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# **The IPPC Directive and BAT in a wider context**

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## 1 The Directive as an aspect of the broad IPPC concept

An OECD Monograph (OECD 1991) gave a name to a broad concept, which it illuminated by describing it as a *shift in focus for decision making*:

<u>Away From</u>	<u>Towards</u>
Water	Substance
Air	Source
Land	Region

Since polluting substances move through all the environmental media (water, air and land) controls over one medium alone is likely to be ineffective. A **source** of polluting substances, such as an industrial plant, may emit them to all three media and controls over one medium may just shift them to another medium. A **substance** may need to be controlled at many points as it moves through its commercial or environmental life cycle. Vulnerable **regions** such as a river estuary or confined sea, will accumulate polluting substances that arrive via all media, and effective protection will require controls over all sources initiating diffuse sources.

The IPPC Directive derived its name from OECD but is only concerned with one of these three aspects of the broad concept. The title of the Directive is therefore slightly misleading. The broad concept is of course much older and was well described by President Nixon when he announced the creation of the US Environmental Protection Agency (CEQ 1970). Why the EPA failed to adopt an integrated approach is a story for another day.

## 2 Best for What? - Origins of the IPPC Directive

The need for an EC Directive on "integrated permitting" of industrial plants was one conclusion of a project undertaken between 1986 and 1988 by IEEP and the Conservation Foundation (Washington) that we called "Integrated Pollution Control in Europe and North America". We spoke publicly about the need for such a Directive at the concluding conference in Brussels in November 1988 and referred to it in the resulting book (Haigh and Irwin 1990). We then developed the argument in a report written for DG Environment (IEEP 1989). This reviewed the possibilities for a Community Strategy for integrated (multi-media) pollution control in the light of developments in several Member States and recommended "an integrated permitting Directive as the most fruitful first step". The objective would be to minimise total emissions from an industrial installation and the total impact on the environment i.e. it would be a driver for clean production rather than just for end of pipe technology. It implied a big change from the type of BAT (NEEC) defined in Directive 84/360 which required "best" technology only for preventing air pollution. However the stimulating discussions on the new meaning of BAT (best for what?) only really started once drafting of the Directive began.

Logically the IPPC Directive should have preceded the EMAS Regulation but Commissioner Ripa di Meana believed that environmental auditing was a more exciting driver for integrated environmental protection. Since EMAS inspired ISO 14001 which has been widely adopted throughout the world he may have had a point. There was some resistance to the idea of the IPPC Directive within DGXI particularly from those responsible for water. Interestingly the pressure for the Directive came mostly from those concerned with chemicals policy who had thought most about integrated approaches.

Drafting of the IPPC Directive only started in 1991 when a British expert was sent to DGXI. Although he used the newly adopted UK legislation as a starting point the many differences between the adopted Directive and the UK legislation show that other Member States contributed. There were tensions over the meaning of BAT. One German commentator noted that the "... draft Directive has added a new element to the longstanding divergence between the British and the German approaches to pollution control – a modified version of BAT(NEEC) and environmental quality standards vs. fairly stringent emissions limit values at Community level", (Schnutenhaus 1994).

A new element that has to be recognised is that 'best' for reducing impact on the environment as a whole must take some account of local environmental conditions. 'Best' can therefore vary from place to place. For example where water is in short supply, a water intensive process may not be 'best', whereas it may be where water is plentiful.

### **3 The Directive does not require BREFs - only exchange of information on BAT**

The Directive nowhere mentions "BAT reference documents" (BREFs), but the Sevilla process is a reasonable administrative response to the Articles of the Directive relating to BAT which:

- define BAT – Art, 2 (ii)
- require emission limit values to be based on BAT (for reducing impact on the environment as a whole), but also to take into account geographical location and local environmental conditions – Art 9(4)
- require competent authorities to be informed of developments in BAT – Art II
- require Member States to send the Commission information on emission limit values and, if appropriate, on BAT – Art 16(1)
- require the Commission to organise an exchange of information on BAT and to publish the results – Art 16(2)

#### 4 Will BREFs lead to emission limits in daughter Directives?

The Directive foresees the Community adopting daughter Directives setting emissions limit values (Art. 18) particularly if, as a result of the exchange of information, "the need for Community action has been identified". Will this happen? Nobody can yet know.

Some people, during the negotiations, believed that the exchange of information was intended to lead to daughter Directives (Schnutenhaus 1994). Others see BREFs as a way of avoiding the need for daughter Directives. The same divergence of opinions had arisen over the 'Technical Notes on BATNEEC' that were drafted following Directive 84/360.

If in the future BREFs are found to be perfect and all Member States follow them perfectly, then there should be no need for daughter Directives. This conference may begin to tell us whether it is possible to prepare good BREFs that are relevant in all Member States despite the varied geographical situation in Europe. But even if BREFs are perfect it will be many years before we know whether Member States follow them perfectly. There will be fascinating discussions about whether perfection means 'clean production' or 'no distortion to competition' or both, and what level of imperfection will be tolerated by the public, by environmental NGOs and by industry concerned with distortions to competition. There were always risks in the new approach to BAT since it is more difficult to define than single medium BAT, but I remain convinced that BAT, where 'best' means best for the environment as a whole, is a much better driver for environmental improvement than the BAT or BAT (NEEC) it has replaced.

#### 5 References

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