

ANSWERS TO THE QUESTIONS WITH REGARD TO COMMUNICATION ACCC/C/2014/1999

1. LEGAL PROVISIONS

The incorporation of the IPPC Directive into Spanish national law was made by Law 16/2002, of July 1st, on Integrated Prevention and Pollution control, whose provisions have the character of basic state legislation.

This law has been developed by Royal Decree 508/2007 of 20 April, the supply of information on emissions of the E-PRTR and integrated environmental permits is regulated, and by Royal Decree 509/2007, of 20 April, approving the Regulation for the development and execution of Law 16/2002, of July 1st, of Integrated Prevention and Pollution control.

Otherwise, the Autonomous Communities, in accordance with the empowerment granted to them by the respective statutes of autonomy, have developed the basic rules of prevention and pollution control, by laws or regulations, even expanding the scope of that legislation.

Law 5/2013 amends Law 16/2002 in a series of articles in order to fully incorporate into Spanish Law, among others, Directive 2010/75/EU of 24 November, on Industrial Emissions.

In any case, considering the **legislation in force at the moment of granting the modification** of the permit (case ACCC/2014/99) we will also include the relevant provisions of Law 16/2002:

Law 3/1998, of 27 February, on the integrated intervention of the environmental authorities, and Decree 136/1999, of 18 May, which approves the general regulations for the development of Law 3/1998 were passed in Catalonia. Law 3/1998 was replaced by Law 20/2009, of 4 December, on environmental prevention and control of activities, which entered into force on 11 August 2010.

1a) The ways in which the public concerned shall be informed about applications to permit activities listed in Annex I of the Convention, and which specific information should be published in the notification.

The following provisions are applicable after the application of a permit is introduced and before the decision is taken

State-Level Legislation

Legislation in force at the time when the permit is processed.

Law 16/2002, of July 1st, of Integrated Prevention and Pollution Control.

“Article 14. Procedures

“In all those aspects not covered by this law, the procedure for granting the integrated environmental authorization shall comply with the provisions of Law 30 of 26 November 1992, on the Legal Regime of Public Authorities and Common Administrative Procedure.

“The public authorities shall encourage the real and effective participation of those interested in the procedures for the granting of the integrated environmental authorization for new facilities or those who make any substantial changes to their facility and in the procedures for the renewal or modification of the integrated environmental authorization of a new facility pursuant to the provisions of Articles 25 and 26.

“The public authorities shall ensure that the participation referred to in the previous paragraph shall take place from the initial stages of the respective procedures. To that end, the provisions shall apply to such procedures for participation set out in Annex 5”

“ANNEX 5

“Public participation in decision making

“1. The competent body of the autonomous community shall inform the public in an early stage of the procedure, before any decision has been taken or, at the latest, as soon as it is reasonably possible to provide information on the following situations:

“a) The application for integrated environmental authorization or, if applicable, renewal or modification of the content of said authorization pursuant to the provisions of Section 4 of Article 16.

“b) If applicable, the fact that the ruling on the application is subject to a national or cross-border environmental impact study or to consultations between Member States, pursuant to the provisions of Article 27.

“c) The identity of the bodies competent to rule the application, on which the relevant information may be obtained and of those to which observations or queries may be submitted, with express indication of the deadline available for so doing.

“d) The legal nature of the ruling on the application or, if applicable, the proposed ruling.

“e) If applicable, the details relating to the renewal or modification of the integrated environmental authorization.

“f) The dates and place or places in which the relevant information shall be provided, and the means used for this purpose.

“g) The forms in which the public may take part and forms of public consultation, as defined in accordance with Section 5.

“2. The competent bodies of the autonomous communities shall ensure that, within an appropriate period of time, the following information is made available to the interested parties:

“a) In accordance with national legislation, the principal reports and decisions sent to the competent authority or authorities, at the time when the interested parties must be informed, pursuant to the provisions of Section 1.

“b) In accordance with the provisions of the legislation regulating the rights of access to information and public participation in environment matters, any and all information other than that mentioned in Point 1 that is pertinent to the ruling on the application, in accordance with the provisions of Article 8, and which can only be obtained when the deadline for providing information to the interested parties, set out in Section 1, has expired.

“3. The interested parties shall be entitled to submit to the competent body any observations and opinions they deem appropriate before the application is ruled on.

“4. The results of the consultations held in accordance with this Appendix shall be duly taken into consideration by the competent body when ruling on the application.

