

**Jerzy Stelmasiak, Ewelina
Iwanek-Chachaj**

**An Integrated Permit as the Legal
Measures for Environmental
Protection**

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Tekst jest udostępniony do wykorzystania w ramach
dozwolonego użytku.

AN INTEGRATED PERMIT AS THE LEGAL MEASURE FOR ENVIRONMENTAL PROTECTION

The integrated permit is a legal instrument aiming at comprehensive environmental protection according to the principle of integrity, i.e. the principle of environmental protection oriented towards perception of the environment as a whole. In the current legal status, the concept of “environment” and “environmental protection” is the subject of provisions in Article 3 points 39 and 13 Act of 27 April 2007 – Environmental Protection Law³, respectively. The legal definition of “environment” means the entirety of the natural elements, especially the surface of the earth inclusive of water, soil, mining resources, air, flora, fauna, the landscape and the climate both in the natural state and their altered form as a result of human activity. The legal concept of “environmental protection” includes both taking up actions and their omission, with the aim to preserve or restore the ecological balance on a given area (J. Stelmasiak (ed.), 2009: pp. 21 and 22). The integrated permit is also an instrument of implementation of the principle of pollution prevention and the ‘polluter pays’ principle which are fundamental principles of Polish and Community law in the field of environmental protection. It is an instrument of environmental protection law introduced by the Polish legislator by necessity of implementation of the Community law in the Polish legal system. Both usefulness of this legal instrument and its effectiveness are undoubtedly indisputable in a successfully operating legal system.

The main act of the Community law in the sphere of the integrated environmental protection is the **Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control**⁴ (referred to as the IPPC-directive). The Directive establishes a general framework for integrated pollution prevention and control as well as measures necessary to implement the integrated system of pollution prevention and control in order to achieve a high level of protection for the environment as a whole. Such an approach aims at prevention and minimization of pollution in particular elements of the environment at the cost of others, while taking into consideration mutual interactions and conversions created by their diffusion in the system of integrated environmental protection (J. Jerzmański, M. Bar, M. Górski, 2003: p. 4). The IPPC-Directive introduced the instrument of the integrated environmental permit for use of the environment, which should cover all installations mentioned in Annex I to this Directive, including a division into new and existing installations.

¹ Professor at the Maria Curie-Skłodowska University, Faculty of Law and Administration, Judge of the Supreme Administrative Court.

² MA, a graduate of the Maria Curie-Skłodowska University (the Faculty of Law and Administration and the Faculty of Chemistry), doctoral student at the Faculty of Law and Administration.

³ Consolidated text [in:] Journal of Laws Dz. U. from 2008 No. 25, item 150 as amended.

⁴ Official Journal EC L 257 from 10.10.1996, p. 26, L 156 from 25.06.2003, p. 17 and L 275 from 25.10.2003, p. 32.

The main act of the Polish law in the sphere of the integrated environmental protection is the Act – Environmental Protection Law. The issue of the integrated permit is regulated by general provisions concerning emission permits and detailed provisions concerning particular emission permits and the integrated permit. According to Article 201 Act – Environmental Protection Law, the integrated permit is required for an installation whose operation, due to its type and scope of its activities might cause significant pollution of particular environmental elements or the environment as a whole. It should be understood that it refers to an activity that causes significant emissions and as a result serious pollution of particular environmental elements and the environment as a whole. Article 3 point 6 of the Act – Environmental Protection Law contains legal concept of ‘installation.’ Emissions causing significant pollution of the environment might be of unidirectional or multidirectional nature, might have a direct impact on one environmental element, and an indirect impact on other elements. The Regulation of the Minister of Environment of 26 July 2002 on the types of installations which could cause significant pollution of particular natural elements or the environment as the whole⁵ defines types of installations covered by an obligation to obtain an IPPC-permit due to their type and scope of conducted activities. The integrated permit, constituting a comprehensive instrument of integrated environmental protection and pollution prevention defines emission conditions based on principles specified for particular types of emission permits, i.e. emission limit values for gases and dust released into air, conditions of waste production and handling principles according to provisions defined in the Act on Waste, conditions of surface or underground waters intake, if they are taken exclusively for the needs of an installation requiring an integrated permit. Regardless of the fact, whether a given installation would require a determination of emission limit values for gases and dusts released into atmosphere, the permissible noise level or the conditions of waste production and handling, the integrated permit shall specify the abovementioned elements. The integrated permit should meet requirements referred to in Article 181 par. 1 points 2–4 Act – Environmental Protection Law and the legal water permit for intake of waters.

