**European Environmental Bureau**

**Split views – LCP BREF Review**

**Consolidated BAT conclusions circulated 21/10/2015**

***This set of Split views is additional to those provided by the EEB to the Final TWG meeting and webinar and those marked as “to be confirmed” are indeed confirmed.***

**Practical suggestions (not per se split views)**

**Item 1 BAT conclusion/BAT-AEL to which the split view refers to:** ALL

**Practical suggestion submitted by:** European Environmental Bureau

**Proposal:**

* All combustion plants / units meeting the BAT-AE(P)L or that have been used as a basis for derivation should be explicitly named in the Final LCP BREF (e.g. in the Appendix 13.1) where the following should be specified (relevant to the parameter considered): name and identifier of the LCP concerned (e.g. E-PRTR plant code) with location, emission levels achieved, commissioning date, date of first operation of the combustion plant, latest retrofit date for the techniques affecting the parameter, type of boiler.
* If the previous point is not taken up in full please add: “*Please contact the EEB office* [*www.eeb.org*](http://www.eeb.org) *to get more information on the reference plants meeting those levels*”

**Rationale:**

This practical suggestion is supported by the following rationale

* Increased transparency on technical basis of the revised LCP BREF
* Permit writers need to be able to contact colleagues of permitting authorities where the reference plants meeting the BAT-AE(P)L concerned are located / the operators of reference plants in case they need more background information on how these environmental performance benchmarks have been met
* The EEB is willing to provide support to permit writers in need of finding additional information in order to strengthen environmental performance.

**References**

This split view is based on the following information already made available to the EIPPCB at the time of drafting the conclusions on BAT for the BREF or has been provided within the commenting period corresponding to such a draft:

* *Appendix 13.1 of Draft 1 LCP BREF (currently empty)*
* *BREF review rules section 2.3.7.2.9 and section 5.3*

**BAT conclusion/BAT-AEL to which the split view refers to:** Definition of “combustion plant” (EIPPCB consolidated conclusions 21/10/2015, Slide 24, second bullet point)

**Split view submitted by:** European Environmental Bureau

**Proposal:**

* Delete : “which have been granted a permit for the first time on or after 1st July 1987, or for which the operators have submitted a complete application for a permit on or after that date,”
* Delete: “and economic ”
* Add: “***The public participation procedure set out in Annex IV of the IED shall apply in relation to the decision making of the competent authority”***
* Add: “***For the purpose of these BAT conclusions an installation on the same site which has a technical connection and which could have an effect on emissions and pollution (e.g. abatement techniques implemented at the combustion plant) shall be considered as integral part of the combustion plant”***

Text as proposed : *“separate combustion plants ~~which have been granted a permit for the first time on or after 1st July 1987, or for which the operators of which have submitted a complete application for a permit on or after that date,~~ which are installed in such a way that, taking technical ~~and economic~~ factors into account, their flue-gases could, in the judgment of the competent authority, be discharged through a common stack whose flue-gases are or could be discharged through a common stack shall be considered as a single combustion plant.* ***The public participation procedure set out in Annex IV of the IED shall apply in relation to the decision making of the competent authority.*** *For calculating the total rated thermal input of such a combination, the capacities of all individual combustion plants concerned, which have a rated thermal input of at least 15MWth, shall be added.* ***For the purpose of these BAT conclusions an installation on the same site which has a technical connection and which could have an effect on emissions and pollution (e.g. abatement techniques implemented at the combustion plant) shall be considered as integral part of the combustion plant”***

