



Final TWG meeting on CWW BREF review on 10- 13 December 2013.

10 December 2013

EEB preliminary comments on proposed BAT conclusions and Background Paper for CWW

Dear TWG participants,

Unfortunately EEB cannot attend to the final meeting this week and therefore we would wish to provide hereby in writing our main comments in relation to the CWW BREF.

Those comments follow the draft BAT conclusions / Background Paper setup.

General comments:

We are very worried about certain approaches taken by TWG members in relation to setting BATAELs. Since when do “compliance rates” of existing installations determine the acceptability of BATAEL derived / proposed that will need to be complied with in 4 years from publication date???

Approach CEFIC: To bluntly sum up the proposed approach of CEFIC is to claim that some BATAEL must be wrong because compliance rate is not at 100% for existing installations. However the overview by CEFIC is certainly interesting since we should conclude the following on this basis:

- TOC: 50 % already comply with the proposed BATAEL
- COD: 63% already comply with the proposed BATAEL
- TSS: 60% already comply with the proposed BATAEL
- TN: 77% already comply with the proposed BATAEL
- Ninorg + AOX : 80% already comply with the proposed BATAEL
- P: 72% already comply with the proposed BATAEL
- Cr: 82% already comply with the proposed BATAEL
- Cu: 76% already comply with the proposed BATAEL
- Ni: 90% already comply with the proposed BATAEL
- Zn: 85% already comply with the proposed BATAEL

We want to remind that the intention of BAT conclusions is not to set BATAEL that would allow all existing installation in the EU to be comfortable with, but to set the standards on what is “best” according to the IED i.e. “most effective in achieving a high general level of protection of the environment as a whole”. As the table suggests the majority of existing installations referred to by CEFIC already do comply with the proposed BATAEL. We may therefore question if the current BREF will indeed “serve as a driver for improved environmental performance across the EU”, as intended by the Guidelines for the BREF review.

We would rather insist that the Bureau reconsiders on whether certain installations highlighted in this survey should be retained as BAT candidates, and to have a careful assessment on why

ranges of emission levels are so huge. Clarity should be provided on whether these installations should be considered as outliers, and therefore excluded from the BATAEL derivation because considering that specific installation would negatively affect the BATAEL range for several orders of magnitude.

This may relate to the following reference installations: DE 06 (COD, Cr, Cu) IT 18 (COD, TSS), UK 25, 27, 28, 29108, 116 (all parameters, how is it possible that for certain heavy metals emission levels of <1000ug/l and above are reported, can this still be considered a BAT candidate!?) , ES 37, 81 (all parameters), FR 41 (very high Ni) 57 (high Zn) , AT 70 (all parameters).

A further check should be done on whether these installations are actually in compliance at all, in particular with the BAT-AELs laid down in the old 2003 CWW BREF, operators were supposed to comply with at the latest by 2008 (IPPC Directive). The upper ranges of BATAEL were set as follows:

Pollutant	Existing 2003 BREF (mg/l)	New draft BAT conclusions	Comment
TSS	20 (monthly)	25 (yearly)	weakening All the red highlighted installations are non compliant
COD	250 (daily)	240 (yearly)	weakening All the UK installations (except one) are exceeding these values by a factor of at least 4
Total P	1,5 (daily)	1,5 (yearly)	weakening Quite a few are in exceedance, in France with a factor 14 (plant 118 “not a blue elephant”)
AOX	<i>none</i>	1.0 (yearly)	New

On heavy metals one Member State suggested, based on available data <2003 to set the following:

Pollutant (ug/l)	Existing 2003 BREF (split view proposal)	New draft BAT conclusions	comment
Cd	0.02-0.833 (yearly)	none	Why missing?
Hg	0.01-0.84 (yearly)	none	Why missing?
Pb	10-100 (yearly)	none	Why missing?
Cd	0.02-0.833 (yearly)	none	Why missing?
Cr	10-30 (yearly)	5-20 (yearly)	New / a bit stricter then in 2003
Cu	20-60 (yearly)	5-50 (yearly)	New / a bit stricter then in 2003
Ni	10-80 (yearly)	5-50 (yearly)	New / stricter then in 2003
Zn	4-174(yearly)	20-300 (yearly)	weakening compared to 2003 BREF

AOX (mg/l)	0.16- 1.7 mg/l	0.2-1.0 mg/l (yearly)	New / a bit stricter then in 2003
------------	----------------	-----------------------	-----------------------------------

1. Dilution / absolute limits

EEB is against any proposals for dilution in regards to achievement of the BATAEL.

