

Factsheet 3.12. Levels of non-compliance

This Factsheet provides practical guidance to assess the degree of non-compliance where this is detected during both routine and non-routine inspections. This will help inspectors to determine the appropriate actions to be taken. There are specific requirements in the Industrial Emissions Directive that address situations where non-compliances are found in inspections of industrial installations. These requirements cover both non-compliances with permit conditions and also complaints, incidents and accidents.

Article 23(2) of the IED requires that all installations should be covered by an environmental inspection plan at national, regional or local level.

Article 23(4) requires competent authorities to regularly draw up programmes for routine environmental inspections. If an inspection has identified an important case of non-compliance with the permit conditions, an additional site visit shall be carried out within 6 months of that inspection.

Article 23(5) requires that: non-routine environmental inspections shall be carried out to investigate serious environmental complaints, serious environmental accidents, incidents and occurrences of non-compliance as soon as possible and, where appropriate, before the granting, reconsideration or update of a permit

This chapter provides guidance on how to interpret these requirements based on work carried out in 2015 as part of IMPEL's project, [‘Supporting IED Implementation’¹](#). This report also provides some examples of practice in different countries. The project also drew upon a previous IMPEL project that looked at the question of inspections and levels of non-compliance: [‘Environmental inspections of industrial installations in accordance with the Industrial Emissions Directive’²](#).

Tiered approach to assessing levels of non-compliance




Three levels of compliance are described:

- A minor
- B significant or relevant
- C important or serious.

These three levels are summarised in this overview:

¹ Supporting Implementation of the Industrial Emissions Directive (2010/75/EU). IMPEL Report 2015/1.

² Environmental inspections of industrial installations in accordance with the Industrial Emissions Directive (IED). IMPEL Project 2012/06.

Levels of non-compliance		Permit conditions complied with?	emission limit values complied with?	environmental quality standards complied with?	Aim of the permit achieved?
A	Minor cases of non-compliance	No	Yes	Yes	
B	Relevant or significant cases of non-compliance	No	No	Yes	
C	Important or serious cases of non-compliance	No	No	No	



No (or negligible) offences



To be assessed from case to case; measures necessary



Enforcement required

There is no simple definition for the three different levels of non-compliance and this will ultimately be a matter of judgement, taking into account, for example, the attitude of the operator, the frequency of recurrence of non-compliance, and the extent of participation in the European Union Eco-Management and Audit Scheme (EMAS) by the operator. Instead, sets of examples for the different circumstances of non-compliance are provided for each of the three categories to help guide decision-making by environmental-inspectors on how the level of non-compliance should be reported and what action should be taken.

It should be noted that no distinction is made here between important and serious cases. Level 3 refers only to important cases of non-compliance. Occurrence of the most serious non-compliances leading to the closing down of installations under Article 8 of the IED is assumed to be very seldom, and accordingly no definition has been provided for those cases.

Each assessment of, and decision on, the level non-compliance should be done on a case-by-case basis. The assessment should take account of and respect other relevant regulations, for example, if it is a criminal offence to operate an installation without a permit this should not be rated as a minor non-compliance.

Level A – Minor level of Non-compliance

In general, these are cases where:

- non-compliance presents a low risk of damage to the environment, so within a reasonable period of time appropriate measures must be taken to eliminate the non-compliances;
- there are only minor violations of permit conditions /legal obligations/operator duties with no consequences for pollution prevention and control;
- emission limit values, environmental quality standards and other limitations are still met;
- the aim of the permit (to protect the human health and the environment against pollution and to take precautionary measures against pollution) is still achieved.

In these cases, it would usually be sufficient for the competent authority to write a letter to the operator pointing out the minor problems that require attention.

Examples:

- The operations diary is not kept in orderly and up to date.
- There are missing work instructions.
- Pipelines are not labelled properly.
- Documentation of stipulated maintenance work is not directly available, or is missing, or there are inadequate records of the work undertaken, such as data on raw material consumption.
- There are missing data on waste types and waste quantities, solvent management plans, etc.
- Waste management plans are missing or inadequate.
- There are inadequate safety precautions at storage units or for the handling of environmentally hazardous substances (e.g. catch basins).
- The operator monitoring arrangements for emissions are inadequate and fall short of accepted good practice.
- Emission monitoring reports from the operator are incomplete or do not conform with accepted good practice.
- The operator monitoring reports show incidences of minor non-compliance.
- The agreed deadline for periodic reports is exceeded.
- Other obligations under environmental law for reporting or verification are not met.

Level B – Significant or relevant non-compliance

In general, these are cases where:

- non-compliance may present a risk of harm to the environment or damage has already occurred, so within a reasonable period of time appropriate measures must be taken to eliminate the non-compliances;
- there are significant violations of permit conditions/violations of legal obligations/operator duties which can have consequences for the prevention and control of pollution;
- it is unclear whether the emission limit values are complied with;

- the aim of the permit (to protect the human health and the environment against pollution and to take precautionary measures against pollution) is in question;
- the requirement, according to Articles 8 (2a) and 20 (1) (IED), that the operator has to inform the competent authority about non-compliances and changes of the operation is not met;
- there are several or repeated similar minor non-compliances which could be rated as a relevant non-compliance.

