

L.N. 9 of 2013**ENVIRONMENT AND DEVELOPMENT PLANNING ACT
(CAP. 504)****Industrial Emissions (Framework) Regulations, 2013**

BY VIRTUE of the powers conferred by articles 2, 61, 64 and 66 of the Environment and Development Planning Act, the Minister for Tourism, Culture and the Environment, in consultation with the Malta Environment and Planning Authority, has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the Industrial Emissions (Framework) Regulations, 2013.

(2) These regulations shall be deemed to have come into force on the 7 January 2013.

Scope.

2. (1) These regulations provide for the implementation in part of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on Industrial Emissions (Integrated Pollution Prevention and Control) (Recast).

(2) These regulations also provide a framework for the integrated prevention and control of pollution arising from industrial activities. They also lay down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment taken as a whole.

Additional regulations.

3. The Minister responsible for the environment shall make additional regulations for the implementation of these regulations, in particular to define the industrial activities regulated by these regulations and the means by which they shall be regulated.

Industrial activities.

4. (1) These regulations shall apply to industrial activities giving rise to pollution as may be prescribed by the Minister by means of regulations.

(2) These regulations shall not apply to research activities, development activities or the testing of new products and processes.

Interpretation.

5. In these regulations unless the context otherwise requires:

"baseline report" means information on the state of soil and groundwater contamination by relevant hazardous substances;

"BAT conclusions" means a document containing the parts of a BAT reference document laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures;

"BAT reference document" means a document, resulting from the exchange of information organised pursuant to Article 13 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on Industrial Emissions, drawn up for defined activities and describing, in particular, applied techniques, present emissions and consumption levels, techniques considered for the determination of best available techniques as well as BAT conclusions and any emerging techniques, giving special consideration to the criteria listed in Annex III of that Directive;

"best available techniques" or "BAT" means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:

(a) "techniques" includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;

(b) "available techniques" means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside Malta, as long as they are reasonably accessible to the operator;

(c) "best" means most effective in achieving a high general level of protection of the environment as a whole;

"biomass" means any of the following:

(a) products consisting of any vegetable matter from agriculture or forestry which can be used as a fuel for the purpose of recovering its energy content;

(b) the following waste:

(i) vegetable waste from agriculture and forestry;

(ii) vegetable waste from the food processing industry, if the heat generated is recovered;

(iii) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered;

(iv) cork waste;

(v) wood waste with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coating and which includes, in particular, such wood waste originating from construction and demolition waste;

S.L. 504.70 "coating" means coating as defined in regulation 2 of the Limitation of Emissions of Volatile Organic Compounds (Paints, Varnishes and Vehicle Refinishing Products) Regulations;

"combustion plant" means any technical apparatus in which fuels are oxidised in order to use the heat thus generated;

S.L. 504.34 "competent authority" means the Malta Environment and Planning Authority as prescribed by the Nomination of the Malta Environment and Planning Authority Order, and such other body or person as the Minister responsible for the environment may by order in the Gazette prescribe and different bodies or persons may be designated as the competent authority for different provisions and different purposes of these regulations;

"diesel engine" means an internal combustion engine which operates according to the diesel cycle and uses compression ignition to burn fuel;

"dioxins and furans" means all polychlorinated dibenzo-p-dioxins and dibenzofurans listed in the Schedule;

"emerging technique" means a novel technique for an industrial activity that, if commercially developed, could provide either a higher general level of protection of the environment or at least the same level of protection of the environment and higher cost savings than existing best available techniques;

"emission" means the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into air, water or land;

"emission levels associated with the best available techniques" means the range of emission levels obtained under normal operating conditions using a best available technique or a combination of best available techniques, as described in BAT conclusions, expressed as an average over a given period of time, under specified reference conditions;

"emission limit value" means the mass, expressed in terms of certain specific parameters, concentration and, or level of an emission, which may not be exceeded during one or more periods of time;