We therefore have sympathy with comments raised by various TWG members that for certain substances we also need to set mass specific BAT-AEL. In particular we see a need to set absolute limits for any substance that has persistent and/or bioaccumulative and toxic properties (PBTs / vPvB). For those substances – i.e. heavy metals- we support the setting of absolute mass limits combined with maximum concentration limits.

We would welcome the TWG to propose absolute limits on those pollutants in combination with maximum concentration BAT-AEL.

Contrary to what some TWG members argue for, the BAT-AEL should set the standards as achieved by “state of the art” / best treatment techniques, and should not be lowered in ambition levels according to the receiving water body for discharge or a new concept called “net pollution principle”. At the end all the pollution will end in the oceans...so this approach is just a transfer / dilution of pollution acceptance.

In this respect we need to carefully consider on whether the BATAEL do deliver the attainment of the other environmental protection objectives such as the Nitrates Directive, the EQS + WFD Directive aiming to achieve a good chemical and ecological status of water or which is consistent with the “no deterioration/pollution” objectives set under the Groundwater Directive 2006/118/EC. Any proposal in risk of jeopardizing these objectives should be rejected.

For EEB it is clear that all the installations do need to do the “best” efforts to PREVENT pollution at source, in accordance with widely accepted principles such as the pollution prevention at source / polluter pays principle. The first level of benchmarks should therefore be set according to what is technically feasible with applying BAT and further requirements would need to be set by competent authorities in light of the local situation.

2. Ambition levels of BATAEL

- The BAT conclusions are incomplete because there are no BATAEL in relation to emissions to air. *Please insert BATAEL for emissions to air.*
- In general we see a weakening of the BATAEL compared to previous BREF of 2003. A lot of pollutants relevant to water are not covered by any BAT requirements.

Scope:

1. Clarify the scope (“main pollutant / different origins”)

As highlighted by Italy (letter sent 3rd December 2013) and other TWG members we feel that the current scope of BAT conclusions is not clear and will raise legal uncertainty on what is covered / not covered. We support an amendment along the lines proposed by Italy (see proposed amendment No 1). It is not clear on what is meant with “main pollutant load” or what is covered by “different origins”. Further as it stands the BATAEL are not watertight from dilution attempts (with rainwater / cooling water discharge), which is not permitted by the IED (Article 15 (1)).

Proposed amendment:

These BAT conclusions concern the activities specified in Sections 4 and 6.11 of Annex I to

Directive 2010/75/EU, namely:

- 4 Chemical industry;

- 6.11 Independently operated treatment of waste water not covered by Directive

91/271/EEC and discharged by installations undertaking activities covered under 4 ~~above~~

~~covered by Chapter II of Directive 2010/75/EU, (provided that the main pollutant load~~

~~originates from the activities specified in Section 4 of Annex I to Directive 2010/75/EU, i.e.~~

~~chemical industry).~~

[...] These BAT conclusions cover the combined treatment of waste water **directly** originating ~~from different origins if the main pollutant load originates from the activities~~ specified in Section 4 of Annex I to Directive 2010/75/EU (i.e. chemical industry) **and cover any discharge (direct and indirect).**

2. CWW BREF versus horizontal BREF

The Bureau needs to make sure that there is no regulatory gap or inconsistency in relation to other relevant (vertical) BREFs in relation to environmental impacts arising from waste water treatment activities. If vertical BREFs do cross-references to the CWW BREF in relation to water emissions, then we need to make sure that all the relevant parameters are kept in this BREF (see general comment). That is the case for Chlor Alkali which sets a BATAEL on free chlorine only! This is a general issue we see in current BREF reviews, always trying to “carry over the hot potato” instead of dealing with it when the issue arises...