**Rationale:**

This split view is supported by the following rationale …

* The aggregation rule relates to applicability questions in regards to setting minimum binding ELVs pursuant to Chapter III of the IED negotiated in co-decision whilst the BAT-AE(P)L derivation is (supposed to be) based on technical facts brought forward in the information exchange . The scope of the LCP BREF is based on Annex I.1 of the IED which refers to “combustion of fuels ***in installations with a total thermal input*** of 50MW or more”. Unlike Article 29, that provision does not exclude pre 1987 permitted installations/plants or introduce subjective conditions linked to economics or technical considerations or case by case decisions by permit writers. Consistency with a politically negotiated provision (Article 29) a) serving a different purpose and b) enabling arbitrary decision making c) and unlevel playing field for industry is therefore counter-productive to the specific purpose of the BREF
* the questionnaires should be checked on whether there are certain cases where separate combustion plants (installations) of a lower size category (50/100/300MWth) operate as a unit (higher size category) and whether the permit date (after /prior to 1987) has any technical relevance. If that is not the case than this differentiation should be removed.
* In our view it is irrelevant on WHEN the separate combustion plants have been permitted as long as the BAT emission levels are effectively met. This would provide for consistency with Annex I.1 of the IED (the proper basis for setting the scope of the BREF) which does not differentiate between permit dates (pre / post 1987)
* Combustion plants pre-dating 1987 should be considered as “effectively closed” combustion plants as by 2021 when the revised BAT conclusions will apply, since these would by then exceed their commercial lifetime. It would be perverse to give them special (laxist) treatment on top of this through the revised BAT conclusions setting “state of the art” performance which would apply for the next decade (2021-2030)
* It should not be an economic issue to install and connect flue gas tubes to inlet of abatement techniques installed on the same site, this is a simple plumbing exercise (unlike for refineries)
* The implications of the decision by the competent authority in relation to the aggregation of separate plants is very high (leading to different ELVs). The operation of combustion plants with heat input exceeding 50MWth are considered as having “significant effects” on the environment for which public participation is mandatory in accordance to the Aarhus Convention (Article 6). Public participation is not explicitly foreseen in Article 29 (nor Article 24 of the IED) when competent authorities need to make this judgement which can have far reaching consequences. We therefore propose this clarification to support compliance with the Aarhus Convention the Member States and the EU is bound to apply in any case
* The explicit inclusion of “*installation on the same site which has a technical connection and which could have an effect on emissions and pollution (e.g. abatement techniques implemented at the combustion plant) shall be considered as integral part of the combustion plant”* is very important for the practical impact and added value of the revised BAT-C (see EEB split view on “new”/existing plants). The precise terms used in the definition have far reaching consequences in terms of effective environmental performance. A Large Combustion Plant is much more than a boiler/turbine/engine and environmental performance is improved by the abatement techniques or other installations at the same site with technical connection which are not themselves defined as “combustion plant” (boiler/engine/turbine). Significant emission reductions are achieved without boiler/engine/turbine change e.g. in case of replacement of abatement installations such as FGD units or systems / new dust filter types which are not themselves defined as a “combustion plant” according to the currently used definition but significantly affect environmental performance of the LCP (the whole installation). These elements should be considered since it is the uptake of the level of performance standards that is at stake here. Whilst boiler types indeed have implications on performance levels on certain parameters (e.g. NOx formation, energy efficiency) that is clearly not the case for SOx, dust and hg controls or water emissions. The abatement techniques form integral part of the combustion plant but are currently completely ignored when it comes to effective implementation requirements. *(see rationale in split view on new/existing plants)*

**References**

This split view is based on the following information already made available to the EIPPCB at the time of drafting the conclusions on BAT for the BREF or has been provided within the commenting period corresponding to such a draft:

* *New text has been proposed following discussion on the “aggregation rule”*
* Annex I point 1.1 of the IED (2010)
* Aarhus Convention (1998) Article 6 and Annex I
* *D1 comments of EEB in relation to definition of “new/existing” plant*
* *EEB letter to Commissioners of 23 March 2015*
* *G1 EEB response to the Background Paper*
* *Proposals reiterated by the EEB at the Final TWG meeting*

**BAT conclusion/BAT-AEL to which the split view refers to:** Definition of “operated hour” (EIPPCB consolidated conclusions 21/10/2015, Slide 11)

**Split view submitted by:** European Environmental Bureau

**Proposal:**

* Delete: “excluding start-up and shut-down periods”.

