

IRELAND

Answer to IPPC Questionnaire

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IPPC facility operating without a permit

This is a serious criminal offence. It can be enforced by the EPA or anybody including any NGO if the Minister for the Environment permits this by regulations made under section 11(2) of the Environmental Protection Agency Act 1992. If the facility begins to operate it can be closed by injunction under section 99H of the Environmental Protection Agency Act 1992 as amended.¹ Anybody has a right to seek the injunction even if they have no personal or proprietary interest in the matter.

IPPC permit issued without a required EIA

It is very unlikely that this matter would not be raised in the permitting process.

However, if it is not, the permit can be declared invalid in the High Court.

Anybody including any NGO can initiate the judicial review proceedings

Proceedings challenging the validity of the permit must be brought within 8 weeks otherwise the validity of the permit cannot be challenged under Irish law. However, there are examples of the EC Commission pressurising Ireland to ensure compliance with EC environmental law although the time limits under Irish law for reviewing permits etc had elapsed. There are indications that EC law requires competent authorities to review the permit to ensure that it complies with EC law or take opportunities to ensure compliance with EC law.

There is a recent example of the State supporting an environmentalist who was seeking to enforce EC habitats requirements. See

<http://www.irishtimes.com/newspaper/ireland/2009/0703/1224249969254.html>

Permit permits discharge violating EC water standards

The permit can be declared invalid in the High Court

Anybody including any NGO can initiate the judicial review proceedings

Proceedings challenging the validity of the permit must be brought within 8 weeks otherwise the validity of the permit cannot be challenged under Irish law. Indications that EC law requires competent authorities to review the permit to ensure that it complies with EC law or take opportunities to ensure compliance.

In any enforcement action taken, the enforcer can insist on compliance with EC standards even if they have not become transposed into Irish law.

IPPC permit does not include BAT as required by IPPC Directive

BAT is also an explicit requirement of Irish law

The permit can be declared invalid in the High Court

Anybody including any NGO can initiate the judicial review proceedings

Proceedings challenging the validity of the permit must be brought within 8 weeks otherwise the validity of the permit cannot be challenged under Irish law. Indications

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that EC law requires competent authorities to review permit to ensure that it complies with EC law or take opportunities that may arise to ensure compliance with EC law.

IPPC facility operates in accordance with IPPC permit but competent authority has not reviewed it to ensure compliance with EC law.

Under Irish law, the competent authority has statutory power to review this permit. If it does not do so when it ought to have, any person could seek a judicial review in the High Court requiring the competent authority to review the permit to ensure compliance with EC law. The competent authority would be bound to review under EC law.

If the discharger was prosecuted or sued, he would usually have a defence of complying with the permit in this case.

IPPC facility operates within terms of permit but green house gases exceed limits in ET Directive

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IPPC facility is compliant but causing disturbance of Natura area.

Disturbance could be enforced by the Minister for the Environment under Conservation law which does not make compliance with the permit a defence.

IPPC facility causes environmental damage as defined in ELD.

Operator would be excused from ELD liability if he had complied with his permit. The exemption is a little narrower than stated in the directive. However, if he could not avail of compliance with his permit or other statutory defence, he could be liable under a whole range of pollution and conservation laws and at common law.

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