

## NATIONAL AFFAIRS

## Spain

**Integrated Pollution Prevention and Control**

by Héctor Rodríguez Molnar\*

With considerable delay beyond the due date of October 1999, the European Council Directive 96/61/EC of 24 September 1996<sup>1</sup> concerning integrated pollution prevention and control was finally transposed into Spanish legislation by virtue of Law 16/2002 on Integrated Pollution Prevention and Control (the IPPC Law).<sup>2</sup>

Receiving the Directive into Spanish legislation proved to be far more cumbersome than expected, mainly due to difficulties arising from discussions between the central and the different regional governments. In the end, however, a consensus was reached, and hence, the new Law was finally approved on 1 July 2002.

The IPPC law is, undoubtedly, one of the most important laws that have been introduced in Spain in recent years with regard to industrial contamination. In this regard, it is expected that more than 4000 industrial plants will be affected by the new law, specially those in the foodstuffs (42 per cent), chemical (21.3 per cent) and mineral industry (10.7 per cent) sectors.

**MAIN CONTENTS OF THE LAW****1. Purpose and scope**

In order to achieve a high level of protection of the environment as a whole, the law is intended to prevent, reduce and control air, water and land contamination arising from certain activities, by establishing an integrated pollution prevention and control system.

As a consequence of this new integrated approach to reduced pollution, the law has created a new administrative instrument known as the *Integrated Environmental Permit (IEP)*. This permit merges all existing environmental permits in Spain, thus creating a Single Permit which guarantees an effective integrated approach by all authorities involved in the granting of environmental permits. This is of paramount importance in a country like Spain, where a large number of authorities intervene in environmental permit-granting procedures.

The law will be applicable to the construction, assembly, exploitation or transfer of all public or privately owned industrial plants carrying out activities listed in any of the

categories and subcategories of industrial activities included in Annex 1 to the Law (see below). The Annex lists activities and facilities such as combustion installations, oil and gas refineries, facilities devoted to the production and processing of metals, chemical industries, waste management, etc. Installations or parts of installations used for research, development and testing of new products and processes are not covered by the law.

**2. General principles governing the Integrated Environmental Permit**

The Environmental Authority competent for the granting of Integrated Environmental Permits shall ensure that all installations for which a permit is applied for are operated in such a way that:

- All the appropriate pollution prevention measures are adequately taken; in particular, through the application of the best available techniques;
- Waste production is avoided, or, if unavoidable, it is appropriately dealt with by using value-adding techniques such as recycling or reusing. If none of the preceding options were to be feasible, waste shall be disposed of using those available techniques that prove to be least harmful for the environment;
- Energy, water and raw materials are efficiently used;
- Serious accidents are prevented and their impact on human health and the environment is limited in accordance with applicable regulations; and
- Closing of activities shall allow for a subsequent and satisfactory subsequent use of the land and premises.

**3. Main obligations of owners or operators**

Individuals or legal entities responsible for the above referred activities shall be obliged to:

- a) Hold the relevant IEP and meet all conditions set forth therein;
- b) Meet the information control and supply obligations provided for in the legislation applicable to the sector of activity concerned;
- c) Report in advance any change (material or not) to be introduced in the installation to which the IEP refers;
- d) Report any change in ownership or control; and any accident or incident that may affect the installation;
- e) Cooperate in any surveillance, inspection or control activity.

In general, data on emissions must be furnished to the regional governments on a yearly basis. This information

\* Senior partner, heading the corporate and environmental practices of Membrillera & Rodríguez Molnar, a firm specializing in international, corporate and environmental matters and a member of the European Environmental Law Practice. The author, an expert in industrial waste matters, coordinates the preparation and production of EH&S Protocols for multinational companies. He is a founder member of the European Environmental Lawyers' Association and a member of the International Council of Environmental Law. E-mail: firm@m-rm.com.

will be relayed to the central government for the purposes of compiling a National Emissions Inventory that will be subsequently notified to the European Commission.

#### 4. Main features of the Integrated Environmental Permits

The IEPs will set forth emission and other equivalent technical measures that the facilities must respect. Said limits will be set on the basis of different factors such as the information to be provided by the owner or operator, the technical features of the installations, the technology to be used thereat, the potential migration of eventual contamination, the obligations Spain may have assumed under EU legislation and other legal provisions applicable to the activity or installation. See Annex 4 below.

