

No 2/2008

ENVIRONMENTAL
LAW NETWORK
INTERNATIONAL

RÉSEAU
INTERNATIONAL
DE DROIT DE
L'ENVIRONNEMENT

INTERNATIONALES
NETZWERK
UMWELTRECHT

elni

REVIEW

IPPC Revision: Health and environment in Europe need
a stronger Directive

Marga Robesin

Belgian EIA systems

Jan De Mulder

Evaluation of the German Act on EIA

Kilian Bizer/ Jaqui Dopfer/ Martin Führ

Application of European Environmental Law by National Courts

Luc Lavrysen

Enforcement of European environmental law

Sebastian Tusch

Public participation and transboundary water cooperation

Iulia Trombitcaia

Stakeholder representation in international environmental
standardisation

Franz Fiala

The Toxic 100: Ranking Corporate Air Polluters in the US

James K. Boyce/ Michael Ash

Conference Reports

CONTENTS

Editorial	53
<i>International Conference Announcement: 10th Anniversary of the Aarhus Convention - The Role of Information in an Age of Climate Change</i>	
Articles with focus on IPPC/IED and EIA	
From IPPC to IED: Health and environment in Europe need a stronger Directive	54
<i>Marga Robesin</i>	
Belgian environmental impact assessment systems: Legal frameworks and beyond	60
<i>Jan De Mulder</i>	
Evaluation of the Federal German Act on Environmental Impact Assessment (EIA Act)	70
<i>Kilian Bizer, Jaqui Dopfer, Martin Führ</i>	
Articles with focus on other topics	
Application of European Environmental Law by National Courts	78
<i>Luc Lavrysen</i>	
Enforcement of European environmental law	
The European Parliament comments on the Commission's report	81
<i>Sebastian Tusch</i>	
Public participation in joint bodies for transboundary water cooperation: A new development by the Plenipotentiaries of Moldova and Ukraine.....	86
<i>Iulia Trombitaia</i>	
Stakeholder representation in international environmental standardisation	
Joint Communiqué by ANEC, ECOS, and the Pacific Institute	93
<i>Franz Fiala et al.</i>	
The Toxic 100: Ranking Corporate Air Polluters in the United States	97
<i>James K. Boyce, Michael Ash</i>	
Conference Reports	
The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law	98
<i>Marc Pallemmaerts</i>	
International Workshop on Regulatory Impact Assessment with a focus on environmental aspects	102
<i>Nicola Below</i>	
New Books	
International Environmental Law: Fairness, Effectiveness, and World Order	105
Imprint	107
Authors of this issue	107
elni Membership	108

The Toxic 100: Ranking Corporate Air Polluters in the United States

James K. Boyce and Michael Ash

Emissions of toxic air pollutants from industrial facilities pose significant health hazards to neighbouring communities. Researchers at the Political Economy Research Institute (PERI) in Massachusetts have developed “*The Toxic 100*”, a ranking of top corporations operating in the United States based on the total human health risk resulting from this air pollution.

The Toxic 100 rankings are based on a remarkable dataset on point-source emissions of toxic chemicals: the Risk-Screening Environmental Indicators developed by the U.S. Environmental Protection Agency (USEPA). The data report health hazards from air releases of hundreds of toxic chemicals from thousands of industrial facilities across the United States, taking into account not only the quantity of emissions but also the relative toxicity of different chemicals, their dispersion patterns in the environment, and the number of people impacted.

The Toxic 100 reports the top air polluters among corporations that appear in the “*Fortune 500*”, “*Fortune Global 500*”, “*Forbes Global 2000*” and “*Standard & Poor’s 500*” lists of the world’s largest corporations. The top ten firms in the latest edition of the Toxic 100 are listed in the accompanying table. Topping the list are E.I. du Pont de Nemours, Archer Daniels Midland, Dow Chemical, Bayer Group, and Eastman Kodak.

The full Toxic 100 list is posted on the Worldwide Web at www.toxic100.org. Users of the web-based list can view the details behind each company’s Toxic Score, including the names and locations of individual facilities owned by the corporations, the specific chemicals emitted by those facilities, their toxicities, and their contributions to the firm’s overall ranking.

- The data on chemical releases originate from the USEPA’s Toxics Release Inventory (TRI). The TRI is widely cited in press accounts that identify “*top polluters*” in various localities. But reports based on TRI data alone have three limitations:
- TRI data are reported in total pounds of chemicals, without taking into account differences in toxicity. Pound-for-pound, some chemicals are up to ten million times more hazardous than others.
- TRI data do not calculate the numbers of people affected by toxic releases – for example, the difference between facilities upwind from densely-populated urban areas and those located far from population centers.

- TRI data are reported on a facility-by-facility basis, without combining industrial plants owned by one corporation to get a picture of overall corporate performance.

The Toxic 100 index tackles all three problems. For each facility, the Risk-Screening Environmental Indicators data include toxicity weights, dispersion patterns, and the number of people at risk. PERI researchers add up these facility-by-facility data to construct the corporate rankings.

In making this information available to the public, PERI builds on the achievements of the right-to-know movement in the United States. The goal of PERI’s Corporate Toxics Information Project is to engender public participation in environmental decision-making, and to help the public translate the right to know into the right to clean air.

