

Fiona Marshall  
Secretary to the Aarhus Convention Compliance Committee  
United Nations Economic Commission for Europe

Cc: Joaquín Carril Martínez, Ministry of Agriculture, Fisheries and Food, Madrid, Spain.

Madrid 1 June 2020

Dear Ms Marshall,

In response to your letter of 18 May 2020, the attached document includes the response to the information requested by the Compliance Committee.

Please do not hesitate to contact us if you require further information.

Sincerely,



Ana Barreira López  
Director

**Response by the Instituto Internacional de Derecho y Medio Ambiente (IIDMA) to question from the Aarhus Convention Compliance Committee 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)**

As explained in our communication of 12 December 2014, Spanish Law 5/2013 of 11 June amending Law 16/2002 of 1 July, on Integrated Prevention and Pollution Control (“IPPC Law”) introduced through its 1st Transitional Provision an obligation to ensure that **existing environmental permits were updated by the competent authority before January 7 2014 in order to comply with the Industrial Emissions Directive (IED) requirements**. The 1st Transitional Provision of Spanish IPPC Law transposed Article 82(1) of the IED, which required Spain “to **apply** the laws, regulations and administrative provisions **adopted in accordance with Article 80(1) of the Directive from 7 January 2014**, with the exception of Chapter III and Annex V” of the IED.

Paragraph 2 of 1st Transitional Provision of the IPPC Law includes a list of specific prescriptions (as provided in sub-paragraphs (a) to (g)) that environmental permits must contain in order to be considered updated. **Annex I** attached to this response includes a **table of concordance** specifying the provisions of the IED that each of those sub-paragraphs intends to implement – all of which are expressly set out in Article 80(1) of the IED. Thus, these provisions had to be implemented by Spanish competent authorities from 7 January 2014, after updating the environmental permits of existing installations. The prescriptions listed in paragraph 2 of 1st Transitional Provision of Spanish IPPC Law implement the following IED provisions:

- **Art. 7 of the IED, entitled “incidents and accidents”** regulates the necessary measures to be adopted by operators in case of any incident or accident significantly affecting the environment. Sub-paragraph a) of paragraph 2 (1st Transitional Provision) implements this Article.
- **Art. 8 of the IED, entitled “Non-compliance”** states the measures that operators shall adopt in the event of a breach of the permit conditions. Sub-paragraph b) of paragraph 2 (1st Transitional Provision) implements para. 2 of this Article 8.
- **Art. 12 of the IED, entitled “Applications for permits”**. Its paragraph 1 sets out the elements that an application for a permit must include. Sub-paragraphs c) and d) of paragraph 2 (1st Transitional Provision) implement paras. h) and e) of Article 12(1), respectively.
- **Art. 14 of the IED, entitled “Permit conditions”**. Its paragraph 1 states an obligation for permits to include all measures necessary to comply with the requirements of Arts. 11 and 18. Among others, these shall include measures relating to conditions other than normal operating conditions at installations and regarding appropriate requirements for maintenance, surveillance and monitoring to prevent soil and groundwater contamination. Sub-paragraphs e) and f) of paragraph 2 (1st Transitional Provision) implement paras. f) and e) of Article 14(1), respectively.

- **Art. 45 of the IED, entitled “Permit conditions”** is included in Chapter IV of the IED which regulates “Special Provisions for waste incineration plants and waste co-incineration plants”. Paragraph 1 of Article 45 sets out the conditions that permits shall contain which include information on the type and quantity of waste to be treated by a plant and the specification of limit values for emissions into air and water, among others. Sub-paragraph g), points i) and ii) of paragraph 2 (1st Transitional Provision) implement paras. a) and c) of Article 45(1), respectively.

Given the nature, environmental implications and significance of these operating conditions, public participation in the sense of the Aarhus Convention should have been ensured in the updating procedure of existing permits, as indicated in our initial communication. However, the updating procedures took place without any opportunity for the public to express its concerns.

A relevant example showing the importance of public participation in the update of existing permits in Spain to prevent negative impacts on the environment can be seen in the updating procedures of four coal power plants operating in the Autonomous Community of Castilla y León. Those permits were updated by the regional competent authority without previously requiring the operators of the plants to prepare and submit a baseline report necessary to determine the state of soil and groundwater contamination by relevant hazardous substances in order to make a comparison with the state of those sites upon the plants' definitive cessation of activities, which must take place no later than 30 June 2020. The requirement to prepare a baseline report is set out in paragraph 2(d) of 1st Transitional Provision of IPPC Law which, as previously mentioned, implements Article 12(1)(e) of the IED. As of today, that is, after more than 6 years from the deadline for updating those permits, the Administration of Castilla y León has not yet ensured the establishment of baseline reports for the above-mentioned coal plants. Due to the lack of adoption of these baseline reports, when the plants shut down it will not be possible to know whether a significant increase in pollution has taken place at the sites and whether remediation measures should be taken by operators. The public did not have any opportunity to submit comments about this requirement given no public participation procedure took place when the environmental permits were updated.

