

## Environment - France

### Establishment of System for Registration of Regulated Installations

September 21 2009

[Objectives](#)  
[Scope of Application](#)  
[Registration System](#)  
[Comment](#)

Order 2009-663 on the registration of certain regulated installations for the protection of the environment (ICPE installations) established an electronic system between the report and permit stages, which can be viewed as a simplified permit. This update looks at the objectives behind the registration system, the scope of its application and the system itself.

#### Objectives

The objectives were presented in a report which was presented to the French president by the Ministry of Ecology, Energy, Sustainable Development and Territorial Development and are as follows:

- to focus the state's actions, first on cases that are of great importance for environmental protection and second on the monitoring of installations;
- to simplify administrative procedures for small installations in cases where the significant risks presented by the project can be forestalled by compliance with standard requirements. The installations that are subject to registration will benefit from reduced investigation periods of four or five months compared with the existing period of over a year for installations subject to the issue of a permit; and
- to establish a framework which is made clear in advance to market operators. The technical requirements that are applicable to ICPE installations are established on a national level and will be known to operators before they begin the administrative registration application procedure. Operators will thus be able to integrate these requirements at an early stage into the design of their projects.

#### Scope of Application

The scope of application of the new registration system is established in Article L512-7-I of the Code of the Environment, which provides that:

*"installations that pose dangers or serious disadvantages...[for the environment] are subject to...registration when these dangers and disadvantages may in theory, given the characteristics of the installations and their potential impact, be forestalled by compliance with general requirements established by the minister in charge of regulated installations."*

In addition, Article L512-7-I specifies that activities that may fall within the scope of the registration system involve sectors or technologies for which the environmental effects and risks are well known and where the installations are not subject to: (i) the Directive on the Prevention and Integrated Reduction of Pollution (2008/1/EC); or (ii) a systematic environmental assessment pursuant to Appendix I of the Directive on the Assessment of the Effects of Certain Public and Private Projects on the Environment (1985/337/EEC).

Approximately 40% of the installations for which permits are issued each year should meet these criteria. An initial phase of implementation of the reform could affect half of such installations.

The sectors proposed by the General Risk Prevention Office to form part of an initial registration group include:

- the transformation of building materials (eg, crushing and vibrating equipment and coating);
- logistics (eg, warehouses, service stations, refrigeration and laundering);

#### Author

Patricia Savin



the processing of wood, plastic and metals; and food and agriculture (eg, cellars, small distilleries and miscellaneous agricultural products and foodstuffs).

## **Registration System**

### ***Procedural rules***

The procedural rules established by Articles L512-7 and following provide for the creation of an application file that will make public the investigation and the issue or denial of a registration order by the prefect after consultation with municipal advisers.

Article L512-7-3 states that to obtain the registration order, the applicant must demonstrate that: (i) the conditions of the proposed operation ensure compliance with all applicable requirements; and (ii) it possesses the technical and financial capabilities both to operate the installation and to restore the site after the permanent shutdown of the installation.

The registration procedure is therefore simpler than the permit procedure, in that it does not require the operator to produce an impact study or a study of dangers, or to hold a public inquiry.

Pursuant to Article L512-7-2, the prefect may decide that the registration application will be investigated according to the procedural rules of the customary law permit if:

- the sensitivity of the environment in the project's location justifies this step;
- the combination of the effects of the project with those of other installation projects or public works in this area justifies this step; or
- the adjustment of the general requirements for installation, as requested by the operator, justifies this step.

The prefect will then inform the applicant of his or her decision and the grounds on which it is based, and the applicant must submit the pertinent documentation. The decision is then published.

Article L512-7-4 provides that due to certain ICPEs' increased use of land or subsoil, their registration must establish the maximum term of operation and, if necessary, the maximum volume of stored or extracted products.

Under Article L512-7-3, when an application for a construction permit has been filed, the permit may be issued with the proviso that work cannot begin until the prefect has issued the registration order.

### ***Applicable requirements***

#### ***General requirements***

These are established for each specification item subject to the registration system and may include conditions for the integration of the project to its local environment and requirements on the distance of the installations from:

- housing;
- buildings habitually occupied by third parties; establishments used by the general public; waterways, roads and highways; water catchments; and areas intended for housing according to zoning documents enforceable against third parties.

The procedure to establish general operation requirements is set out in Article L512-7-1-III. General requirements are established by the minister in charge of regulated installations, following:

publication of the draft decision;  
submission of the draft to the Superior Council for Regulated Installations for its opinion; and  
consultation with ministers.

Publication of general requirements is necessary before the classification of a specification item in the registration system can take effect. In addition, the decision establishing general requirements automatically applies to new installations. The opinions of the professional organizations concerned are obtained, after which the decision on general requirements establishes the timeframe and conditions of the application of the requirements to the existing installations.<sup>(1)</sup>

#### ***Installation-specific requirements***

The prefect can combine registration with individual requirements that supplement, reinforce or adjust the general requirements applicable to a specific installation, particularly in light of local circumstances.<sup>(2)</sup>

In addition, by virtue of Article L512-7-5, if compliance with the general requirements applicable to the operation is insufficient to ensure protection of the environment, the

prefect may issue a supplemental order to impose any necessary requirements.

## **Penalties**

### *Administrative penalties*

Article 514-2 pertains to administrative penalties applicable in the event of the unauthorized operation of an ICPE, including installations subject to registration. Penalties are similar to those incurred by the operators of regulated installations that are subject to permit or reporting.

Article L514-7 also integrates registration and provides for the suspension of operation of an installation that poses a danger to the environment or other disadvantages that were not known at the time of registration.

### *Criminal penalties*

Under Article L514-9, the operation of an installation without the required registration is punishable by one year's imprisonment and a fine of €75,000. The courts may forbid the use of the installation. The prohibition ends if the installation is subsequently registered. Provisional enforcement of the prohibition may be ordered.

Under Article L514-11-II, the continued operation of an installation that fails to observe a deadline for conformity with the technical requirements imposed on ICPEs subject to registration is punishable by six months' imprisonment and a fine of €75,000. Failure to observe a deadline for monitoring or restoration measures for ICPEs subject to registration is punishable by six months' imprisonment and a fine of €75,000.

## **Comment**

The registration system for regulated installations constitutes a simplified permit system that allows operators to benefit from reduced inspection periods. A safety measure allows the prefect to review the permit procedure if he or she considers it necessary in view of the characteristics of the case.

However, elimination of the requirements to produce an impact study, prepare a study of dangers and hold a public inquiry at the time of application for electronic registration of ICPE operations raises the question of whether the procedure for such installations shows a level of concern for the environment equal to that of installations subject to a permit.

*For further information on this topic please contact [Patricia Savin](#) at Savin Martinet Associés by telephone (+33 1 53 43 22 20), fax (+33 1 53 43 22 21) or email ([savin@smaparis.com](mailto:savin@smaparis.com)).*

## **Endnotes**

(1) Article L 512-7-1-III, C Env.

(2) Article L512-7-3, C Env.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at [www.iloinfo.com](http://www.iloinfo.com).



Official Online Media Partner to the International Bar Association  
An International Online Media Partner to the Association of Corporate Counsel  
European Online Media Partner to the European Company Lawyers Association

© Copyright 1997-2009 Globe Business Publishing Ltd