**Rationale:**

This split view is supported by the following rationale …

* Common sense should be preserved at least in the BAT-C, even if political negotiations during the IED have led to a different approach for specific derogatory operation modes for Large Combustion Plants. Article 3(27) of the IED effectively excludes start up and shut down periods in the definition of “operating hours” for combustion plants. This compromise has been retained for the purpose of calculation of hours used for the Article 33 Limited Lifetime Derogation (LLD) of the IED where the term “operating hours” is used. The European Commission can easily check this in the 4th column documents for the Trialogues
* the practical implications are very limited since those LLD plants would have either used up their “operating hours” or would stop operation under this derogatory regime by 2024 in any case. This specific derogation is linked to derogations from the EU Safety net ELVs and in no case can be considered as combustion plants operating in accordance to BAT (in fact these plants do not even meet the LCP 2006 BREF). Further it is not clear what the purpose of inclusion of this definition in the BAT-C should serve
* Chapter II of the IED, which is the only relevant provision for BAT based permitting, differentiates between “normal operating conditions” and “not normal operating conditions”. Obviously a combustion plant is discharging emissions into the air during start up and shut down periods (as provided by the German delegation the emissions during start up periods are in fact much higher compared to “normal operation”). It is absurd to claim the opposite and we cannot sign up to such a blatant case of nonsense. If that is not the case the EEB we would very much welcome this, however we see not any technique or technical facts described in the revised LCP BREF which demonstrate that combustion plants manage to discharge 0 emissions into the air during those periods. EU citizens should have confidence in EU decision making, this provision is just doing the opposite and harms the credibility of the Sevilla Process especially since this definition serves no purpose.

**References**

This split view is based on the following information already made available to the EIPPCB at the time of drafting the conclusions on BAT for the BREF or has been provided within the commenting period corresponding to such a draft:

* *D1 submissions by the EEB not to consider combustion plants operating under Chapter III derogations*
* *Data submitted by Germany on higher emissions occurring during start up (BATIS)*
* *EEB/Greenpeace May 2015 Health and Economic Implications of Alternative Emission Limits for coal-fired power plants in the EU*

**BAT conclusion/BAT-AEL to which the split view refers to:** Definition of “new” plant

(EIPPCB consolidated conclusions 21/10/2015, Slide 14)

**Split view submitted by:** European Environmental Bureau

**Proposal:**

**Initial proposal (option 1):**

Amend definition of “new plant” to: “*a combustion plant first permitted* ***after 7 January 2013******or that submitted a complete permit application provided it went into operation after 7 January 2014*** *or a ~~complete~~ replacement of a combustion plant on the existing foundations of the installation****, or replacement of an installation on the same site which has a technical connection and which could have an effect on emissions and pollution*** *following the publication of these BAT conclusions,* ***or obtained a construction permit following the publication of these BAT conclusions.”***

**Updated Proposal 2 (following to compiled draft BAT-C)**

* Amend definition of “new plant” to: “*a combustion plant first* ***operated******at the installation******following the publication of these BAT conclusions*** *or a ~~complete~~ replacement of a combustion plant on the existing foundations of the installation****, or replacement of an installation on the same site which has a technical connection and which could have an effect on emissions and pollution*** *following the publication of these BAT conclusions.”*
* *Introduce clarifications in Chapter 10 that for “new plants”:* ***“The BAT conclusions apply from the date of the publication of these BAT conclusions****”.*