Examples:

- Required actions arising from inspection reports are not completed.
- The required frequency of maintenance work, for example, maintenance work on an exhaust gas cleaning facility, is not complied with.
- Required reports are missing (from audits, emission- or monitoring reports).
- The annual emission monitoring report required by Art.14 para. 1 (d) IED is not made available, if requested, or the deadline for the periodic report is significantly exceeded.
- Continuous monitoring of emissions is severely deficient, there is a failure of monitoring systems, the monitoring equipment is not operational or does not exist at all.
- Safety precautions at storage units or for the handling of environmentally hazardous substances (eg, catch basins) are missing.
- The operator does not hold a permit for a mode of operation where this would normally be required; this may have consequences for the control of emissions.
- There has been a series of ongoing minor non-compliances that have not been addressed and resolved.

Level C - Important cases of non-compliance

In general, these are cases where:

- non-compliance results in substantial harm to the environment or presents a serious risk of doing so; immediately appropriate measures must normally be taken to resolve the cases of non-compliance;
- there are serious violations of permit conditions, legal obligations, or operator duties which can have consequences for the prevention and control of pollution;
- emission limit values, environmental quality standards or other limitations are not met;
- the aim of the permit (to protect the human health and the environment against pollution and to take precautionary measures against pollution) is not met;
- there are several or repeated similar relevant non-compliances that could be rated as a serious non-compliance;
- there is violation of an environmental quality standard or non-compliance that could result in harm to the environment and human health.
- non-compliance is very important in terms of complaints and public perception.

Examples

- Operation of an installation without a permit or a substantial change of an installation is made without necessary changes to the existing permit.
- Maintenance or monitoring of environmentally relevant parts of the installation is not carried out by the operator.

- The maximum permitted waste storage capacity of the installation is exceeded.
- There is a malfunctioning of filter installations or protection systems leading to significant exceedance of emission limit values.
- Hazardous (liquid) waste is stored on unprotected soil.
- Old, single-walled sub-soil pipelines for hazardous substances may be in use without proper protection against corrosion.
- The operation of the plant presents 'imminent danger' to the environment.
- Emission control systems or wastewater treatment systems are not functioning.
- There are exceedances of emission limit values (based on BAT-AELs) that could lead to significant impacts on public health and environment.

Important cases of non-compliance leading to an additional site visit

The decision on whether a non-compliance should lead to an additional site visit should be supported by an assessment of the risk presented by the process or activity. Section 6.2 of the combined guidance gives further information on this.

If a non-compliance detected during a routine inspection presents a higher degree of risk to the environment and human health than that identified in the existing risk assessment, then this non-compliance is considered to be important and an additional inspection within six months would be required as set out in article 23(4) of the IED.

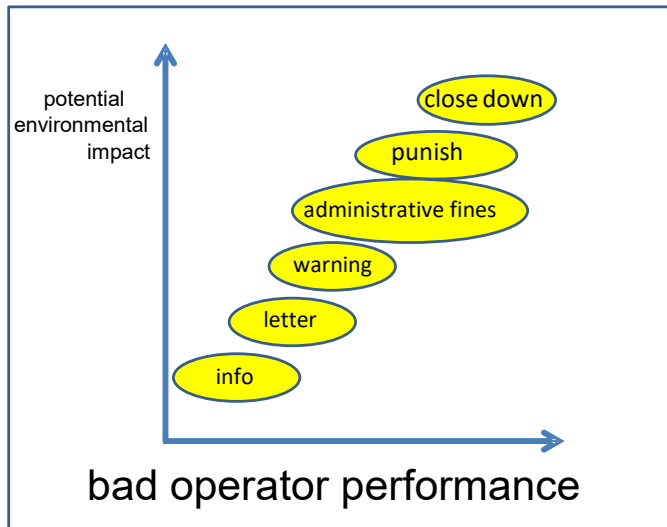
It should be noted that leaving the EMAS scheme or enlarging the production capacity may lead to a higher inspection frequency, but is not, in itself, a case of non-compliance. So, this will not lead to an additional site visit according to Art. 23(4) IED).

The risk assessment should be updated (directly) after each inspection. A higher inspection frequency could be the outcome. However, the update of the full inspection program can be done later, according to the practice of the competent authority (for example each year).

It is recommended that where an additional site visit is carried out this does not lead to the inspection cycle being changed. The next regular site visit should be performed at the planned date according to the last determined inspection frequency. If the next routine site visit is planned within the next six months, it may be combined with the necessary additional on-site inspection.

Possible action to be taken in the case of non-compliance

Decisions on the appropriate action to be taken in the case of non-compliance will depend on the impact on human health and the environment as well as the operator performance.



Reaction of the administration to non compliances

Possible measures that can be taken by the authority include:

- writing a letter to the company
- demanding a rehabilitation plan/technical measures
- putting seals on devices
- partially or full closing down a plant or activity
- administrative fines
- notification to prosecutors
- imprisonment.

If a non-compliance is observed several times in the same year, the competent authority can adopt a partial and/or temporary closure of installation, depending on the environmental impact of the non-compliance.

In some countries, individual cases of non-compliance are recorded on a database, collected over one year and then assessed. Less-compliant sites will pay a surcharge on their annual charge, while operators with perfect compliance records may receive a discount. Another result could be a changed inspection frequency.

It should be kept in mind that the judgement and the experience of the inspectors is a very important factor when assessing and classifying cases of non-compliance. While they are useful to support decision-making, technical definitions of non-compliance levels are not sufficient on their own for a realistic assessment.