“5. The competent body of the autonomous community for granting integrated environmental authorization shall determine the forms of information to be provided to the public and the forms of consultation of the interested parties. Reasonable deadlines shall be established for the different stages, which provide sufficient time to inform the public and for the interested parties to prepare and take part effectively in the decision-making process on the environment, in accordance with the provisions of this Appendix.”

“Article 16. Public Information

“1. Once the documentation is complete, in accordance with the provisions of the preceding articles, public information period of not less than thirty days shall be observed.

“2. The period of public information will be common for those procedures whose actions are integrated in the integrated environmental permit and, where appropriate, for substantive authorization procedures industries mentioned in paragraph b) of Article 3.

“3. This excludes the public inquiry that data of the request, in accordance with the provisions in force about confidentiality.”

Legislation currently in force

Last modification of Law 16/2002 of Integrated Prevention and Pollution Control

In force from June 12th 2013

“Article 14. Procedures.

“In all those aspects not covered by this law, the procedure for granting the integrated environmental authorization shall comply with the provisions of Law 30/1992 of 26 November on the Legal Regime of Public Administration and Common Administrative Procedure.

“Public Administrations will promote real and effective participation of those interested in the procedures for granting, substantial modification, and review of the integrated environmental permit for an installation.

“The government will ensure that this participation take place from the early stages of the respective procedures in accordance with the provisions in Article 23. To that end, the provisions shall apply to such procedures for participation set out in Annex 4.

“Annex 4

“Public participation in decision making

“1. The competent Body of the Autonomous Community will inform the public in an early stage of the proceedings always prior to making a decision or, at the latest, as soon as it is reasonably possible to provide the information through electronic means, if available, on the following:

“a) The documentation of the application for integrated environmental authorization, its substantial change, or where applicable, the documents relating to the review, in accordance with Article 16.

“b) Where applicable, the fact that the decision of the application is subject to an, national or cross-border environmental impact assessment or to consultations between Member States in accordance with the provisions of Article 27.

“c) Identification of the authority competent to decide, of those where relevant information that can be obtained and those who can refer comments or questions, expressly indicating the time frame for this purpose.

“d) The legal nature of the decision of the application or, where appropriate, of the proposed decision.

“e) Where applicable, the details relating to the revision of the integrated environmental authorization.

“f) The dates and place or places where the relevant information is provided, and the means used.

“g) The modalities for public participation and consultation in accordance with paragraph 5.

“h) In any case the grant, substantial modification or review of an authorization for an installation where the application of Article 7.5 is proposed.

“2. The competent bodies of the Autonomous Communities shall ensure that, within appropriate time frames, are made available to interested persons the following:

“a) In accordance with national legislation, the main reports issued to the competent authority or authorities at the time to inform interested persons pursuant to the provisions of paragraph 1.

“b) In accordance with the provisions of the legislation regulating the rights of access to information and public participation in environmental matters, information other than that referred to in point 1 which is relevant to decide on the application, according with the provisions of Article 8, and can only be obtained after the expiry of the period of information to interested persons governed by paragraph 1.

“3. Interested persons have the right to communicate the competent organ observations and opinions deems appropriate before the application is decided.

“4. The results of the consultations held according to this Annex must be taken into due account by the competent body to decide the application.

“5. The competent body of the Autonomous Community for integrated environmental permit granting determines the procedures for public information and consultation of interested parties. In any case, there will be provided reasonable time-frames for the various stages sufficient to inform the public and interested persons, to prepare and participate effectively in the decision-making process on environment according to the provisions of this Annex.”

“Article 16. Public information.

“1. Once the documentation is complete, in accordance with the provisions of the preceding articles, public information period of not less than thirty days shall be observed.

“2. The period of public information will be common for those procedures whose actions are integrated in the integrated environmental permit and, where appropriate, for substantive authorization procedures industries mentioned in paragraph b) of Article 3.

“3. This excludes the public inquiry that data of the request, in accordance with the provisions in force about confidentiality.”

Legislation in Catalonia

Legislation in force at the time when the permit is processed.

Law 3/1998 of 27 February, on the integrated intervention of the environmental authorities:

“Article 16. Public Information

“1. The application submitted with the accompanying documentation and, if applicable, the environmental impact study shall be made available for public consultation for a period of twenty days.

“2. Details of the application and accompanying documentation covered by the regimen on confidentiality, in accordance with the legislation in force, shall be excluded from the public information.”

Decree 136/1999, of 18 May, which approves the general regulations for developing Law 3/1998.

“Article 31. Public and Neighborhood Information

“31.1 When the period of 15 days mentioned in the previous article has expired or, if applicable, when the deficiencies have been resolved, the Unified Environmental Management Agency (OGAU) shall submit the application for public consultation for a period of 20 days, by publishing in the Official Journal of the Catalan Government and by publishing on online information networks, and the municipal council shall submit the application for consultation by the neighbors closest to the place of the activity, for a period of 10 days, and shall inform the OGAU of the result.