**Rationale:**

This split view is supported by the following rationale …

* As it stands, the standards for “new plants” will only apply effectively to combustion plants that have been permitted after the publication of the BAT conclusions i.e. not likely prior to Q1 2017? or even later if further delays for publication would occur. This provision effectively promotes the status quo in environmental performance for existing plants (in the sense of energy generation through combustion in installations above a certain threshold) which concerns roughly 98% of all coal/lignite plants for the decades to come
* the cut-off date refers to when a “combustion plant” has been permitted which are to be understood as boilers i.e. “*Any technical apparatus in which fuels are oxidised in order to use the heat thus generated*”. This would mean that the EIPPCB assumes that the only relevant parameter to consider in relation to differentiating the stricter BAT benchmarks (“new” plant standards) from the laxist BAT-C standards (“existing” plants) is the first permit date / replacement date of a boiler/turbine/engine. The precise terms used in these definitions have far reaching consequences in terms of effective environmental performance. A Large Combustion Plant is much more than a boiler and environmental performance is improved by the abatement techniques or other installations at the same site with technical connection which are not themselves defined as “combustion plant” (boiler/engine/turbine). Significant emission reductions are achieved without boiler/engine/turbine change e.g. in case of replacement of abatement installations such as FGD units or systems / new dust filter types which are not themselves defined as a “combustion plant” according to the currently used definition but significantly affect environmental performance of the LCP. These elements should be considered since it is the uptake of the level of performance standards that is at stake here. Whilst boiler types and age indeed has implications on performance levels on certain parameters (e.g. NOx formation, energy efficiency) that is clearly not the case for SOx, dust and hg controls or water emissions. We expect that most of the boiler modifications (primary measures) already took place to meet the 2006 LCP BREF. At least that is the case for EU lignite plants
* the proposed additions are also in line with the wording used in Annex I point 1.1 which refers to “installations” which includes more than just combustion plants (boiler/engine/turbine) and are much more outcome oriented in line with the BREF aims to promote environmental performance
* all BAT-AE(P)L proposed for “”new” plants are in fact met by plants that have been commissioned at latest in 2012 (HFO), 2010 (coal) , 2011 (natural gas) but also much older plants (e.g. ref plant 668 already meeting the “new” standards), which are de facto “existing” plants and permitted as such. The only exception is for the non-binding energy efficiency BATAE(P)L where more recent plants (2014) have been put forward to derive performance benchmarks for “new” units. It is more relevant to consider the first date of operation to reflect better factual accuracy since permit procedures can take considerable time and only reflect legal obligations set by EU/national law and not what techniques can achieve
* There is no technical basis behind using the permit date as the relevant cut off to differentiate “new” plants from “existing” ones
* Further it is not explicit if that refers to “operating permit” or other type of permit which supports a situation of legal uncertainty should be prevented and not in line with the better regulation agenda. In practice this provisions invites for “cheating” by competent authorities, where plants not even in operation / in construction would be granted a (operating) permit prior to publication on paper just so they can operate in accordance to the laxist “existing” plants standards of the BAT-C as from 2021 up to the 2030ies (this is not fictional claim, the European Commission has been alerted on this point by Greenpeace and the EEB). A cut off date relating to first effective operation date taking place after the publication of the BAT conclusions is therefore more straightforward. Operators of plants under construction are perfectly aware of the revised LCP BREF BAT-C requirements
* The trigger to apply the “new” BAT-C is only if a “complete replacement” (of a combustion plant) takes place. This is arbitrarily chosen and excessive and out of touch with reality since minor upgrades at boiler level or implementation / upgrades of abatement techniques that are not at all related to the combustion plant (e.g. SOx, hg, dust abatement) can achieve the same level of performance. What would a “complete” replacement entail?
* The legal definition of the IED with a clear cut off date of 7 January 2013 pursuant to Article 30 should be used instead (option 1). One must assume that the Member States have correctly transposed the IED which specified this cut off date for differentiating “new” from “existing” combustion plants for the purpose of implementing Chapter III of the IED. It would not be useful to introduce another different definition of what is “new” in the meaning of compliance of the BAT-C. We assume that any plant that went into operation after 7 January 2013 already meets the “new” LCP BAT-C anyways so there is no practical problem to use this approach
* A cut off date based on first date of operation has also been used in other BAT-C (e.g. Chlor-Alkali BREF) even if that definition is far from adequate (based on other points made here)
* In practical and legal terms it is not clear for “new” plants by when they need to comply with the revised BAT-C. Article 21(3) of the IED provides for a maximum 4 years deadline for compliance with the updated BAT-C. One may argue that in practice and from logical point of view the “new” plants standards would apply from publication date of the LCP BAT-C at the latest, but this is unfortunately not legally required (whilst it is for compliance with part 2 Annex V ELVs which however is not BAT). The EEB therefore proposes to be crystal clear that for “new” installations / combustion plants the requirements of the “new BAT-C” effectively apply at the latest from the publication date, to prevent perverse situations of operating permits setting out emission levels of the “existing plants” standards from 2017-2021 as an interim period to exploit the legal uncertainty created by inadequate definitions of the revised LCP BREF. *This is a critical issue which deserves to be addressed at the IED Forum level as well.*

