

**Act**  
**on the Prevention of Harmful Effects on the Environment**  
**Caused by Air Pollution, Noise, Vibration**  
**and Similar Phenomena**  
**(Federal Immission Control Act - BImSchG)**

in the version promulgated on 26 September 2002 (BGBl. I p. 3830)

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**Part I**  
**General Provisions**

**Article 1**  
**Purpose of the Act**

(1) It is the purpose of this Act to protect human beings, animals and plants, soil, water, the atmosphere as well as cultural objects and other material goods against any harmful effects on the environment and to prevent the emergence of any such effects.

(2) In the case of installations subject to licensing, the Act shall also

- ensure integrated prevention and reduction of any harmful effects on the environment caused by emissions to air, water and soil by securing the participation of the waste management sector in order to achieve a high level of protection for the environment as a whole and
- ensure protection and the taking of precautions against any hazards, significant disadvantages and significant nuisances caused in any other way.

**Article 2**  
**Scope of the Act**

(1) The provisions of this Act shall apply to

1. the construction and operation of installations;
2. the production, marketing and importation of installations, fuels, substances and products made of any such substances, in conformity with Articles 32 to 37 ;
3. the nature, equipment, operation and testing of motor vehicles including their trailers, and of railborne vehicles, aircraft and watercraft as well as of floating bodies and floating installations, in conformity with Articles 38 to 40 and
4. the construction of public roads as well as of railways, magnetic levitation trains and tramways, in conformity with Articles 41 to 43 .

(2) The provisions of this Act shall not apply to any airports, installations, equipment, facilities or nuclear fuels or other radioactive substances falling under the provisions of the Atomic Energy Act or any ordinance issued thereunder, insofar as protection from the hazards of nuclear energy or from the harmful effects of ionising radiation is concerned. They shall furthermore not be applicable if provision has otherwise been made in any water or plant protection or fertiliser regulations issued by the Federal Government or by any *Land* governments for the purpose of water protection.

**Article 3**  
**Definitions**

(1) “Harmful effects on the environment” as used herein shall mean any immissions which, because of their nature, extent or duration, are likely to cause any hazards, significant disadvantages or significant nuisances to the general public or the neighbourhood.

(2) “Immissions” as used herein shall mean any air pollution, noise, vibration, light, heat, radiation and similar effects on the environment which affect human beings, animals and plants, soil, water, the atmosphere as well as cultural objects and other material goods.

(3) “Emissions” as used herein shall mean any air pollution, noise, vibration, light, heat, radiation and similar phenomena originating from an installation.

(4) “Air pollution” as used herein shall mean any change in the natural composition of the air, especially through smoke, soot, dust, gases, aerosols, steam or odorous substances.

(5) “Installations” as used herein shall mean

1. any operating plants and other stationary facilities;
2. any machines, equipment and other non-stationary technical facilities as well as vehicles and craft unless they are subject to the provisions of Article 38 below and
3. any premises used to store or deposit materials or to carry out work likely to cause emissions, with the exception of routes used for public transport.

(5a) An “establishment” as used herein shall mean the entire area under the control of an operator where hazardous substances within the meaning of Article 3 No. 4 of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ EC 1997 No. L 10, p. 13) are present or planned to be present or will be present in one or more installations, including common or related infrastructures or activities including storage as defined in Article 3 No. 8 of the Directive in the quantities specified in Article 2 of the Directive, if there is reason to assume that the said hazardous substances are generated when certain industrial chemical processes get out of control; the establishments, hazards and activities referred to in Article 4 of Directive 96/82/EC shall be exempted from this provision.

(6) “Best available techniques” as used herein shall mean the state of development of advanced processes, establishments or modes of operation which is deemed to indicate the practical suitability of a particular technique for restricting emission levels to air, water or soil, for guaranteeing installations safety or for preventing or reducing any effects on the environment with a view to achieving a generally high level of environmental protection altogether. When determining the best available techniques, special consideration shall be given to the criteria listed in the Annex.

(7) Manufacture, processing or any other treatment shall be deemed to be equivalent to “production” as used herein; any other conveyance into the jurisdiction of this Act shall be deemed to be equivalent to “import” as used herein.

## **Part II**

### **Construction and Operation of Installations**

**Section I**  
**Installations Subject to**  
**Licensing**

**Article 4**  
**Licensing**

(1) The construction and operation of installations which, on account of their nature or operation, are particularly likely to cause any harmful effects on the environment or otherwise endanger or cause any significant disadvantages or significant nuisances to the general public or the neighbourhood, and the construction and operation of stationary waste disposal plants designed to store or treat wastes shall be subject to licensing. With the exception of waste disposal plants, any installations which do not serve commercial purposes and are not used within the framework of business undertakings shall not be subject to licensing unless they are particularly likely to cause harmful effects on the environment caused by air pollution or noise. After hearing the parties concerned (Article 51), the Federal Government shall specify by ordinance, with the consent of the *Bundesrat*, those types of installations which require licensing (installations subject to licensing); the ordinance may also provide that licensing is not required for any installation which, in its entirety or in essential parts specified in the ordinance, has been type-approved and constructed and operated in accordance with the construction type approval.