The Law obliges the central government to share with the regional governments all the information it may have available on best current techniques, control measures and pollution evolution control. If necessary, the central government will have to implement sector guidelines that the regions will apply to set forth the emission limit values.

As usual, the central government *may* set forth emission and protection measures and limits which the Autonomous Regions may increase. To these effects, Annex 3 of the Law describes the main pollutants and their basic limit values applicable to the activities listed in the Law. A key provision allows the regional governments to apply – by holding resolution – *ad hoc* limit values and restrictions to specific industries or activities. As long as no new limits are set, Article 7(2) of the Law provides that the current limits and protections measures described in the legislation described in Annex 2 shall continue to apply (see Annex 2 below).

The IEP (i) must be secured prior to any other licence or approvals that the facility or activity may be required to secure under other regulations such as those requiring Opening Licences, and/or a Municipal Authorization for the Development of Classified Activities; and (ii) shall be without prejudice to any other permit required in connection with the use of the Public Domain, such as (exceptions existing) those required by the Water Law.

#### 5. Granting procedures

As advanced above, an IEP will be necessary to construct, assemble, exploit or transfer any public or privately owned industrial plants carrying out industrial activities listed in any of the categories included in Annex 1 to the Law.

Changes to authorized facilities also have to be notified or authorized. Changes may be material (substantial) or not. Material changes are those that may have an impact on the environment, safety and health of individuals. Such material changes can only be carried out upon receiving prior approval from the competent body. Such approval will take the form of a new IEP.

Non-material changes can be implemented if no objection is received by the owner or operator within a month from the day the intended change is notified together with all the details required by Article 10 of the Law, such as (i) size and production levels of the relevant facility, (ii) natural resources and raw materials used, (iii) levels of

energy and water consumed, (iv) volume, weight and kind of waste generated, (v) degree of resulting contamination, (vi) intensity of the use of hazardous substances, etc.

The Application for the permit must include the following data, documentation and information:

a) A so-called Basic Project describing the activity, in-



Iberian lynx, population growing

Courtesy: World Conservation

stallations, production processes and kind of resulting products, including, but not necessarily limited to, the following:

- All documentation normally required in connection with the granting of Municipal Licences required by Classified Activities;
  - An Environmental Study describing the area and the impact thereon;
  - Natural resources, raw materials, substances, water and energy used at or generated by the facility;
  - Emission sources;
  - Kind and amounts of emissions into air, water and soil as well as waste generated;
  - Technology to be used;
  - Waste prevention, reduction and management measures;
- b) A report from the Municipality where the facility will be established and/or the activity will be carried out confirming that the project is consistent with the applicable zoning (urban planning) regulations;
- c) If applicable, all the documents and information required by the Water Laws in connection with discharges.

The regional governments will identify the administrative bodies that will be competent to process and grant IEP within their jurisdictions. Until such determination is effective, the applications will be filed with the different Regional Environmental Agencies.

The Law came into effect on 3 July 2002. Therefore, its regulations are (at least in theory) immediately applicable to new projects. On Existing Installations, see below.

Following the filing, a period of not less than 30 calendar days shall exist for all interested parties to file allegations. Any and all aspects of the application deemed confidential shall not be open to public allegations.

Upon completion of the allegations period, a full dos-

sier shall be delivered to the bodies competent to decide on the different aspects encompassed by the project for their review: most importantly, to the Municipality and, eventually, to the Basin Authority concerned. The opinion of the Municipality must be taken into consideration, but does not oblige the competent regional authority. The report from the Basin Authority would be mandatory for the granting authority if produced within six months and may thus cause the IEP to be denied if the report is not favourable. Failure by the Basin Authority to produce its report in time would allow proceedings to continue, but a report produced past the due date must be taken into consideration when the Application is decided upon.

Proceedings may not take longer than ten months. Failure by the competent body to resolve matters within such a period may entitle the applicant to consider that the permit has been denied. This means that the applicant may elect to continue with the proceedings in spite of the overdue deadline.