**References**

This split view is based on the following information already made available to the EIPPCB at the time of drafting the conclusions on BAT for the BREF or has been provided within the commenting period corresponding to such a draft:

* *D1 comments of EEB in relation to definition of “new/existing” plant*
* *EEB letter to Commissioners of 23 March 2015*
* *G1 EEB response to the Background Paper*
* *Proposals reiterated by the EEB at the Final TWG meeting (08/06/2015) in BATIS*
* *Health and Economic Implications of Alternative Emission Limits for coal-fired power plants in the EU*

**BAT conclusion/BAT-AEL to which the split view refers to:** General issues; (EIPPCB revised Updated draft LCP BAT conclusions page 10 and consolidated conclusions 21/10/2015, Slide 19)

**Split view submitted by:** European Environmental Bureau

**Proposal:**

* Keep : “*Where emission levels associated with the best available techniques (BAT-AEL) are given for different averaging periods, all of those BAT-AELs apply*”.

**Rationale:**

This split view is supported by the following rationale

* This provision is to be kept for implementation purposes and effectiveness of the revised BAT-C. The EEB has focussed on the BAT-AEL referred to as yearly averages and we cannot accept that competent authorities can choose to ignore these by complying with the higher / more laxist daily averaged BAT-AEL ranges instead
* It has been a common understanding by TWG members that both averaging periods apply, we cannot accept this sudden change of approach.
* More clarity is always welcome when the objective is to promote harmonised implementation and prevent exploitation of vagueness on how BAT-C need to be implemented. The removal of this important statement is just serving those parties that exploit flexibility in order to downgrade environmental standards
* this provision has also been taken up in other BAT conclusions (e.g. Pulp and Paper);

**References**

This split view is based on the following information already made available to the EIPPCB at the time of drafting the conclusions on BAT for the BREF or has been provided within the commenting period corresponding to such a draft:

* *D1 submissions by the EEB not to consider combustion plants operating under Chapter III derogations*
* *EEB submissions on the methodology proposed by NL to express BAT-AEL with different averaging periods*
* *This proposal to remove the important text “comes out of the blue”*

**BAT conclusion/BAT-AEL to which the split view refers to:** ALL BAT-C on upper BAT-AEL (solid and liquid fuels). Footnote derogations which either exempts, considers levels as “indicative” or provides for higher upper BAT-AEL for plants operating less than 1500 hours/year.

(This split view complements and clarifies previous split views made on the upper BAT-AELs e.g. on the upper BAT-AEL of coal/lignite combustion which implicitly objects to the 1500 hours/year relaxation/derogations or enabling certain levels to be considered as “indicative” only. Split views have been provided on combustion plants firing liquid fuels and are not repeated here)

E.g. EIPPCB consolidated conclusions 21/10/2015

solid fuels: **all coal / lignite** (slides 136 on energy efficiency, slide 149 + 152 footnotes 6 + **7** for NOx/CO, slides 166 footnotes 3+ 7 and slide 167 footnote 4 for SOx, slide 173 footnote 2 and 3 for HCL and HF, slide 181 footnote 1+7 and slide 182 footnote 1 for dust)

**all biomass/peat** (slide 200 footnote 1 for Energy efficiency, slide 206 footnotes 2 + 6 for NOx/CO, slides 217 footnotes 2+ 5 for SOx, slide 221 footnote 2 and 4 and slide 223 footnote 1bis for HCL and HF, slide 237 footnote 1+2 for dust)

liquid fuels: HFO and/or gasoil in boilers (already submitted 31/07/2015)

**Split view submitted by:** European Environmental Bureau

**Proposal:**

* Remove all footnotes which provide for relaxation/exemption of upper BAT-AEL range for combustion plants operating below 1500 hours.