"environmental inspection" means all actions, including site visits, monitoring of emissions and checks of internal reports and follow up documents, verification of self monitoring, checking of the techniques used and adequacy of the environment management of the installation, undertaken by or on behalf of the competent authority to check and promote compliance of installations with their permit conditions and, where necessary, to monitor their environmental impact;

"environmental quality standard" means the set of requirements which must be fulfilled at a given time by a given environment or particular part thereof, as set out in national or European Union legislation;

"flue" means a compartment or division of a stack for conveying waste gases from the combustion plant to the outer air;

"fuel" means any solid, liquid or gaseous combustible material;

"gas engine" means an internal combustion engine which operates according to the Otto cycle and uses spark ignition or, in case of dual fuel engines, compression ignition to burn fuel;

"gas turbine" means any rotating machine which converts thermal energy into mechanical work, consisting mainly of a compressor, a thermal device in which fuel is oxidised in order to heat the working fluid, and a turbine;

"general binding rules" means emission limit values or other conditions, at least at sector level, that are adopted with the intention of being used directly to set permit conditions;

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"groundwater" means groundwater as defined in regulation 2 of the Protection of Groundwater against Pollution and Deterioration Regulations;

"hazardous substances" means substances or mixtures as defined in Article 3 of Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures;

S.L. 504.37

"hazardous waste" means hazardous waste as defined in regulation 4 of the Waste Regulations;

"indigenous solid fuel" means a naturally occurring solid fuel fired in a combustion plant specifically designed for that fuel and extracted locally;

"installation" means a stationary technical unit within which one or more activities listed in the regulations concerning integrated pollution prevention and control or in the regulations concerning organic solvents are carried out, and any other directly associated activities on the same site which have a technical connection with these activities and which could have an effect on emissions and pollution;

"mixed municipal waste" means waste from households as well as commercial, industrial and institutional waste which, because of its nature and composition, is similar to waste from households, but excluding fractions indicated under heading 20 01 of the Annex to Decision 2000/532/EC that are collected separately at source and excluding the other waste indicated under heading 20 02 of that Annex;

"multi-fuel firing combustion plant" means any combustion plant which may be fired simultaneously or alternately by two or more types of fuel;

"nominal capacity" means the sum of the incineration capacities of the furnaces of which a waste incineration plant or a waste co-incineration plant is composed, as specified by the constructor and confirmed by the operator, with due account being taken of the calorific value of the waste, expressed as the quantity of waste incinerated per hour;

"operating hours" means the time, expressed in hours, during which a combustion plant, in whole or in part, is operating and discharging emissions into the air, excluding start-up and shut-down periods;

"operator" means any natural or legal person who operates or controls in whole or in part the installation or combustion plant, waste incineration plant or waste co-incineration plant, or to whom decisive economic power over the technical functioning of the installation or plant has been delegated;

"organic compound" means any compound containing at least the element carbon and one or more of hydrogen, halogens, oxygen, sulphur, phosphorus, silicon or nitrogen, with the exception of carbon oxides and inorganic carbonates and bicarbonates;

"organic solvent" means any volatile organic compound which is used for any of the following:

- (a) alone or in combination with other agents, and without undergoing a chemical change, to dissolve raw materials, products or waste materials;
- (b) as a cleaning agent to dissolve contaminants;
- (c) as a dissolver;
- (d) as a dispersion medium;
- (e) as a viscosity adjuster;
- (f) as a surface tension adjuster;
- (g) as a plasticiser;
- (h) as a preservative;

"permit" means a written authorisation to operate all or part of an installation or combustion plant, waste incineration plant or waste co-incineration plant;

"pollution" means the direct or indirect introduction, as a result of human activity, of substances, vibrations, heat or noise into air, water or land which may be harmful to human health or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment;

"poultry" means poultry as defined in point 1 of Article 2 of Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra Community trade in, and imports from third countries of, poultry and hatching eggs;

"the public" means one or more natural or legal persons and, in

accordance with national law or practice, their associations, organisations or groups;