“31.2 When the information has been provided to the public and to the neighbors, the OGAU shall provide the Environmental Board and, if applicable, the other bodies taking part in the evaluation of the project, with any representations submitted.”

Legislation currently in force

Law 20/2009, of 4 December, on environmental prevention and control of activities.

“Art. 20. Public information

“1. When the sufficiency and suitability of the environmental impact study, of the project and of the rest of the submitted documentation has been verified, this information shall be made available for public consultation for a period of thirty days by means of publication in the Official Journal of the Catalan Government, and the public authorities involved and the interested parties shall be notified.

“Said information shall also be published on the online information networks.

“Furthermore, said publication shall indicate the right of the citizens to access all the information available on the specific procedure and especially the information managed by the unit of the competent department in environmental matters that is responsible for environmental information.

“2. At the same time, the environmental impact study and the project shall be made available to the municipal council of the municipality in which the activity is to take place; the project shall be made available for consultation by the general public and by the neighbors for a period of ten days and the body of the competent department on environmental matters shall be informed of the result.”

1b. The ways in which, and the time limits by when, the public shall be informed about decisions taken with respect to activities listed in Annex I of the Convention, and how the texts of such decisions, along with the reasons and considerations on which they are based, should be made accessible to the public.

The following provisions are applicable once the decision is taken.

State-Level Legislation

Legislation in force at the time when the permit is processed.

Law 16/2002, of July 1st, on Integrated Prevention and Pollution Control.

“Article 23 Notification and advertising

“1. The body responsible for granting the integrated environmental authorization shall inform the interested parties, the municipal council where the facility is to be located, the different bodies who have submitted binding reports and, if applicable, the state body competent to grant substantive authorizations, indicated in Article 11.2.a) of this law, of the resolution.

“2. Individuals and bodies corporate are entitled to have access to the rulings on integrated environmental authorizations and to their subsequent updates, in accordance with the legislation on access to environmental information.

“3. The autonomous communities shall publish the administrative rulings by means of which comprehensive environmental authorizations are granted or modified in their respective official journals.

“4. The autonomous communities shall publish the administrative rulings by means of which integrated environmental authorizations are granted or modified and shall make the following information available to the public:

“a) The content of the decision, including a copy of the integrated environmental authorization and any conditions and subsequent updates.

“b) A report containing the principal reasons and considerations on which the administrative ruling is based and indicating the reasons and considerations on which

said decision is based, including the information relating to the process of public participation.”

Legislation currently in force

Law 16/2002 of Integrated Prevention and Pollution Control

Last modification in force from June 12th 2013

“Article 23 Notification and advertising

“1. The body responsible for granting the integrated environmental authorization shall notify the decision granting, modifying and reviewing to the public concerned, the Local Authorities where the facility is located, to the various bodies that had issued a binding report and, where appropriate, to the national body competent to grant authorizations referred to in Article 11.2.a) of this Act.

“2. The public has a right to access the Decisions of the integrated environmental permits and their subsequent amendments and revisions, in accordance with Law 27/2006 of 18 July. (This Law incorporates to the Spanish national Law, Aarhus Convention)

“3. The Autonomous Communities will publish in their respective official gazettes to administrative decisions granting, modifying or reviewing integrated environmental authorizations.

“4. The Autonomous Communities make public the decisions which may have been granted, modified or substantially revised integrated environmental permits, identifying in the announcement the plant or facility concerned. Also, it will be available to the public, including by electronic means, at least the information referred to letters a), b), e) and f):

“a) The content of the decision, including a copy of the integrated environmental authorization, including its annexes, as well as any condition and subsequent adjustment.

“b) A report including the grounds on which the decision is based, including also the results of the consultations held during the public participation process and an explanation of how they were taken into account.

“c) The title of the BAT reference documents relevant to the installation or activity.

“d) The method used to determine the conditions of the authorization referred to in Article 22, including the emission limit values in relation to the best available techniques and emission levels associated with BAT.

“e) When an exemption is granted under Article 7, paragraph 5, the specific reasons for that derogation and the conditions imposed.

“f) Information on measures taken by the operator upon definitive cessation of activities in accordance with Article 22a.

“g) Environmental inspection reports within four months of completion of the site visit.

“h) The results of the measurement of emissions required under the conditions of the IEA.”

Legislation in Catalonia

Legislation in force at the time when the permit is processed.