These are commonly expressed through footnotes as “These BAT-AELs do not apply when plants operate <1500h/yr” or “These levels are indicative for combustion plants operated <500 h/yr”or “In the case of plants operated <1500 h/yr [...], the higher end of the BAT-AEL range is [...]”or “The higher end of the BAT-AEL range is [...] in the case of plants [...] operated <1500h/yr [...].

* Introduce a definition of “emergency situation” and replace the term “<500h/yr” by “emergency situation”. Possible definition: “**state of the power system that is not normal in accordance with the EU Network Code on Operational Security”.**

**Rationale:**

This split view is supported by the following rationale:

* The relaxations are purely arbitrary and not backed up by any technical (and not even economic) facts
* It constitutes a sidelining of the agreed derogation procedure foreseen by the IED pursuant to Article 15(4) where the (dis)proportionality of costs compared to the benefits claims for meeting a certain level of emissions is properly weighted by the competent authority given the specific conditions for the installation concerned and subject to public participation
* These upfront relaxations based on limited operating hours for existing plants is in our view a distortion of competition in the liberalised energy market. Special treatment should not apply to power generation operating in the liberalised wholesale electricity and balancing markets. Any derogation should be limited to out-of-market emergency conditions
* At times of peak energy demand when renewable energy sources are not (sufficiently) available, air quality is more likely to be poor. The derogations / relaxations will create the perverse situation of rewarding the worst performing plants (with exemptions from BAT performance) the Industrial Emissions Directive is trying to avoid. To take NOx as an illustration, in Member States which implemented the 2006 LCP BREF, large hardcoal LCPs all operate with an SCR (irrespective of effective hours). These provisions would actually allow to switch off the SCR although investments have been made and rather let dirtiest and oldest plants (see footnote 7 in slide 152 allowing to run with primary NOx abatement only -up to 340mg/Nm³!) run instead with higher returns of profit margins. At worst it will create a very profitable retirement scheme for precisely those LCPs that have managed to evade the 2006 LCP BAT standards for decades, when the Transitional National Plan will end (as from mid 2020). Rewarding the laggards of the sector cannot be the purpose of the BREF! (*more rationale is provided in the Briefing provided by RAP/EEB to the comments on the Background paper submitted to BATIS 21/05/2015)*

**References**

This split view is based on the following information already made available to the EIPPCB at the time of drafting the conclusions on BAT for the BREF or has been provided within the commenting period corresponding to such a draft:

* *Comments provided to the Background paper submitted on 21/05/2015 (RAP/EEB)*
* *Briefing document of RAP G2\_Load Modes Derogation submitted on 21/05/2015*
* *Document* [*Load modes\_RAP and EEB recommendation FIN*](http://eippcb.jrc.ec.europa.eu/batis/console/forumIndex.jsp?fuseAction=forum_showForum&forumID=114646) *exchanged during the meeting 08/06/2015*
* *Article 15(4) of the IED and BREF review rules*

**BAT conclusion/BAT-AEL to which the split view refers to:** ALL BAT-C on upper BAT-AEL (solid fuels in particular).

Footnote derogations which “align” the upper range of the BAT-AEL for plants put into operation “no later than 7 January 2014” this is in fact all existing plants to align to the Annex V binding ELVs (EU lowest common denominator emission limit values politically negotiated in 2010).