## 6. Contents of the Integrated Environmental Permits

The IEPs will deal with the following aspects:

- a) Emission limits applicable to the facility or activity; in particular, those limits applicable to the contaminating substances listed in Annex 3 of the Law. The Permit shall include a description of those circumstances that would warrant temporary exceptions (see below);
- b) Requirements in connection with the prevention of soil and underground water contamination;
- c) Procedures and methods to be used to manage waste to be generated;
- d) Systems and procedures to be applied to treat and control emissions and wastes, also describing the measuring methods, frequency thereof and the applicable assessment procedures;
- e) Requirements applicable to the operation of the facility under abnormal operation circumstances such as malfunctions, temporary halts or final closing.
- f) If applicable, the Impact Assessment Study and the prevention and control measures required by the regulations applicable to the prevention of serious accidents involving dangerous substances (Namely, Royal Decree 1254/1999,<sup>3</sup> currently applicable to a large number of industrial installations).
- g) Any other requirement applicable pursuant to specific sectorial regulations.

Exceptions to emission limits can be authorized provided the operator produces the following:

- (i) A rehabilitation plan assuring that the maximum value limits shall be again respected within six months; and
- (ii) A project for reducing contamination.

Such Plan and Project will become a part of the IEP.

The granting of the IEP shall be notified to the Municipality and other bodies that may have produced obligatory reports and will be subsequently published in the Regional Official Bulletin.

Interested parties may oppose to the obligatory reports

in accordance with the Administrative Procedure Law (Law 30/1992,<sup>4</sup> as amended).

## 7. Validity, amendments and renewal of IEPs

IEPs will be valid for a maximum period of eight (8) years and can be renewed and, eventually, updated for successive periods.

Renewals must be applied for not less than ten (10) months prior to the expiration of the validity of the IEP or any extension thereof. A simplified procedure would apply.

Should the competent body fail to expressly decide on the renewal, the renewal shall be deemed granted.

As described above, the owner or operator must report any material or non-material changes in the relevant facility or activity. But even if no change is reported, the competent authority may independently move to modify the contents of the IEP whenever

- a) The existing contamination levels make it advisable to adjust (revise) the emission limits or to set forth new limits;
- b) Emissions cannot be significantly reduced without incurring excessive costs due to material changes that may affect the best available techniques;
- c) Safety of the processes or activities make it necessary to use other techniques;
- d) The Basin authority may consider it appropriate to modify the IEP and shall so request.
- e) Specific legislation may so require.

Any such change shall not entitle the operator to any kind of indemnification and shall be processed through a simplified procedure to be set forth by subsequent regulation.

## 8. Activities with cross-border effects

Other EU countries that may be affected by the activities encompassed by a certain IEP shall be entitled to file allegations at any time before the IEP is granted. They shall also be notified of any resolution on the granting or denial of the IEP.

A new provision likely to be conflictive sets forth that contacts between the regional governments and the affected EU country(ies) shall only take place through the Spanish Ministry of Foreign Affairs.

The Law describes different procedures and obligations applicable to the coordination between bodies of the Spanish administration in connection with Environmental Impact Assessment Studies and Classified Activities.

A full set of penalties is meticulously described, ranging from minor to serious and very serious breaches. These latter may encompass fines of up to 2 million Euros plus possible temporary or definitive closure of activities. Individuals may be subject to penalties of varying degrees, including, among others, the prohibition to carry out the relevant activity. Penalties can be made public.

Minimum penalties for minor breaches may reach 20,000 Euros.

In addition, the Law provides for interim measures such as stoppage of activities, total or partial closing of facilities and/or suspension of the permits. ➔

Penalties for non-compliance include the obligation to restore the damage caused and to face indemnification for damages. Failure to comply could result in fines of up to one-third of the fine foreseen for the relevant breach.

### 9. Existing installations

'Existing installation' is defined by the Law as any facility that either (i) was authorized and existing before the coming into effect of the Law; or (ii) on the effective date of the Law had already applied for the permits and authorizations required by applicable legislation, provided said installation starts to operate within 12 months from the effective date of the Law.

Owners or Operators of Existing Installations must comply with the terms of the Law and secure an IEP before 30 October 2007.

Procedures leading to secure authorizations and permits applied for under former regulations shall continue to be governed by said regulations.

