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Dutch guideline based approach to introduce the BREFs

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Planning and the Environment*

Dutch framework on environmental policy/legislation

- National Environmental Policy Plan
- Environmental Management Act
- Reference documents for guidance
- Covenants
- Emission reductions trading
- (Questions for the European Commission)



Environmental Management Act

- Procedural act (quite similar to IPPC)
- Provides legal basis for:
 - individual permitting
 - decrees (= general binding rules)
 - ALARA (as low as reasonably achievable)
- ALARA: Prevent pollution or, if this is not entirely possible, apply highest level of protection against environmental pollution, unless not reasonable (quite similar to BAT)
- Judge-made law defined freedom ALARA



Court of appeal: judge-made law

- Application of ALARA offers permitting authority some freedom / flexibility
- This freedom is restricted by environmental (including economical) opinions derived from **most recent and general accepted** environmental views, as laid down in guidelines, reference reports, etc
- Guidelines have to be taken into account



Reference document for guidance

- Netherlands Emission Regulations (NeR):
 - issued in 1992
 - principal derived from TA Luft
 - based on ALARA
 - general applicable emission standards
 - specific regulations for specific processes
 - not direct legally binding, but...
 - divergencies justified in recital of permit
 - NeR is pseudo-legislation with flexibility



Position of IPPC BREFs in NL

- NL: IPPC BREFs useful instruments to secure high level of protection of the environment and achieve level playing field
- High level of protection = Focus on “maximal application” of all BAT options
- BREFs are considered “**most recent and general accepted** environmental views, applicable for protection of environment”
 - > automatically applicable ALARA



Practical approach

- BREF compared to NeR specific regulation and other national guidelines
- Cover note to BREF describing differences
- In many (?) cases the NeR specific regulation will be withdrawn
- BREF + cover note will be disseminated to all permitting authorities: “**most recent and general accepted** environmental views”
- BREFs also for OSPAR implementation



Covenants and emission trading

- Covenants include obligation to apply BAT and thus BREFs
- NO_x emission reduction trading:
 - under development
 - most cost effective NO_x reduction
 - NO_x emission standard on plant level in g/GJ
 - all rules and obligations laid down in decree
- Art 9.8 IPPC accepts decrees for implementing BAT



Questions for the Commission

- To what extent is BREF legally binding in IPPC directive?
- How to prevent “minimal” (in stead of “maximal”) application of all BAT options?
- Ideas on enforcement on a European level?