The integrated permit does not specify the permissible emission values of gases or dusts released into air in an unorganized manner from installations, to which do not apply provisions about emission standards in the scope of emission of gases and dusts into air, from installations releasing landfill gas into air, and from gravity ventilation. Many a times operation of an installation that needs the integrated permit requires creation of a limited use area, i.e. determination of borders of such an area, limits concerning designation of the land as well as technical requirements related to building structures and the manner of their use. In such an event, apart from a proof of registration payment, an application for issuance of an integrated permit should have the following enclosures: a record of an application in the electronic version on information carriers of data, a copy of an application for issuance of a decision or a decision about the environmental conditions, referred to in article 71 par. 1 Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in the environmental protection and environmental impact assessments⁶, and a copy of the

⁵ Journal of Laws Dz. U. from 2002, No. 122 item 1055.

⁶ Journal of Laws Dz. U. from 2008 No. 199 item 1227 as amended.

registration map, if issued, certified by an appropriate body, with the borders marked on the area, for which a need arises to create a limited use area.

The integrated permit replaces particular sectoral permits defining at the same time emission conditions for a given installation or plant in the form of a single administrative decision. All installations that require an integrated permit and are located on the premises of one plant, must be covered by one permit. Installations that do not require an integrated permit, and require only a sectoral permit, shall not be included in such an integrated permit, unless the applicant for issuance of the integrated permit applies for inclusion of installations requiring a sectoral permit and located on the premises of that plant in the IPPC-permit. In such an event, installations requiring sectoral permits and covered by an integrated permit must meet requirements for installations that require an integrated permit. An integrated permit is required not only for newly opened installations but also for installations covered by an integrated permit that have undergone significant changes. Prior to any significant changes in an installation covered by an integrated permit, the operator shall notify a body appropriate to issue permits about intended changes and submit an application for a change of an integrated permit issued. An application for a change of an integrated permit should include data, referred to in article 184 and 208 Act – Environmental Protection Law, and a decision about a change of an integrated permit should specify the requirements referred to in article 188 and 211, connected with the intended changes. In reference to other changes in an installation covered by an integrated permit, consisting in a change of the manner of installation operation, prior to changes the operator shall notify an administrative body about the intended changes. If the body thinks that the intended changes in the installation require a change of certain conditions of the integrated permit issued, it shall oblige the operator, within 30 days of the receipt of the notification, to submit an application for a change of the permit. If the permit is to cover an installation for the first time or is to cover an installation upon a significant change, issuance of a permit should take place within 6 months of the date of submission of the application; provisions of article 35 § 5 Code of Administrative Procedure⁷ shall be applied respectively.

The integrated permit is an administrative decision issued in the administrative proceedings. Provisions of Act of 14 June 1960 Code of Administrative Procedure are applied to issuance of integrated permits, although the administrative procedure concerning issuance of integrated permits is different, e.g. article 107 § 4 Code of Administrative Procedure is not applied. It means that it is not possible to abandon a justification of the integrated permit, which is an administrative decision, when it takes into account an application of the party in full. Moreover, the elements of such a decision are regulated by article 107 § 1 Code of Administrative Procedure and they include in particular: determination of a body of public administration, date of issuance, determination of a party or parties, presentation of legal grounds, settlement, factual and legal justification, instructions whether the decision may be appealed and if so, in what manner, and a signature with presentation of full name and position of the person authorized to issue a decision. A decision, which may be sued to the general court or appealed to the administrative court should also include instructions about admissibility of its suing or appealing.

⁷ Journal of Laws Dz. U. from 2000, item 1071 as amended; further k.p.a.

The specific character of the integrated permit is the necessity of ensuring that the IPPC-installations meet requirements of the best available techniques (BAT). According to article 3 point 10 Act – Environmental Protection Law, the best available technique is the most effective and advanced stage in the development of technologies and methods of operation in a given activity, used to provide the basis for emission limit values to minimize emissions or, where that is not practicable, to reduce emissions and the impact on the environment as a whole.

The definition indicates that keeping the limit emission values has the most important meaning for stating whether a given solution meets BAT requirements. Each technical or organizational solution that ensures keeping the limit emission values should be recognized as fulfilling BAT. The permissible emission values from the IPPC-plants are defined while taking into account the need to observe the emission standards as well as the general duty not to exceed the environmental quality standards out of the area, to which the operator of a plant has a legal title or out of the industrial zone, and in reference to noise emissions – out of the area of the limited use, if it has been established.

