

Response to the draft findings and recommendations of the Aarhus Compliance Committee with regard to communication ACCC/C/2014/122 concerning compliance by Spain

1. On 26 August 2020 we received a letter informing us that the Aarhus Convention Compliance Committee has agreed its draft findings in relation to the “Communication concerning compliance by Spain with the provisions of the Convention on public participation in connection with the updating of environmental permits (ACCC/C/2014/122)”, and setting a deadline (7 October) to send possible comments, as a response of the mentioned draft, that will be taken into account in the finalization of the findings.
2. The draft findings conclude that Spain failed to comply article 6.10 of the Convention, by putting in place a legal framework that did not envisage any possibility for public participation in relation to reconsiderations and updates of permits under the First Transitional Provision of Law 16/2002.
3. Article 6.10 of the Aarhus Convention regulates “Public participation in decisions on specific activities”, likewise:
*“1. Each Party:
(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I
(...)
10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate”.*
4. According to the opinion of the Committee, taking into account the case studies of Spanish permits updated through this transitional provision referred to in the draft findings, especially the Chlorine Production Facility located in Pontevedra, the decision the competent authority had to take in relation to the applicable monitoring requirements on soil and groundwater in case of closure and dismantling of an installation has to be considered as addressing significant environmental aspects capable of modifying basic parameters, being necessary and “appropriate” in consequence a public participation process for that decision making procedure.
5. Spain would like to stress once more that the updating of the permits, provided in the First Transitional Provision of Law 16/2002, did not include any reconsideration (review in our legislation) of any technical or functioning condition of the granted permits, as we did not considered that the monitoring requirements for soil and groundwater in case of closure and dismantling of an installation (when these has not already taken place) were functioning conditions affecting the production process and therefore the basic parameters. For the review of this technical conditions article 26 of the same law (article 21 of the Industrial Emissions Directive) indeed foresees a public participation procedure.
6. With respect to the monitoring requirements on soil and groundwater of the **Chlorine Production facility**, we would like to emphasize that they have been reviewed and the conditions of the

permit adapted to article 21 of the Industrial Emissions Directive during the time elapsed from the enactment of Law 5/2013 and the Transitional Provision until today, being during the whole process the environmental protection an absolute and unquestionable priority.

7. In fact, since the updating in 2013 the draft findings referred to, the conditions of the permit for this installation have been reviewed in 2017 with the purpose of adapting the installation to the Commission Implementing Decision of 9 December 2013 establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the production of chlor-alkali (Resolución del 11/12/2017 del expediente 2005/0101_NAA/IPPC_150).
8. This 2017 review was carried out coinciding with the cease of the chlorine production, after which the labors of soil and groundwater decontamination would start. By means of the review, the conditions for the soil and groundwater monitoring were therefore updated to adapt them to the dismantling procedure and, as a review as foreseen in article 21 of Directive 2010/75, a public participation process was developed under the provisions of the Aarhus Convention.
9. Taking into account the date of August 2017 as the deadline to cease the chlorine production, and in order to proceed with the soil and groundwater decontamination caused by this process, the following phases and conditions were established in the resolution:
 - The baseline scenario consists on several reports showing historical soil and groundwater pollution with high levels of mercury.
 - **Phase 1** (December 2017- June 2020): the objective are to reach the levels of decontamination for mercury laid down in *Royal Decree 9/2005, of January 14, establishing the list of activities that are potentially soil pollutant and the criteria and standards for the declaration of contaminated soil* (national legislation transposing Directive 2008/98), and include the following measures:
 - levels for metals and hydrocarbons are also set to reduce the detected concentrations,
 - the operator of the installation must carry out an investigation and report information on soil and groundwater, including samples of total mercury content, pH, organic matter, granulometry and conductivity,
 - surface waters monitoring to check possible pollution on the river must be done on a quarter basis,
 - dismantling of the units of chlor-alkali production and by-products using mercury cells (between December 2017 and December 2018),
 - the conversion of the installation to membrane technology for the production of chlor-alkali,
 - the production of sodium hypochlorite from chlor acquired from third parties and storage of sodium hypochlorite, chlor, caustic soda and hydrochloric acid,
 - ELVs for chlor in units F1, F2 and F3 with annual external monitoring and annual external mercury monitoring for unit F4,
 - control and surveillance of groundwater on a quarter basis must be carried out for the next parameters: chlorides, sulphates, total petroleum hydrocarbons, volatile aromatic hydrocarbons, halogenated hydrocarbons, BTEX, styrene, PCBs, arsenic,

cadmium, cobalt, copper, lead, mercury, nickel, zinc, cresol, phenol, m-ethylphenol, free residual chlorine and combined residual chlorine.

- **Phase 2** (from June 2020): membrane technology will be already being used but the soil and groundwater decontamination labors will be carried out until the reports and inspections prove to do so, when the legal levels and standards are achieved.
 - The installation must have a person responsible for the monitoring of a surveillance plan; 10 days after the entry into force of the resolution this responsible must be designated.
 - The environmental follow-up report will include, among other information, the monitoring reports, as well as the soil and ground water assessment report.
10. On 9 May 2017 the file with the documentation concerning the review of the conditions was submitted to **public information**; all the comments received were evaluated and are included in Annex V of the resolution.
11. Thus, according to the content of the review of 2017, the final decision for the establishment of the conditions in relation to monitoring requirements of soil and groundwater for the Chlorine Production facility located in Pontevedra has indeed been submitted to a public participation procedure under the provisions of the Aarhus Convention, documented in the Resolution of 11 December 2017 of the Xunta de Galicia (https://cmatv.xunta.gal/busca-de-expedientes-da-autorizacion-ambiental-integrada?p_p_id=AAIPortlet_WAR_AAIPortlet_INSTANCE_4ZiN&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_count=1).
12. On the basis of the above example, Spain would like to insist in the fact that the permits updated on the basis of the Transitional Provision did not include significant technical or environmental conditions, as these kind of conditions have been reviewed under the terms of the procedure foreseen in article 21 of the IED (article 25 of Law 16/2002) or modified according the procedure of article 10 of Law 16/2002.