"the public concerned" means the public affected or likely to be affected by, or having an interest in, the taking of a decision on the granting or the updating of a permit or of permit conditions; for the purposes of this definition, non governmental organisations promoting environmental protection and meeting any requirements under national law shall also be deemed to have an interest;

"rate of desulphurisation" means the ratio over a given period of time of the quantity of sulphur which is not emitted into air by a combustion plant to the quantity of sulphur contained in the solid fuel which is introduced into the combustion plant facilities and which is used in the plant over the same period of time;

S.L. 423.22 "small isolated system" means a small isolated system as defined in regulation 2 of the Electricity Market Regulations;

"soil" means the top layer of the Earth's crust situated between the bedrock and the surface. The soil is composed of mineral particles, organic matter, water, air and living organisms;

"stack" or "chimney" means a structure rising above roof level containing one or more flues providing a passage for waste gases in order to discharge them into the air;

"substance" means any chemical element and its compounds, with the exception of the following substances:

S.L. 365.15 (a) radioactive substances as defined in regulation 3 of the Nuclear Safety and Radiation Protection Regulations;

S.L. 504.86 (b) genetically modified micro-organisms as defined in regulation 3 of the Contained Use of Genetically Modified Micro-organisms Regulations;

S.L. 504.101 (c) genetically modified organisms as defined in regulation 2 of the Deliberate Release into the Environment of Genetically Modified Organisms Regulations;

"substantial change" means a change in the nature or functioning, or an extension, of an installation or combustion plant, waste incineration plant or waste co-incineration plant which may have significant negative effects on human health or the environment;

"volatile organic compound" means any organic compound as well as the fraction of creosote, having at 293.15 K a vapour pressure

of 0.01 kPa or more, or having a corresponding volatility under the particular conditions of use;

"waste" means waste as defined in regulation 4 of the Waste Regulations; S.L. 504.37

"waste co-incineration plant" means any stationary or mobile technical unit whose main purpose is the generation of energy or production of material products and which uses waste as a regular or additional fuel or in which waste is thermally treated for the purpose of disposal through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;

"waste incineration plant" means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of waste, with or without recovery of the combustion heat generated, through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated.

6. (1) No installation, combustion plant, waste incineration plant or waste co-incineration plant shall be operated without a permit from the competent authority: Obligation to hold a permit.

Provided that, by way of derogation, and subject to any other applicable regulations, the competent authority may require the registration of certain or all installations covered only by regulations relating to the limitation of emissions of volatile organic compounds. In such cases, the type of installations requiring registration shall be published by the competent authority on its website. Operators of such installations shall be required to apply for registration with the competent authority using the application forms published by the competent authority on its website.

(2) (a) A permit may cover two or more installations or parts of installations operated by the same operator on the same site.

(b) Where a permit covers two or more installations, it shall contain conditions to ensure that each installation complies with the requirements of these regulations.

(3) A permit may cover several parts of an installation operated by different operators. In such cases, the permit shall specify the responsibilities of each operator.

Granting of a permit.

7. (1) Without prejudice to other national or European Union legislation, the competent authority shall grant a permit if the installation complies with the requirements of these regulations.

(2) Where more than one competent authority or more than one operator is involved or more than one permit is granted, the Malta Environment and Planning Authority shall take the measures necessary to ensure that the conditions of, and the procedures for granting of, the permit are fully coordinated, in order to guarantee an effective integrated approach by all authorities competent for this procedure.

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(3) In the case of a new installation or a substantial change which requires an environmental impact assessment under the Environmental Impact Assessment Regulations, any relevant information obtained or conclusion arrived at pursuant to the Environmental Impact Assessment Regulations shall be examined and used for the purposes of granting the permit.

General binding rules.

8. (1) Without prejudice to the obligation to hold a permit, the competent authority may include requirements for certain categories of installations, combustion plants, waste incineration plants or waste co-incineration plants in general binding rules.

(2) General binding rules shall be considered to have been formally adopted when the competent authority publishes them on its website.

(3) Where general binding rules are adopted, the permit may simply include a reference to such rules.

