

Environmental Permitting Regulations 2008

The EP Regulations came into force in April 2008 and replaced several other licensing and permitting regimes - Waste Management licenses, Pollution Prevention & Control permits, etc.

The EP Regulations identify what needs to have an environmental permit. Currently these are:

- **An installation** - one of more than 20,000 facilities carrying out the activities listed in Schedule 1 of the EP Regulations. These include activities in the energy, metals, minerals, chemicals and waste sectors.
- **A waste operation** - any disposal or recovery of waste which is not exempt under the EP Regulations, or
- **A mobile plant** - carrying out one of the above activities or waste operations.

All these facilities used to be regulated under the legislation the EP Regulations have now replaced.

A new application for an Environmental Permit (EP) has to be accepted by the Environment Agency (EA) as 'Duly Made' before the statutory consultation period can begin. 'Duly Made' status is when the Environment Agency are happy that they have enough information to be able to start the consultation phase, however, they may still ask questions about the application. The statutory consultation phase takes a minimum of 4 months plus 1 month for public participation where local communities can have their say. However, the EA advises applicants to expect a permit to take a total of 8 months from duly made status. A permit application is likely to take around 4 months to put together to a standard where duly made status will be given.

The EP application to the EA will include an assessment of the environmental risk of the proposals including the risk under both normal and abnormal operating conditions. The EA should satisfy itself that the operator's assessment of the risk is sufficiently robust. In particular, any assumptions

that the operator has made about its proposals must be clearly justified using Best Available Technology (BAT) assessments.

The EP application has Best Available Technology (BAT) at its core. The reasons for choosing a particular process must be scrutinised using BAT and then show the reasoning and justification for choosing that process over other potential alternatives. The EA should then assess the application and the adequacy of the impact assessment including whether the control measures proposed by the operator are appropriate for mitigating the risks and their potential impact.

For waste management facilities the EA cannot issue a permit until planning permission for the activity has been given. Nevertheless, the EA actively encourage applicants to dual track the planning and EP applications so they can begin their formal considerations early on in the planning process. However, once the planning permission has been given, the permit **must** be refused in only two circumstances -

1. The EA do not believe that the applicant for the permit (or their agent) will be the operator
2. The EA believe that the operator will not be able to comply with any of the conditions on the permit.

The EA may also **decide** to refuse an application in certain circumstances.

Examples of cases where this might be appropriate are:

- The EA has reason to believe that the operator is not competent to run the regulated facility in accordance with the permit.
- The environmental impact would be unacceptable. For instance, an operator might propose siting a new facility close to an extremely sensitive environment, but with no means of providing adequate control.
- The information provided by the operator does not provide a reasonable basis to determine the permit conditions, taking into account the operator's responses to requests for more information.
- The requirements of relevant European Directives cannot be met.

The final issued permit will usually come with a set of conditions. All permit conditions should be both necessary and enforceable. "Necessary" means that the regulator should be able to justify - at appeal if necessary - the permit conditions it attaches. To be enforceable, conditions should clearly state the objective, standard or desired outcome of the condition so that the operator can understand what is required. Permit conditions may comprise some or all of the following:

- Conditions stipulating objectives or outcomes
- Standards to mitigate a particular hazard / risk, or
- Conditions addressing particular legislative requirements

On final surrender of the permit once the facility has closed, the land area that the permit applied to must be returned to its original condition with any contaminants remediated. This of course requires monitoring to be undertaken prior to building the facility so that comparisons can be made, but gives communities comfort knowing that their local area will not suffer detrimentally.

The Environmental Permit regime is tightly controlled with enforced closure for overstepping set limits. It is closely monitored by the EA with live data being sent to them covering aspects such as emissions and throughput. If the plant oversteps any European Directive limits then it must be shut down within 4 hours and this can only happen for a total of just 60 hours in a whole year. The Environmental Permit is there to ensure that the environment and public health is not influenced in any potentially harmful ways.