THE TOXIC 100: TOP TEN
Corporate Air Polluters in the United States¹

Rank	Corporation	Toxic score
1	E.I. Du Pont de Nemours	285,661
2	Archer Daniels Midland	213,159
3	Dow Chemical	189,673
4	Bayer Group	172,773
5	Eastman Kodak	162,430
6	General Electric	149,061
7	Arcelor Mittal	134,573
8	US Steel	129,123
9	ExxonMobil	128,758
10	AK Steel Holding	101,428

¹ Source: PERI’s Toxic 100: www.toxic100.org.

The Öko-Institut (Institut für angewandte Ökologie - Institute for Applied Ecology, a registered non-profit-association) was founded in 1977. Its founding was closely connected to the conflict over the building of the nuclear power plant in Wyhl (on the Rhine near the city of Freiburg, the seat of the Institute). The objective of the Institute was and is environmental research independent of government and industry, for the benefit of society. The results of our research are made available of the public.

The institute's mission is to analyse and evaluate current and future environmental problems, to point out risks, and to develop and implement problem-solving strategies and measures. In doing so, the Öko-Institut follows the guiding principle of sustainable development.

The institute's activities are organized in Divisions - Chemistry, Energy & Climate Protection, Genetic Engineering, Sustainable Products & Material Flows, Nuclear Engineering & Plant Safety, and Environmental Law.

The Environmental Law Division of the Öko-Institut:

The Environmental Law Division covers a broad spectrum of environmental law elaborating scientific studies for public and private clients, consulting governments and public authorities, participating in law drafting processes and mediating stakeholder dialogues. Lawyers of the Division work on international, EU and national environmental law, concentrating on waste management, emission control, energy and climate protection, nuclear, aviation and planning law.

Contact

Freiburg Head Office:

P.O. Box 50 02 40
D-79028 Freiburg
Phone +49 (0)761-4 52 95-0
Fax +49 (0)761-4 52 95 88

Darmstadt Office:

Rheinstrasse 95
D-64295 Darmstadt
Phone +49 (0)6151-81 91-0
Fax +49 (0)6151-81 91 33

Berlin Office:

Novalisstrasse 10
D-10115 Berlin
Phone +49(0)30-280 486 80
Fax +49(0)30-280 486 88
www.oeko.de

The University of Applied Sciences in Bingen was founded in 1897. It is a practiceorientated academic institution and runs courses in electrical engineering, computer science for engineering, mechanical engineering, business management for engineering, process engineering, biotechnology, agriculture, international agricultural trade and in environmental engineering.

The *Institute for Environmental Studies and Applied Research* (I.E.S.A.R.) was founded in 2003 as an integrated institution of the University of Applied Sciences of Bingen. I.E.S.A.R. carries out applied research projects and advisory services mainly in the areas of environmental law and economy, environmental management and international cooperation for development at the University of Applied Sciences and presents itself as an interdisciplinary institution.

The Institute fulfils its assignments particularly by:

- Undertaking projects in developing countries
- Realization of seminars in the areas of environment and development
- Research for European Institutions
- Advisory service for companies and know-how-transfer

Main areas of research:

- **European environmental policy**
 - Research on implementation of European law
 - Effectiveness of legal and economic instruments
 - European governance
- **Environmental advice in developing countries**
 - Advice for legislation and institution development
 - Know-how-transfer
- **Companies and environment**
 - Environmental management
 - Risk management

Contact

Prof. Dr. jur. Gerhard Roller
University of Applied Sciences
Berlinstrasse 109
D-55411 Bingen/Germany
Phone +49(0)6721-409-363
Fax +49(0)6721-409-110
roller@fh-bingen.de

www.fh-bingen.de

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.

The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.

The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of *homo oeconomicus institutionalis*, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover

- Product policy/REACH
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conservation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- Self responsibility

sofia is working on behalf of the

- VolkswagenStiftung
- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Nature Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

Contact

Darmstadt Office

Prof. Dr. Martin Führ – sofia
University of Applied Sciences
Haardtring 100
D-64295 Darmstadt/Germany
Phone +49(0)6151-16-8734/35/31
Fax +49(0)6151-16-8925
fuehr@sofia-darmstadt.de
www.h-da.de

Göttingen Office

Prof. Dr. Kilian Bizer – sofia
University of Göttingen
Platz der Göttinger Sieben 3
D-37073 Göttingen/Germany
Phone +49(0)551-39-4602
Fax +49(0)551-39-19558
bizer@sofia-darmstadt.de

www.sofia-research.com

elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. Since then, elni has grown to a network of about 350 individuals and organisations from all over the world.

Since 2005 elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

The Coordinating Bureau was originally set up at and financed by Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit research institute.

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. It is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt). The Coordinating Bureau is currently hosted by the University of Bingen. elni encourages its members to submit articles to the Review in order to support and further the exchange and sharing of experiences with other members.

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researchers, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brus-

sels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

- Access to justice in Environmental Matters and the Role of NGOs, de Sadeleer/Roller/Dross, Europa Law Publishing, 2005.
- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant, 2002.
- Voluntary Agreements - The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London, 1998.
- Environmental Impact Assessment - European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd., London, 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann / Dyssli (eds.), Cameron May Ltd., London, 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
- Environmentally Sound Waste Management? Current Legal Situation and Practical Experience in Europe, Sander/ Küppers (eds.), P. Lang, 1993
- Licensing Procedures for Industrial Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilmowsky/Roller, P. Lang, 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

Elni Website: elni.org

On the elni website www.elni.org one finds news of the network and an index of articles. It also indicates elni activities and informs about new publications. Internship possibilities are also published online.