Incidents and accidents.
S.L. 504.85

9. Without prejudice to the Prevention and Remedying of Environmental Damage Regulations, in the event of any incident or accident significantly affecting the environment:

(a) the operator shall inform the competent authority immediately;

(b) the operator shall immediately take measures to limit the environmental consequences and to prevent further possible incidents or accidents;

(c) the competent authority may require the operator to take any appropriate complementary measures that the competent authority considers necessary to limit the environmental consequences and to prevent further possible incidents or accidents.

10. (1) The operator shall take the necessary measures to ensure that the permit conditions are complied with. Non-compliance.

(2) In the event of a breach of the permit conditions:

(a) the operator shall immediately inform the competent authority;

(b) the operator shall immediately take the measures necessary to ensure that compliance is restored within the shortest possible time;

(c) the competent authority may require the operator to take any appropriate complementary measures that the competent authority considers necessary to restore compliance:

Provided that if the operator fails to comply, the competent authority may itself take the appropriate complementary measures, defraying the expenses incurred out of the financial guarantee:

Provided further that the competent authority may bring into effect any punitive measures deemed necessary, including confiscation of all or part of the financial guarantee:

Provided that if the cost of these measures exceeds the financial guarantee, the operator shall bear the additional costs.

Such action by the competent authority shall be without prejudice to regulations 17, 18 and 19.

(3) Where the breach of the permit conditions poses an immediate danger to human health or threatens to cause an immediate significant adverse effect upon the environment, and until compliance is restored in accordance with sub-regulation (2)(b) and (c), the operation of the installation, combustion plant, waste incineration plant or waste co-incineration plant or relevant part thereof shall be suspended.

11. Operators shall keep all raw data and reports related to these regulations for at least three years, and make these available to the competent authority on request. Keeping of raw data and reports.

12. (1) Where emissions of a greenhouse gas from an installation are specified in Annex I to the European Community Greenhouse Gas Emissions Trading Scheme Regulations, in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas, unless necessary to ensure that no significant local pollution is caused. Emission of greenhouse gases. S.L. 504.66

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(2) For activities listed in Annex I to the European Community Greenhouse Gas Emissions Trading Scheme Regulations, the competent authority may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site.

(3) Where necessary, the competent authorities shall amend the permit as appropriate.

Fees and financial provisions.

13. (1) Applications for a permit (including for the variation, transfer, renewal or surrender thereof) shall be accompanied by such a fee as may be from time to time prescribed by the competent authority.

(2) The competent authority shall charge an annual fee payable on the anniversary of the date of issue of the permit. All inspection costs shall be added to the annual fee according to the standard rate charged by the competent authority. The cost of any consultancy services engaged by the competent authority to obtain specialised expertise on specific applications or to assist the authority in compliance auditing shall be borne by the applicant, and added to the annual fee.

(3) The competent authority may also require the provision by the operator of a suitable financial guarantee to be made in favour of the competent authority to secure the obligations under the permit before the permit is issued. The financial guarantee may also be tied to specific requirements in the permit.

(4) The competent authority shall not process any application for a permit or render any other service if the fees relative to a previous or the current permit or service given to the same person or in respect of a site or any technically connected site have not been paid in full.

Competent authority exempt from civil liability.

14. The competent authority shall be exempt from civil liability for anything done reasonably and in good faith in the execution of its duties under these regulations.

Legal responsibility.

15. (1) An operator shall be legally responsible and accountable to ensure that the operation of the installation, combustion plant, waste incineration plant or waste co-incineration plant for which he has been granted a permit is carried out in accordance with these regulations and with any conditions stipulated in the permit. Employees of a permit holder shall be authorised to undertake operation of the installation under these regulations by virtue of their employer's permit, provided that they are acting on their employer's behalf and they are acting within the remit of their

employer's permit and are in observance of the terms, conditions and rules attached thereto and these regulations in general.

(2) Employees of a permit holder shall be deemed to be acting on their employer's behalf unless the contrary is proved.

