

Factsheet 2.12 – Derogation from BAT-AELs

Article 15(3) of the IED provides for a specific role for BAT conclusions and BAT-AELs when setting emission limit values in permits. The expectation is that, in general, emission limit values will be set in permits so that emissions from the installation do not exceed the BAT-AELs. However, Article 15(4) of the IED provides the possibility to derogate from the requirements of Article 15(3) and, thereby, to allow emissions to be higher than the BAT-AELs where an assessment shows that the achievement of BAT-AELs would lead to disproportionately higher costs compared to the environmental benefits due to:

- a) the geographical location or the local environmental conditions of the installation concerned; or
- b) the technical characteristics of the installation concerned.

Under Article 21(3) of the IED, within 4 years of publication of decisions on BAT conclusions competent authorities must reconsider and, if necessary, update the permit to ensure compliance with the Directive and in particular Article 15(3) and 15(4) and that the installation complies with its permit. The first two sets of BAT conclusions for the manufacture of glass and iron and steel production were published on 08 March 2012 and competent authorities are now under pressure to reconsider and update permits for these sectors by the 2016 deadline.

Finally, Article 15(5) of the IED provides for temporary derogations for the testing and use of emerging techniques for a total period of time not exceeding 9 months, after which either the technique is stopped or the activity achieves at least the BAT-AEL. The IED does not stipulate any technical criteria for the using this derogation provision.

Technical characteristics, local environment and geographic factors

Article 15(4) of the IED makes clear that derogations can only be justified where one or more of the following factors would mean that the achievement of the emissions levels associated with the best available techniques would lead to disproportionately higher costs compared to the environmental benefits:

- I. The geographical location of the installation concerned;
- II. The local environment of the installation concerned;
- III. The technical characteristics of the installation concerned.

Participants in the IMPEL project provided examples where derogations might be applied with respect to these factors.

With regard to technical characteristics, examples given were:

- production of specialist products that are not adequately covered by the BAT conclusions,
- configuration of a plant on a given site and lack of space to fit equipment,
- practicability of installing equipment within four years,
- intended operational lifetime of parts of an installation,
- application of BAT to short-run / batch activities,
- specificity of process gases,

- failure of the application of the BAT concerned to achieve the BAT-AELs and
- plants designed to use specific local raw materials.

With regard to geographic characteristics, examples given were:

- remote locations (such as islands) involving high transport costs for waste treatment,
- availability of process water, and
- size, type and flow of surface water were given as examples.

With regard to local environment examples given were:

- The availability of water and quality of the surrounding environment including location of sensitive receptors.