It should be noted, however, that the issues mentioned in Art. 143 Act Environmental Protection Law are to be applied to all plants subject to obtainment of an IPPC-permit (new installations and installations with important changes), i.e.:

- 1) use of substances of low hazard potential;
- 2) effective generation and use of energy;
- 3) ensuring rational consumption of water and other raw materials as well as other materials and fuels;
- 4) application of waste-free and low-waste technologies and the possibility of recycling of the arising waste;
- 5) type, scope and volume of emissions;
- 6) application of processes and methods comparable to those applied effectively on the industrial scale;
- 7) application of scientific and technical progress.

Moreover, the Act Environmental Protection Law imposes an obligation to include the following aspects while defining BAT requirements for a given plant:

- 1) profit and loss account;
- 2) time necessary to implement the best accessible techniques to a given type of plant;
- 3) prevention of environmental risks caused by emissions, or their limitation to a minimum;
- 4) taking up measures to prevent serious industrial accidents or reducing the environmental risk caused by them to a minimum;
- 5) date of delivery of the plant to use;
- 6) information about the best accessible techniques, published by the European Commission based on Art. 16 clause 2 of the IPPC-directive.

The Act – Environmental Protection Law introduces an exception from the obligation to meet requirements resulting from BAT by the existing installations as the condition for obtainment of an integrated permit in the form of adjustment programmes. An adjustment programme permits a temporary operation of an installation, which in the time required for obtainment of an integrated permit cannot meet requirements resulting from BAT. It is an individual schedule of meeting requirements resulting from BAT by a given installation, agreed with an administrative body, which constitutes the basis for determination of conditions for use of the environment in the transition pe-

riod in the IPPC-permit. The result of accomplishment of an adjustment programme is obtainment of requirements resulting from BAT by a given installation by 31 December 2010.

The requirements regarding technologies covered by the IPPC-permit described in Art. 143 points 1–4 Act Environmental Protection Law as well as Art. 207 clause 1 points 1–4 have been included in reference documents published by the European Commission (so-called BREFs), referred to in Art. 207 clause 1 point 6. These documents contain specific quantitative emission parameters or volumes of raw materials and other materials consumption, as well as recommendations referring to application of particular technical and organizational solutions. Therefore, while proving the conformance of an application with BAT requirements one should include a comparison of the factual state of affairs with the provisions included in the reference documents. However, one should remember that information contained in BREFs constitutes a point of reference exclusively, and not unequivocal recommendations of solutions to be applied. All the more they cannot be treated as limit emission values, especially while taking into account the fact that the IPPC-directive forbids to recommend specified techniques or technologies and it orders to include technological characteristics of a given plant, its geographical location and local environmental conditions.

According to the IPPC-directive, the authority responsible for implementation of provisions resulting from the IPPC-directive, specified by the legal provisions of a Member State, is the authority competent to issue an IPPC-permit. Article 378 of the Act – Environmental Protection Law defines the competent authorities in relation to an emission permits. The competence of authorities to issue an emission permit depends on the type of a project and localization of an plant.

- a) Regional Director of Environmental Protection is the competent authority in reference to projects and events on the enclosed area.
- b) Marshal of the Voivodship is the competent authority in the affairs related to:
 - 1) projects and events on the premises of plants, where the installation is used, which is qualified as an enterprise that might always have a significant impact on the environment in the understanding of Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in the environmental protection and environmental impact assessments;
 - 2) a project that might always have a significant impact on the environment in the understanding of Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in the environmental protection and environmental impact assessments, implemented on the areas other than those specified in point 1).
- c) Staroste is the competent authority to issue an emission permit concerning other projects.

The administrative procedure concerning issuance of an integrated permit is a separate procedure in relation to the proceedings regarding assessment of impact on the environment and to the procedure about issuance of the decision on the localization. An application for issuance of an IPPC-permit may be submitted already at the moment the execution of an investment is commenced, i.e. upon obtainment of the final decision about a building permit. So an application for issuance of an integrated permit may be submitted before obtainment of a permit for use. It should be stressed that usually installations covered by the IPPC-permits are projects that might always have

a significant impact on the environment or they are qualified as such projects. In these cases such project is the subject of a procedure regarding the assessment of impact on the environment, which is a separate procedure in relation to the procedure about issuance of the IPPC-permits. Assessment of impact of an intended project on the environment is a result of transposition of Community law to the national legal system, i.e. Council Directive 85/337/EEC of 27 June 1985 about assessment of impact of certain public and private projects on the environment, as amended by Council Directive 97/11/EC and Directive of European Parliament and Council 2003/35/EC. In the Polish legal system the procedure of assessment on the environment is a separate procedure completed with issuance of an administrative decision (Jendroška, 2008: p. 123; Nowicki, 2008: p. 3). The process based on the directive 85/337/EC is completed with issuance of a decision on the environmental conditionings. A copy of the decision on environmental conditionings or a copy of an application for issuance of a decision about the environmental conditionings is one of the attachments to the application for an IPPC-permit. It must be stressed that the process about issuance of an IPPC-permit has to be carried out with public participation, which ensures transposition of Art. 10a of the directive 85/887/EEC concerning the need to ensure all members of “the interested society” an access to justice in matters related to the environment. This way the demands of the IPPC-directive and 85/887/EEC directive are fulfilled in the process of issuance of an IPPC-permit. At the same time, it has to be stressed that a building permit must be preceded by issuance of a decision about the environmental conditionings.