This split view is closely linked to the “new” combustion plant definition issue raised earlier. Split views have been provided on the upper ranges which implicitly cover these footnote derogations as well. However since these footnotes reveal a more structural / problematic general attitude / habit taken by the EIPPCB, we strongly object to this non technical approach to “align” the upper BAT-AEL to the minimum binding requirements set in the IED (here the Annex V emission limit values, irrespective of part 2 or part 1 ELVs). In effect these footnotes undermine fully the upper (daily averaged) BAT-AELs set. In our view this habit is questioning the relevance and added value to have BAT-AEL set at all to which the footnote relates to. Deleting the BAT-AEL would yield the same result in terms of environmental benchmarks required when entering the permitting phase.

E.g. EIPPCB consolidated conclusions 21/10/2015

solid fuels: **all coal / lignite** (slide 151 footnotes 9 + 10 and slide 152 footnote 6(+7) for NOx/CO, slides 166 footnotes 5 and slide 167 footnote 4 for SOx, slide 181 footnote 2+3 and slide 182 footnote 4+5+6 for dust)

**Split view submitted by:** European Environmental Bureau

**Proposal:**

* **Remove all footnotes which provide for relaxation/exemption of upper BAT-AEL range for combustion plants put in operation no later than 7 January 2014**. In fact this is relevant for 98% of all LCPs that would be affected by the revised BAT Conclusions at least for coal/lignite (see split view on “new” combustion plant, which is directly linked)

**Rationale:**

This split view is supported by the following rationale:

* As it stands all boilers put in operation “no later than 7 January 2014”, in essence all existing plants, may have derogatory upper (higher) ranges. The relaxations to align to the IED Annex V EU safety net binding requirements are arbitrary and not backed up by any technical facts brought forward in the information exchange to derive BAT-AEL on a sound basis. Obviously any plant put into operation after 7 January 2014 is required to meet the ELVs set in part 2 of the IED without possible derogations. The revised LCP BREF upper ranges of the BAT-AEL (which matter for implementation) should not be a “copy and paste” exercise of what is required anyways through Annex V of the IED. Yet this is what is proposed:

Illustration 1 (Hardcoal NOx >300Mwth) the  daily average BATAEL is 25-**165mg**/Nm³ yet footnote 6 states that “In the case of plants put into operation no later than 7 January 2014, the higher end of the BAT-AEL range is 200mg/Nm³ for plants operated >= 1500 h/yr […]. Thus the upper-range (daily) set at 165 mg/Nm³ becomes void / irrelevant in practice.

Illustration 2 (SOx coal-fired PC boiler >300MWth)

The upper (daily) range for existing plants is set at 165mg/Nm³ yet the footnote 4 provides that all existing plants can have a higher end of the BAT-AEL set at 205mg/Nm³. Again what is the practical value/relevance of the upper end 165mg/Nm³ figure?!

Illustration 3 (dust for lignite / coal, all size categories):

For each of the upper (daily) higher end of the BAT-AEL range set, derogatory higher values are provided (footnote 2, 3, 5, 6) which render the figures set as void / irrelevant in practice.

* The EEB is opposed to the “footnotes derogation approach” to downgrade environmental standards set. The proliferation of footnotes with derogatory requirements / relaxations/ exemptions makes the BAT conclusions illisible and the exception (emission levels based on worst performers or as required by EU legislation) becomes suddenly BAT. This cannot be in coherence with the “better regulation” commitment taken by the European Commission and is in contradiction with the aims of the BREF to set the levels of emissions on the basis of the “best” performers only.

**References**

This split view is based on the following information already made available to the EIPPCB at the time of drafting the conclusions on BAT for the BREF or has been provided within the commenting period corresponding to such a draft:

* *Comments provided to the Background paper submitted on 21/05/2015 (EEB)*
* *Split views provided on the upper BAT-AEL*
* *Article 15(4) of the IED and BREF review rules*

**BAT conclusion/BAT-AEL to which the split view refers to:** BAT 3ter (Coal and/or lignite minimum monitoring frequency for mercury), footnote 8, 9 , 18