### 10. Repealing provisions

The Law includes a set of material repealing provisions, namely, the following:

- a) Provisions on Waste Production and Management included in Law 10/1998 on Waste.<sup>5</sup>
- b) Provisions in Royal Decree 1088/1992 on Incineration of 'Municipal Waste,' setting forth limits for emissions of certain air pollutants from large incineration facilities.
- c) Provisions governing the granting of dangerous waste incineration permits; namely, Royal Decree 1217/1997.
- d) Provisions on discharges into continental waters included in the restatement of the Water Law approved by Legislative Royal Decree 1/2001.<sup>6</sup>
- e) Authorizations for land to sea discharges into the maritime public domain governed by Law 22/1988 on Coasts.<sup>7</sup>
- f) Approvals and binding reports required in connection with air pollution governed by Law 38/1972<sup>8</sup> on Protection of the Atmospheric Environment and its implementing regulations.
- g) All exceptions to the general provisions on emissions, quality goals and measuring methods for certain noxious or dangerous substances present in waste water discharges foreseen in Article 2 of the Order dated 12 November 1987; and in Article 4 of Royal Decree 258/1989 setting forth the general provisions applicable to the discharges of dangerous substances from land to sea.
- h) Finally, the Law repeals in full Law 4/1998 governing ozone-depleting substances enacted pursuant to EU Council Regulation 3093/1994.

#### ANNEX 1

##### Activities and Installations described in Article 2 of the Law

(By Chapters. Sub-chapters are omitted. Further information can be provided on request)

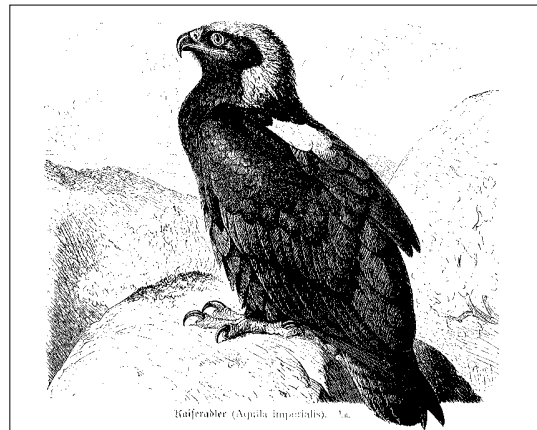
1. Combustion Installations
2. Production and Transformation of Metals

3. Mineral Industries
4. Chemical Industries
5. Waste Management
6. Paper Industry
7. Textiles.
8. Food and Cattle
9. Consumption of organic solvents
10. Carbon Industry

#### ANNEX 2

##### Legal provisions foreseen in Article 7(2) of the Law

1. Royal Decree 108/1991 on Prevention and Reduction of environmental contamination produced by asbestos.
2. Water Law. Restatement approved by Legislative Royal Decree 1/2001.
3. Royal Decree 849/1986 approving the regulations on the Hydraulic Public Domain.
4. Order of 12 November, 1987 setting forth general provisions on emissions, quality goals and measuring methods for certain noxious or dangerous substances present in waste water discharges, as implemented by Orders of 13 March, 1989 and 28 June, 1991 and amended by Order dated 25 May, 1992.
5. Royal Decree 258/1989 approving general regulations on discharge of dangerous substances from land to sea, as implemented by Order dated 31 October, 1989 modified by Order of 9 May, 1991 and implemented by Order dated 28 October, 1992.
6. Royal Decree 1088/1992 on Incineration of 'Municipal Waste' (Household and Inert waste) setting forth limits for emissions of certain air pollutants from large incineration facilities.
7. Royal Decree 1217/1997 on Incineration of Dangerous Waste, also amending Royal Decree 1088/1992 on the matter.



Courtesy: Bilderatlas der Tiere

8. Order of 18 April, 1991 approving provisions intended to reduce contamination caused by waste from titanium dioxide industries.
9. Royal Decree 646/1991 updating the emission limits for large combustion facilities.
10. Law 10/1998 on Waste.
11. Royal Decree 833/1988 implementing former Law 20/

1996 on Toxic and dangerous waste to the extent not already repealed by Law 10/1998.

(NOTE: This is an old surviving provision that the government continues to keep in force in spite of the fact that the main legal framework it intended to implement has been completely overhauled.)