16. Operators of installations shall comply with the conditions of the permit. Compliance with the permit.

17. Any person shall be guilty of an offence under these regulations if: Offences.

(a) he fails to comply with any provision of these regulations or fails to comply with permit conditions or with any order lawfully given in terms of any provision of these regulations; or

(b) he contravenes any restriction, prohibition or requirement imposed by or under these regulations; or

(c) he acts in contravention of any of the provisions of these regulations; or

(d) he conspires or attempts, or aids, or abets, any other person by whatever means, including advertising, counselling or procurement to contravene the provisions or to fail to comply with any such provisions, including any order lawfully given in terms of any of the provisions of these regulations, or to contravene any restriction, prohibition or requirement imposed by or under the said regulations.

18. Any person who commits an offence under these regulations shall, on conviction, be liable: Penalties.

(a) on a first conviction to a fine (*multa*) of not less than twenty-three thousand euro (€23,000.00) and not greater than two hundred and thirty-three thousand euro (€233,000.00) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment;

(b) on a second or subsequent convictions, to a fine (*multa*) of not less than forty-six thousand euro (€46,000.00) and not greater than four hundred and sixty six thousand euro (€466,000.00) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment:

Provided that whenever any person is found guilty of committing an offence under these regulations by means of a vehicle,

the owner of the said vehicle, where applicable, is held liable in the same manner and degree:

Provided further that the court shall order any person who has been found guilty of committing an offence against these regulations to pay for the expenses incurred by the competent authority as a result of the said offence, the revocation of the permit issued by the competent authority and the confiscation of the *corpus delicti*, including the vehicle, if applicable.

Applicability of
the Criminal
Code.
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19. (1) The provisions of articles 23 and 30 of the Criminal Code shall, *mutatis mutandis*, apply to proceedings in respect of offences against these regulations, so however that the disqualification from holding or obtaining a licence, permit or authority shall in no case be for less than one year.

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(2) Notwithstanding the provisions of article 370 of the Criminal Code, proceedings for an offence against these regulations shall be held before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts of criminal judicature.

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(3) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) in respect of proceedings for any offence against these regulations.

SCHEDULE

Equivalence factors for dibenzo-p-dioxins and dibenzofurans

For the determination of the total concentration of dioxins and furans, the mass concentration of the following dibenzo-p-dioxins and dibenzofurans shall be multiplied by the following equivalence factors before summing:

	Toxic equivalence factor
2,3,7,8 – Tetrachlorodibenzodioxin (TCDD)	1
1,2,3,7,8 – Pentachlorodibenzodioxin (PeCDD)	0.5
1,2,3,4,7,8 – Hexachlorobenzodioxin (HxCDD)	0.1
1,2,3,6,7,8 – Hexachlorobenzodioxin (HxCDD)	0.1
1,2,3,7,8,9 – Hexachlorobenzodioxin (HxCDD)	0.1
1,2,3,4,6,7,8 – Heptachlorodibenzodioxin (HpCDD)	0.01
Octachlorodibenzodioxin (OCDD)	0.001
2,3,7,8 – Tetrachlorodibenzofuran (TCDF)	0.1
2,3,4,7,8 – Pentachlorodibenzofuran (PeCDF)	0.5
1,2,3,7,8 – Pentachlorodibenzofuran (PeCDF)	0.05
1,2,3,4,7,8 – hexachlorodibenzofuran (HxCDF)	0.1
1,2,3,6,7,8 – hexachlorodibenzofuran (HxCDF)	0.1
1,2,3,7,8,9 – hexachlorodibenzofuran (HxCDF)	0.1
2,3,4,6,7,8 – hexachlorodibenzofuran (HxCDF)	0.1
1,2,3,4,6,7,8 – Heptachlorodibenzofuran (HpCDF)	0.01
1,2,3,4,7,8,9 – Heptachlorodibenzofuran (HpCDF)	0.01
Octachlorodibenzofuran (OCDF)	0.001