Another example of the importance of public participation within the updating procedures of permits lies in the fact that paragraph 2 (a) of 1st Transitional Provision of IPPC Law sets out that a permit shall be considered updated when it contains specific provisions on incidents and accidents, that is, “the obligations operators have of communicating them to the competent authority and of **implementing measures, even complementary ones, to limit environmental consequences and avoid other possible incidents and accidents**”.

The ACCC, in its advanced unedited version of 30 March of 2020 of the findings and recommendations with regard to communication ACCC/C/2014/121 concerning compliance by the European Union, finds that “the requirements of the Seveso III Directive do not compensate for **the failure to provide for public participation for reconsiderations and**

updates of operational safety requirements that do not relate to the presence of dangerous substances”. Therefore, it can be concluded that the ACCC also foresees that there is an obligation to provide for public participation within updating procedures of permits which include provisions on operational safety requirements, such as the one set out in paragraph 2(a) of 1st Transitional Provision of Spanish IPPC Law.

## Annex I - Table of concordance

Table of concordance	
1st Transitional Provision of Spanish IPPC Law, paragraph 2	Industrial Emissions Directive (Directive 2010/75/EU)
2. According to paragraph 1, permits shall be considered updated when they contain specific prescriptions on:	
a. Incidents and accidents, especially regarding the obligations operators have of communicating them to the competent authority and of implementing measures, even complementary ones, to limit environmental consequences and avoid other possible incidents and accidents;	<p><b>Article 7-Incidents and accidents</b></p> <p>Without prejudice to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, in the event of any incident or accident significantly affecting the environment, Member States shall take the necessary measures to ensure that:</p> <p>(a) the operator informs the competent authority immediately;</p> <p>(b) the operator immediately takes the measures to limit the environmental consequences and to prevent further possible incidents or accidents;</p> <p>(c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to limit the environmental consequences and to prevent further possible incidents or accidents.</p>
b. The failure to comply with permit conditions;	<p><b>Article 8 - Non-compliance</b></p> <p>2. In the event of a breach of the permit conditions, Member States shall ensure that:</p> <p>(a) the operator immediately informs the competent authority;</p> <p>(b) the operator immediately takes the measures necessary to ensure that compliance is restored within the shortest possible time;</p> <p>(c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to restore compliance.</p> <p>Where the breach of the permit conditions poses an immediate danger to human health or threatens to cause an immediate significant adverse effect upon the environment, and until compliance is restored in</p>

	<p>accordance with points (b) and (c) of the first subparagraph, the operation of the installation, combustion plant, waste incineration plant, waste co-incineration plant or relevant part thereof shall be suspended.</p>
<p><i>c. In case of waste generation, the implementation of the waste hierarchy as established in article 4.1.b);</i></p>	<p><b>Article 12- Applications for permits</b>  1. Member States shall take the necessary measures to ensure that an application for a permit includes a description of the following:  (...) (h) measures for the prevention, preparation for re-use, recycling and recovery of waste generated by the installation;</p>
<p><i>d. When necessary, the report mentioned in article 12.1.f), which must be taken into consideration in the event of plant closure;</i></p>	<p><b>Article 12- Applications for permits</b>  1. Member States shall take the necessary measures to ensure that an application for a permit includes a description of the following:  (...) (e) where applicable, a baseline report in accordance with Article 22(2);</p> <p>Article 22, paragraph 2:  2. Where the activity involves the use, production or release of relevant hazardous substances and having regard to the possibility of soil and groundwater contamination at the site of the installation, the operator shall prepare and submit to the competent authority a baseline report before starting operation of an installation or before a permit for an installation is updated for the first time after 7 January 2013. (...).</p>
<p><i>e. The measures which will be applied in the event of anomalous functioning conditions;</i></p>	<p><b>Article 14- Permit conditions</b>  1. Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 11 and 18.  Those measures shall include at least the following:  (...) (f) measures relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations;</p>
<p><i>f. When necessary, the monitoring requirements for soil and groundwater;</i></p>	<p><b>Article 14- Permit conditions</b>  1. Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 11 and 18.  Those measures shall include at least the following:  (...) (e) appropriate requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point (b) and appropriate requirements concerning the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site and having</p>

	regard to the possibility of soil and groundwater contamination at the site of the installation;
<i>g. In the case of incineration or co-incineration plant:</i>	<b>Chapter IV- Special Provisions for waste incineration plants and waste co-incineration plants</b> <b>Article 45-Permit conditions</b> 1.The permit shall include the following:
<i>i. Waste treated by the plant, when listed in the European Waste List.</i>	(a) a list of all types of waste which may be treated using at least the types of waste set out in the European Waste List established by Decision 2000/532/EC, if possible, and containing information on the quantity of each type of waste, where appropriate;
<i>ii.The emission limit values regulated for these types of plants.</i>	(c) the limit values for emissions into air and water;