12. Order of 29 February, 1989 on Used Oils, as amended by Order of 13 June, 1990.
13. Law 38/1972 on Protection of the Atmospheric Environment.
14. Decree 833/1975 implementing Law 38/1972 as amended in part by Royal Decree 1613/1985 setting forth new provisions on the quality of air contaminated by sulphur dioxide and particles and by Royal Decree 717/1987 setting forth new provisions on the quality of air contaminated by nitrogen dioxide and plumb.
15. Regulations governing limitations of emissions of organic volatile compounds from solvents used in certain industrial activities.
16. Any and all provisions modifying or implementing the above.

### ANNEX 3

#### List of main pollutants to be mandatorily taken into consideration in order to apply emission limits

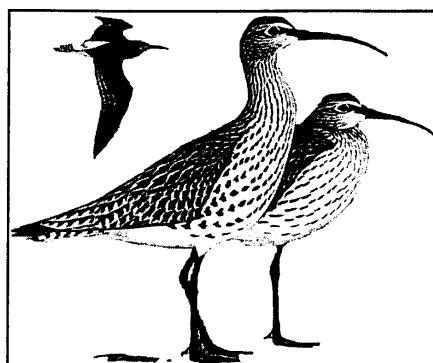
##### Atmosphere

1. Sulphur dioxide and other sulphur compounds
2. Nitrogen Oxide and other nitrogen compounds
3. Carbon Monoxide
4. Volatile Organic Compounds
5. Metals and their Compounds
6. Dusts
7. Asbestos (suspended particles, fibres)
8. Chlorine and its compounds
9. Fluorine and its compounds
10. Arsenic and its compounds
11. Cyanide
12. Substances and preparations having proven carcinogenic or mutagenic effects or capable of affecting reproduction through the atmosphere
13. Polychlorinated benzodioxin and Polychlorodibenzofurans.

##### Water

1. Organic halogenated compounds and substances that may give rise to such compounds in a water environment
2. Organo-Phosphorous Compounds
3. Organic Stannic Compounds
4. Substances and Preparations having proved cancer or mutation-producing effects or capable of affecting reproduction in a water environment or through a water environment
5. Persistent Hydrocarbons and persistent toxic organic substances
6. Cyanides
7. Metals and their compounds
8. Arsenic and its compounds
9. Biocides and Phytosanitary products

10. Suspended materials
11. Eutrophication enhancing substances (in particular, nitrates and phosphates)
12. Substances having an unfavourable impact on the oxygen balance and which are assessable through DBO, DQO and similar parameters



Curlews

Courtesy: IUCN

### ANNEX 4

#### Aspects to be taken into consideration (in either a general manner or in specific cases) at the time of identifying the best available techniques defined in Article 3(n), bearing in mind both the costs and advantages that may derive from an action and the caution and prevention principles

1. Use of reduced waste-producing techniques.
2. Use of less dangerous substances.
3. Development of techniques for the recovery and recycling of substances generated and used in the process, and the resulting waste, if applicable.
4. Comparable Processes, Installations and Operating Methods that may have showed positive results at industry level.
5. Technical advances and developments in scientific knowledge.
6. Nature, effects and volume of the relevant emissions.
7. Date of coming into operation of new or existing installations.
8. Time necessary for the best available technique to be put in place.
9. Level of consumption and kind of raw materials (water included) used in energy efficient processes.
10. Need to foresee or reduce to a minimum the global impact of emissions and risks for the environment.
11. Need to foresee a possible risk of accident or reduce the environmental consequences of the same.

#### Notes

- <sup>1</sup> Official Journal L 257, 10 October 1996.
- <sup>2</sup> Official State Bulletin No. 157, 2 July 2002.
- <sup>3</sup> Official State Bulletin No. 172, 20 July 1999.
- <sup>4</sup> Official State Bulletin No. 285, 27 November 1992.
- <sup>5</sup> Official State Bulletin No. 96, 22 April 1998.
- <sup>6</sup> Official State Bulletin No. 176, 24 July 2001.
- <sup>7</sup> Official State Bulletin No. 181, 29 July 1988.
- <sup>8</sup> Official State Bulletin No. 309, 26 December 1972.