EIPPCB consolidated conclusions 21/10/2015, slide 196 and 197

**Split view submitted by:** European Environmental Bureau

**Proposal:**

* Set minimum monitoring frequency to “continuous” monitoring also for the <300MWth size category considering the alternative method of sorbet traps
* Remove or amend footnote 8. Second option: footnote 8 is amended: Allow for sorbent traps method and explicitly state that “*For waste co-incineration in coal, lignite, solid biomass and/or peat combustion plants,* ***the monitoring frequency shall be continuous***”
* Remove footnote 9
* Remove footnote 18

**Rationale:**

This split view is supported by the following rationale:

* The EIPPCB has proposed the sorbent trap monitoring method as an alternative method of continuous monitoring which is much cheaper to implement compared to CEM devices. This should at least be required for the <300MWth category as well, instead of periodic measurements every 3 months which are insufficient for coal/lignite combustion, representing the no 1 point source emitters of mercury into the air in the EU.
* Footnotes 8 needs to be amended or deleted. It is not acceptable to reduce the measurement to only once every year on that basis of emissions being “sufficiently stable”. This is not defined and characterized on what this actually means. Hardcoal combustion involves frequent blending of various fuels with various mercury content which therefore may have an impact on the emissions. A procedure or protocol needs to be required which ensures that the emissions are indeed “stable” and mercury emissions did not increase after the change of fuels occurred. It may be considered that the frequency of monitoring is lowered below the minimum 4 times a year if the operator has switched to fuels with lower mercury content and the abatement levels are at least kept. However guarantees / evidence need to be provided that this is indeed the case, the BAT-C should provide for these criteria and conditions
* Footnote 8: A reference to binding requirements (set by part 6 of Annex VI of the IED) is not an adequate reference for a BREF document referring to “state of the art” requirements, in fact it foresees just 2 measurements per year. Rather a link to the updated Waste incineration BREF monitoring requirements should be considered instead. In case of co-incineration of waste the monitoring frequency should be increased to continuous monitoring because of the variations of mercury content in specific waste types. This should be required for sewage sludge or other type of waste which may be contaminated with mercury
* Footnote 9: the EEB objects to the lowering of the monitoring frequency for this size category. *See previous bullet points in relation to the problem of characterizing meaning of “sufficiently stable”.*

**References**

This split view is based on the following information already made available to the EIPPCB at the time of drafting the conclusions on BAT for the BREF or has been provided within the commenting period corresponding to such a draft:

* *Comments provided to the Background paper submitted on 21/05/2015 (EEB)*
* *Split views provided on the monitoring frequency for mercury*
* *New elements based on alternative proposal by the EIPPCB (sorbent traps)*

**BAT conclusion/BAT-AEL to which the split view refers to:**

**Exclusion of combustion in process furnaces or heaters from scope / definition of furnaces or heaters**

EIPPCB consolidated conclusions 21/10/2015, slide 7 and 12

**Split view submitted by:** European Environmental Bureau

**Proposal:**

* Keep combustion of fuels in “process furnaces or heaters” in the scope
* Not exclude in the definition specific types of furnaces

**Rationale:**

This split view is supported by the following rationale:

* It is not clear on what technical basis “process furnaces or heaters” have been excluded from the scope of the LCP BREF. The scope of the LCP BREF is based on Annex I.1 of the IED which refers to “combustion of fuels ***in installations with a total thermal input*** of 50MW or more”. Process furnaces or heaters are to be considered as installations where fuel is combusted. Certain type of combustion installations are indeed exempted from Chapter III requirements of the IED, but this is not the case for the Chapter II requirements on which the scope of the LCP BREF is based upon
* Process furnaces or heaters are defined by the EIPPCB as: “combustion plants whose radiant and/or conductive heat is transferred to the objects or feed material **through a solid wall [...]**” Such combustion processes do not differ at all from other combustion processes targeted by this BAT-C, therefore an exemption is not needed as combustion conditions are 100% the same as in furnaces heating steam for electricity production or industrial use.

**References**

This split view is based on the following information already made available to the EIPPCB at the time of drafting the conclusions on BAT for the BREF or has been provided within the commenting period corresponding to such a draft:

* *Comments provided to D1 of the LCP BREF*