It would therefore be useful to insert a footnote with the following statement in accordance with the aims of the IED in the BAT conclusions “General Considerations” section:

“These BAT conclusions shall apply as minimum requirements in case of common waste water treatment, without prejudice to stricter conditions laid down in vertical BREFs. In case of conflicting requirements, the requirements leading to a higher level of environmental protection taken as a whole shall prevail”.

1.1 Environmental management systems (BAT 1.1)

Add after VII (“following the development of cleaner technologies”) **“applying the principles of Green Chemistry pursuant to section 3.6.2 and pro-active substitution of hazardous substances”**

Rationale: Another effective and integrated environmental protection technique is to substitute relevant hazardous substances in the production process / treatment phase. These may be required by chemical legislation (REACH, Pesticides / Biocides, product legislation like RoHS, Toys, Cosmetics etc) or follows implementation of the Green Chemistry principles developed in section 3.6.2.

It is important that these aspects are explicitly recognised as part of a proper EMS in the BREF, otherwise EEB considers the conclusions on EMS as INCOMPLETE.

1.2 Monitoring (BAT 3)

EEB insists that all the relevant priority substances / priority substances according to the EQS Directive amended by Directive 2013/39/EU are monitored continuously irrespective of any threshold.

Relevant means that this substance is likely / has the potential to be used on the site(s) in question and may end up in the waste water. It is clear according to Art 10 (1a) and (1b) / 18 of the IED / the EQS Directive that monitoring has to be done on those pollutants. Further, annual reporting obligations apply according to E-PRTR on those 45 pollutants.

We cannot accept that “state of the art” requirements i.e. BAT conclusions are ignoring – or running counter- to the fulfillment of other environmental protection legislation. We expect the European Commission (acting as a guardian of the Treaty) to make sure that relevant EQS are not undermined by inadequate requirements laid down in this BREF, which are supposed to set the state of the art of environmental performance for the decades to come!

Further EEB requests that any substance of very high concern (SVHC) listed to the official candidate list of REACH <http://echa.europa.eu/candidate-list-table> is monitored periodically, if that substance is used (irrespective of form) on the site upstream / in the treatment of waste water. An annual report of exact volumes used on the site is to be made available in a publicly available register. It is highly probable that the chemical industry produces / uses those SVHC.

Proposal:

Please add: “BAT is to monitor continuously any relevant substance listed in Annex X to Directive 2006/60/EC. Relevant means that the substance is likely to be used or found in the upstream process or treatment activities related to waste water, irrespective of thresholds”

“BAT is to monitor periodically the presence of any substance of very high concern identified on the REACH candidate list <http://echa.europa.eu/candidate-list-table>, and likely to be found in waste water, irrespective of thresholds. The operator of an installation using any of the above mentioned substance shall report annually on its website the exact amount of substances used and provide a justification that the substance is not emitted into the environment.”

If this demand is not included the EEB would herewith submit a split view.

- Further it would be important to lay down requirements for sub sampling for a 24 h sample (see EEB comments on the MON BREF guidance document).

1.3 Emissions to Water

- It is not clear to us on what basis BAT 27- 38 of the first draft 2 has been removed from the revised draft. It is the aim of the IED to prevent pollution at source, therefore clear requirements should be laid down on common pre treatment techniques to prevent pollution from tributary waste water streams, in particular where pollutants of concern have been identified. If pre-treatment is already covered in vertical BREF / to be covered in the vertical BREF then it does not harm that the CWW lays down a reminder on what should be done (see the comment in point 2 CWW BREF versus horizontal BREFs).

The revised draft is non-purpose oriented on this count, EEB therefore would like the previous version to be retained.

- **EEB strongly objects to the removal of BAT 57** “BAT is to minimize the ecotoxic impact of waste water effluents by biomonitoring of the effluents and taking measures based on the biomonitoring results.”

It is a common sense requirement. The applicability wording is already restrictive in relation to which cases this has to be taken and it is necessary that the operator demonstrates that the toxicity potential is without concern when there is variation in performance of biological

WWT installation. We call on the Bureau to keep this BAT in the BAT conclusions section. However a relationship with BAT 58 could be made.

