agencies more accountable and responsive.

Principle 16: Long Permit Validity and Clear Variation and Termination Rules

27. Long validity periods simplify the permitting system and reduce the administrative burden on both the government and industry. Environmental permits in most OECD countries are either valid for five to ten years or remain in force until other factors trigger a revision. A simplified procedure for amending a permit may be used in cases of administrative or small operational changes that do not affect permit conditions, or if there is a change of operator not entailing operational changes.

28. Permits should be revised at the operator's initiative if changes are envisaged to the regulated process or if there are changes to the operator's ownership or contact information. A permit revision may be initiated by the competent authority if the applicable environmental quality objectives and/or standards have been modified.

29. Revocation or temporary suspension of a permit should be used only where exhaustive use of other enforcement tools has failed to protect the environment. The operator may surrender the permit voluntarily if he ceases the activity for commercial or other reasons, but has to do so through a formal application to the regulatory authority.

Principle 17: Possibility of Appeal

30. Any person or body, including the applicant for a permit, should be able to make an appeal to the higher competent authority against a refusal to grant a permit or against certain conditions in the permit that has been granted. An appeal may be considered through comparison of the parties' written arguments or through a hearing, at the discretion of the appeal authority, but its evaluation should be transparent. A court appeal should always be possible as well.

5. TRANSITION TO AN EFFECTIVE PERMITTING SYSTEM

31. The reform of an environmental permitting system should start from the development of an implementation strategy with concrete actions, its acceptance by environmental authorities as well as by other stakeholders, and its approval by the Government. Political will is indispensable for the introduction of the new system.

32. The first step in the *transition to integrated permitting for large industry* is to determine the *scope of the integrated permitting system*, i.e., establish a list of industrial sectors and the minimum size (production capacity) of installations to be controlled under the integrated permitting regime. This determination may be guided by the list of sectors and size thresholds stipulated in the EU IPPC Directive, with a possible addition of other priority polluting sectors in the country. An inventory should be prepared of all the country's installations that fall under the designated categories. The final list of industry categories and capacity threshold values should be agreed in interagency consultations and discussions with industry.

33. Existing industrial installations will need management strategies for compliance with integrated permitting requirements and time to make the necessary investment. Even for new installations, integrated permitting cannot be made operational immediately because of the need to create appropriate legal and institutional arrangements and prepare technical guidance. Therefore, it is important to phase the introduction of integrated permitting by setting priorities among industrial sectors. The criteria for such prioritisation include the environmental impact, anticipated compliance costs, economic and financial conditions of the industrial sectors concerned, as well as administrative capacity constraints of the permitting authorities. Different compliance deadlines for new and existing installations should also be established.

34. The *transition to simplified permitting for SMEs* should happen at the same time as the introduction of integrated permitting for large industry, and both should be part of a coordinated permitting reform process. The introduction of *registration* for installations with no significant environmental impact should be prepared once the criteria defining such installations are agreed. The introduction of a *GBR system* will require that national authorities prepare technical rules for a number of categories of installations. However, GBRs may not be appropriate for a significant number of installations. Therefore, for a number of years single-medium permitting will remain the default option for regulating SMEs that are either unsuitable for a GBR or scheduled to be covered by one at a later date.

Institutional and legal aspects of a transition to a new permitting system are very important and include:

- Making amendments in the existing environmental legislation, development of a law on environmental permitting and implementing regulations for it;
- Management of the transition through effective stakeholder cooperation under the leadership of the environment ministry;

- Designation of competent permitting authorities at appropriate administrative levels (national and/or territorial), their linkage with environmental enforcement agencies, and coordination between the permitting and environmental assessment processes;
- Institutional capacity building in terms of addressing the enhanced needs for human and financial resources under the new system, development of permitting procedures and BAT guidance, pilot projects in industry, and extensive staff training; and
- Participation in the international exchange of experience in reforming environmental permitting systems.

While the preparatory phase of the introduction of the new permitting system may last for up to five years, the full transition may well take up to 15 years.