In the process of issuance of an IPPC-permit or a decision about a change of an IPPC-permit concerning a significant change of the plant, the administrative authority shall ensure a possibility of public participation based on the principles and according to the procedure specified in Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments. Act of 3 October 2008 regulates the issues of public participation in the procedure concerning issuance of IPPC-permits. Everyone is admitted to take part in the procedure concerning issuance of an IPPC-permit, regardless of his/her nationality and origin, place of residence and direct profits or loss resulting from the conduct of proceedings. Everyone has the right to express his/her comments and submit motions, take part in an open administrative session, if the authority decides to carry it out, yet he/she does not have the right to appeal against the administrative decision, since this right is vested only to the parties. According to Article 28 Code of Administrative Procedure, the party is everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest. Ecological organizations may lodge an appeal or a complaint about a decision requiring public participation even if they have not taken part in the proceedings about issuance of the decision (Article 44 Act on the provision of information on the environment and its protection, public participation in the environmental protection and environmental impact assessments). This regulation ensures proper transposition of Article 10a of directive 85/337/EEC regarding the necessity to ensure access to justice in matters related to the environment to all members of “the interested society“.

The IPPC-permit is issued for a defined period of time, yet not longer than for 10 years. The Minister of the Environment keeps a register of applications for IPPC-permits and the IPPC-permits issued. The Minister of the Environment may ask the Star-

oste or Marshal of the voivodship for granting information or access to documents concerning issuance of IPPC permits. If an incorrectness in the scope of issuance of IPPC-permits by the Staroste is found, the Minister of the Environment makes an approach, which may include in particular a motion for statement of invalidity of the decision about issuance of an IPPC-permit. If an approach is made, the Minister of the Environment shall have the right to be a party in the administrative procedure and the proceedings before the administrative court. The authority proper to issue a permit at least every five years makes a review of an issued IPPC-permit. Moreover, issuance of an IPPC-permit is also reviewed, if there has been a change in the best accessible techniques, permitting a considerable reduction of emission volume without causing excessive costs, or it results from the need to adjust the use of the plant to changes in regulations concerning environmental protection. If the review shows a need to change the content of an IPPC-permit, whose expiry period elapses later than in a year upon the completion of the review, the existing IPPC-permit shall be cancelled or limited without compensation.

The operator of the installation covered by the IPPC-permit is obliged to pay registration fee. The amount of the registration fee can't exceed 3000 EUR. The registration fee should be paid when the IPPC-permit are going to be changed because of significant changes in the installation. In this case the registration fee amounts 50% of the registration fee. The evidence of the paid registration fees is one of the attachments of the application for the IPPC-permit. In the event the IPPC-permit is changed as a result of significant changes of an installation covered by the integrated permit, a proof of registration payment should be attached of 50% the registration payment that would be required with an application for issuance of an integrated permit for such an installation.

The administrative proceedings about issuance of the integrated permit is a two-instance procedure and is a subject to legal control. The issues concerning IPPC-permits are brought to the administrative court as a litigation upon prior lodging of an appeal of an IPPC decision⁸. Moreover, they can be subject of criminal proceedings in the event of an offence against the environment. Appeals against the decision about IPPC-permits are heard by the Self-Government Board of Appeals. The entities authorized to lodge appeals are parties to the administrative proceedings, even if they have not taken part in the pending proceedings. It should be noticed that according to Article 28 Code of Administrative Procedure, a party is everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest. Act of 3 October 2008 broadened the scope of the rights of ecological organisations. Ecological organisations have the right to file a complaint with an administrative court against a decision issued in a procedure requiring public consultation if this is substantiated by the statutory objectives of the organisation, also if the organisation did not participate in the procedure. The organisation is authorized to lodge appeals even if the organisation did not participate in the procedure. In this case, the organisation enjoys the rights of a party if this is substantiated by the statutory objectives of that organisation.

⁸ Act of 30 August 2002 – Law about procedures before administrative courts (Journal of Laws Dz. U. No. 153, item 1270 as amended).

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