If this demand is not included the EEB would herewith submit a split view.

- **EEB objects to the removal of BAT 58** “BAT is to assess and to minimise the release of hazardous substances by discharge of waste water effluents containing chemicals which are persistent, liable to bioaccumulate and/or toxic by using the whole effluent assessment (WEA) technique. “

The issue of cocktails effects is a well recognized scientific fact in chemicals policy and it is acknowledged that a “substance by substance” specific thresholds approach is inadequate for protecting the aquatic environment.

PBT are of specific concern to the environment and there is a 0 immission objective in surface water from man-made PBTs according to OSPAR Convention / Water Framework Directive for PBTs (Priority Hazardous Substances). The WEA is addressing identification of potential negative impact at source, and aims to identify needs for additional measures to be taken at source. It is a common technique for pharmaceutical sites / petrochemical sites already used. It is irrelevant for BAT determination on whether this technique is routinely used across the EU or not.

If this demand is not included the EEB would herewith submit a split view.

1.3.3 BATAELs for emissions to water

EEB objects to exceedance of relevant MAC values under the EQS Directive / “net pollution principle”

- EEB strongly opposes any upper range of BATAEL for emissions to water that is higher than the relevant Maximum Concentration (MAC) Values set under the Environmental Quality Standards Directive 2008/118/ EC amended by Directive 2013/39/EU.

Currently there is a list of 45 relevant pollutants in Annex X of the Water Framework Directive (WFD), as amended by Directive 2013/39/EU: Priority Substances (PS) and priority Hazardous Substances (PHS). For all of those substances, the permit needs to set an ELV according to Article 10 para 1(a), in particular for emissions to water as is the case for CWW installations. Art 18 of the IED requires the competent authority to safeguard the relevant EQS.

These substances are explicitly mentioned under Annex II point 13 of the IED (Annex X of the WFD). We would like to remind Member States that the “*ultimate aim of [the WFD] is to achieve the **elimination** of priority hazardous substances and contribute to achieving concentrations in the marine environment **near background values for naturally occurring substances**.* “ The objective is to be achieved at the latest by 2020 according to OSPAR.

Therefore we propose to add the following sentence (in bold) under 1.3.3:

The BAT-AELs refer to direct discharges to a receiving water body at the point where the emission leaves the installation while disregarding any dilution with other waste water streams after the final waste water treatment. The BAT-AELs apply if the emissions exceed the threshold values for the annual pollutant load.

“The upper range of the BATAEL (annual average) of pollutants considered as priority substances or priority hazardous substances shall correspond to the maximum allowable concentration (MAC) values for the same unit as referred to in the relevant columns of the receiving water (columns 4, or 5, or 6) according to Annex II of Directive 2013/39/EU.

The upper range of the BATAEL of relevant MAC values for substances identified as priority hazardous substances shall provide for a linear decrease from the first review of the permit. They shall be set at “<detection limit” as from 2020 at the latest, and achieved through a combination of BAT 10, 11 and 12, or any other required measure.”

If these demands are not included the EEB would herewith submit a split view.

Table 1 of Bat 1.3.3 should be amended on the following counts:

- No thresholds values for emissions of any relevant PS/PHS under Annex I of Directive 2013/39/EU should be set

If this demand is not included the EEB would herewith submit a split view.

- All upper ranges of the relevant BATAEL shall not exceed any annual average set for maximum allowable concentration (MAC) pursuant to Annex II of Directive 2013/39/EU

This relates in particular to the following BATAEL retained: Nickel and its compounds should be <4 ug/l

If this demands is not included the EEB would herewith submit a split view.

- BATAEL need to be set for the other pollutants listed in Annex II of Directive 2013/39/EU, in particular substances recognized as PHS (Cadmium and its compounds, mercury, Nonylphenols, PAH, etc).

Currently BATAEL are missing for those unwanted pollutants.

EEB will provide further comments after the final TWG meeting

*Done Brussels 10/12/2013
Christian Schaible*