Law 3/1998 of 27 February, on the integrated intervention of the environmental authorities:

“Article 23. Notification and advertising

“1. The interested parties shall be notified of the ruling by which the environmental authorization is granted or denied via the municipal council of the municipality in which the activity is to take place.

“2. Rulings on environmental authorizations are public information, with the limits established on the right to access to environmental information and any other applicable regulations.”

Decree 136/1999 of 18 May, which approves the general regulations for developing Law 3/1998.

“ Article 37. Notification

“37.1 The OGAU shall draft the notification of the ruling by which the environmental authorization is granted or denied. The municipal council shall, within a period of 10 days, issue the notification to the interested parties and shall inform the OGAU.

“37.2 A sealed copy of the technical project shall be attached to the notification and an authorized copy of this project shall be kept by the corresponding OGAU.”

Legislation currently in force

Law 20/2009 of 4 December, on environmental prevention and control of activities.

“Article 10. Environmental Information

“1. The competent department in environmental matters shall designate the unit responsible for environmental information, which shall manage the database of environmental activities and satisfy the rights of access of the citizens to this information.

“2. The competent body shall have sufficient information on the following:

“a) The quality of the natural resources and environmental conditions in Catalonia.

“b) The quality objectives and regulations on the environment and especially on the legally established maximum levels of emissions.

“c) The sources of pollutants, with express indication of the content of the rulings on the environmental authorization and license.

“d) The levels of emissions and other established technical prescriptions, in general terms, and the best available techniques that have been used to establish them.

“3. The information indicated in Article 10.2, together with the information that must be provided by the person or company responsible, constitutes the reference material for environmental impact studies and for the environmental evaluation of the activities. This information is public and is contained in an environmental database, established with the participation of the local bodies, which must have free access to it in order to exercise their authority.

“4. For the purposes established in Article 10.3 and in order to ensure access to the environmental information, the competent body must create databases of the available environmental information, with clear indications on the place where this information can be found, and must take the necessary steps to disseminate this information and make it available to the public by using online channels.”

“Article 30. Notification and advertising

“1. The interested parties shall be notified of the ruling by which the environmental authorization is granted or denied and the municipal council of the municipality in which the activity is to take place and any authorities that have issued reports shall be informed.

“2. The operative part of the ruling by means of which the environmental authorization for activities indicated in Appendix I is granted or modified, and, if applicable, the environmental impact statement, shall be published in the Official Journal of the Catalan Government and included in the database of environmental activities, with the information determined by the regulations.

“3. The entire content of environmental authorizations is public information, with the limits established on the right to access to environmental information and any other applicable regulations.”

2. Please provide an English translation of the relevant part of the decision of 3 June 2010 that states whether the modification was permitted as (i) a new

activity; or (ii) a change or extension of an existing activity; or (iii) a reconsideration or update of operating conditions for an existing activity.

The environmental authorization of 3 June 2010 was granted for the undertaking of a substantial modification to the activity that already existed (Point ii), as indicated in the authorization itself.

The title and the first page read as follows (the underlining is ours):

“Ruling of 3 June 2010, on the incorporation of a substantial change, due to the expansion of the waste to be used for energy recovery, to the environmental authorization of 16 January 2007 of Uniland Cementera, S.A. located in the municipality of Santa Margarida i els Monjos.

“Current dossier BA 20090192.

“Facts

“The company Uniland Cementera, S.A. has applied to incorporate a substantial change, due to the expansion of the waste to be used for energy recovery, which consists of the fraction of urban solid waste and dry sludge from the wastewater treatment plant, to the environmental authorization of 16 January 2007, processed by the municipal council of Santa Margarida i els Monjos.”

Dossier details

OGAU: Barcelona

Application number: BA 2009 0192

Type of dossier: Incorporation of a substantial change

Appendix: I

Section: 4

Subsection: 1.a

Description of the activity: Manufacture of cement or clinker in rotary kilns, when the sum of the production capacity for cement or clinker exceeds 200 T/day.

The operative part of the ruling (page 2) indicates the following:

“RULING

“1. To include in the environmental authorization of 16 January 2007 of the company Uniland Cementera, S.A., located in the municipality of Santa Margarida i els Monjos the substantial change of an expansion of the waste to be used for energy recovery, which consists of the fraction of urban solid waste (CER 191210) (90,000 T/year) and dry sludge from the wastewater treatment plant (CER 190805) (50,000 T/year), with

a storage capacity for waste pending treatment of 500 metric tons of waste-derived fuel (WDF) and 280 metric tons of dry sludge from the treatment plant.

Appendix to the ruling (pages 5 and 6) indicates the following (the notes and the underlining are ours):

“Appendix to the ruling of 3 June 2010, on the incorporation of a substantial change, consisting of the application to recover energy from dry sludge from the wastewater treatment plant (CER190805) and waste-derived fuel from the remainder of urban solid waste (CER191210), to the environmental authorization of 16 January 2007 of Uniland Cementera, S.A. located in the municipality of Santa Margarida i els Monjos.

“BACKGROUND

“Uniland Cementera, S.A. has the following:

“• Ruling authorizing the manufacture of cement and extraction of limestone and marl; said authorization was processed with dossier number BA20050045.¹

“• Ruling on the incorporation of a non-substantial change due to the recovery of material from fly ash (330,000 T/year), processed with dossier number BA20080022.²

“• The rulings that approve the management of the following waste as byproducts for material recovery: aspiration means for casting molds and cores without pouring, processed with dossier number BA20090022 and the use of fluoride-neutralizing clay (CER060503) and water-clarification clay (CER190902), processed with dossier number BA20090135.³

“• Ruling on the incorporation of a non-substantial change due to the recovery of plant clippings (115,000 T/year), processed with dossier number BA20090001⁴.

“The documentation accompanying the application consists of the following:

“• Environmental impact study and report on the project for the partial replacement of conventional fuel from the wastewater treatment plant and waste-derived fuel (WDF).

“• Favorable report of the Health Protection Agency in which the activity under normal operation is not considered likely to produce significant negative effects on people’s health.

¹ This authorization was granted on 19 January of 2007

² This authorization was granted on 18 June of 2008

³ This authorization was granted on 3 November of 2009

⁴ This authorization was granted on 3 March of 2009

“DESCRIPTION OF THE PROJECT AND OF THE ENVIRONMENTAL IMPACT STUDY

“a) Project characteristics

“The Uniland Cementera, SA plant in Santa Margarida i els Monjos uses petroleum coke as fuel in its clinker kilns (kilns 4E and 5E). The documentation submitted describes the change as the partial replacement of this fuel (maximum 33% energy replacement) using the following as alternative fuels:

“Combustible waste - WDF from the urban solid waste that has been classified, dried and ground (waste with code CER 191210, classified as not special). Sludge from the wastewater treatment plant (waste with code CER 190805, classified as not special).

“According to the documentation submitted by the company, Uniland intends to replace the electrofilter in kiln 5 with a sleeve filter before starting to use the secondary fuels. The emission foci of kilns 4E and 5E will be as follows:

“1. 28101: Sleeve filter no. 1 kiln 5E (Vilafranca side).

“2. 28103: Sleeve filter no. 2 kiln 5E (Arboç side).

“3. 28151: Sleeve filter kiln 4E”

[...]

“a1) Waste vector

“The documentation submitted includes an application for an expansion of the waste to be used for energy recovery, which consists of waste-derived fuel from the fraction of urban solid waste (CER 191210) (90,000 T/year) and dry sludge from the wastewater treatment plant (CER 190805) (50,000 T/year), with a storage capacity for waste pending treatment of 500 metric tons of waste-derived fuel (WDF) and 280 metric tons of dry sludge from the wastewater treatment plant.”

Page 8:

“• Description of the processes.

“The following are not modified in relation to dossier BA20050045:

[...]”

Pages 16 and 17:

“CAPACITY OF THE RECEIVING ENVIRONMENT

“The environmental vectors at the location of the activity present an overall sufficient environmental capacity for the activity to be compatible with the environment and natural resources.

“EVALUATION

“Overall, the activity should not produce effects on the environmental vectors if it is managed in accordance with the conditions set out in the project and the environmental impact study, and with the technical prescriptions, emission levels and control regimes contained in this appendix.

“Given the capacity of the receiving environment and the existence of minimal effects that the projected activity can transfer to the environmental vectors, its overall impact is considered to be moderate in terms of the conservation and protection of the affected environment and natural resources.

“This evaluation agrees with the favorable environmental impact statement drafted by the Environmental Board on 14 May 2010 and which rates the overall impact of the activity as moderate.”

3. When and how was the public informed about the decision of 3 June 2010 permitting the modification of the cement plant, and how and when was the text of the decision, together with the reasons and considerations on which it was based, made accessible to the public?

The legislation in force at that time (Law 3/1998, of 27 February, on the integrated intervention of the environmental authorities, established in Article 23 that rulings on environmental authorizations were public information. The legislation did not require the publication of these rulings in the official journal.

The full text of the ruling in question was published on the website of the department immediately after 14 June 2010.