(2) Mining installations or parts thereof shall only be subject to licensing pursuant to paragraph (1) above where they are constructed and operated above ground. No licence pursuant to paragraph (1) above shall be required for open-pit installations and for any installations necessary for their operation or indispensable for their ventilation.

**Article 5**  
**Obligations of Operators of Installations**  
**Subject to Licensing**

(1) Installations subject to licensing shall be constructed and operated in such a way that, in order to ensure a high level of environmental protection altogether,

1. harmful effects on the environment or any other hazards, significant disadvantages and significant nuisances to the general public and the neighbourhood are avoided;
2. precautions are taken to prevent any harmful effects on the environment or any other hazards, significant disadvantages or significant nuisances, in particular by such measures as are appropriate according to the best available techniques;
3. wastes are avoided, unavoidable wastes are recovered, and non-recoverable wastes are disposed of without impairing the public welfare; wastes shall be deemed to be unavoidable if avoidance is not technically feasible or not reasonable; avoidance shall be deemed to be inadmissible if it leads to more adverse effects on the environment than would be the case with the option of recovery; recovery and disposal of wastes shall be based on the provisions of the Closed Substance Cycle and Waste Management Act and on any other provisions applicable to wastes;

4. economical and efficient energy use is ensured.

(2) After hearing the parties concerned (Article 51), the Federal Government shall specify by ordinance, with the consent of the *Bundesrat*, those types of installations which are likely to produce utilisable heat in significant quantities and which, according to the requirements to be particularised in such ordinance, need to be constructed and operated in conformity with paragraph (1) No. 4 above.<sup>1</sup>

(3) Installations subject to licensing shall be constructed, operated and closed down so as to ensure that even after cessation of operation<sup>2</sup>,

1. no harmful effects on the environment or no other hazards, significant disadvantages and significant nuisances to the general public and the neighbourhood may be caused by such installation or the surrounding premises;
2. existing wastes are orderly and safely recovered or are disposed of without impairing the public welfare and
3. restoration of the site to proper condition is guaranteed.

#### **Article 6 Prerequisites for Licensing**

(1) A licence shall be granted if

1. it is ensured that the obligations arising from Article 5 and from any ordinance issued under Article 7 will be complied with and if
2. the construction and operation of such installation does not conflict with any other provisions under public law and occupational safety and health concerns.

(2) In the case of installations which are operated in different modes or where different substances are used (multi-purpose or multi-substance installations), the licence shall, upon request, be extended to cover such different modes of operation and different substances if the prerequisites pursuant to paragraph (1) above are fulfilled for all modes of operation and substances covered.

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<sup>1</sup> Repealed by Article 2 of the Act of 27 July 2001 (BGBl. I p. 1950).

<sup>2</sup> In accordance with Article 3 No. 1, in conjunction with Article 4 of the Act of 17 March 1998 (BGBl I p. 502), this version will enter into force on 1 March 1999; according to the law in effect until that date, the introductory part of the sentence reads as follows: "The operator shall ensure that even after the cessation of operation"

**Article 7**  
**Ordinances Governing the Requirements for Installations**  
**Subject to Licensing**

(1) The Federal Government is authorised, after hearing the parties concerned (Article 51), to require by ordinance, with the consent of the *Bundesrat*, that the construction, nature and operation of installations subject to licensing and their condition after cessation of operation, as well as their supervision by the operator, must meet certain requirements in order to comply with the obligations ensuing from Article 5 , which means, in particular, that

1. such installations shall meet specific technical requirements;
2. any emissions released from such installations shall not exceed specific limits;
- 2a. the use of energy shall meet certain requirements. When defining such requirements, account shall in particular be taken of any possible shifts of adverse effects from one protected resource to another; a high level of protection shall be ensured for the environment as a whole;
3. the operators of any such installations shall take measurements, or have measurements taken, of emissions and immissions using methods to be specified in such ordinance; and
4. the operators of such installations shall provide for specific safety checks as well as specific audits of safety-related documents to be carried out by an expert pursuant to Article 29 a according to a procedure to be specified in the ordinance, i.e.
  - a) during the construction or else prior to the commissioning of the installation,
  - b) following such commissioning or any alteration within the meaning of Article 15 or Article 16,
  - c) at regular intervals or
  - d) at the time of or after cessation of operation,

except where provision is made for such checks in any ordinance issued under Article 11 of the Act on the Safety of Appliances (*Gerätesicherheitsgesetz*). When defining such requirements, account shall in particular be taken of any possible shifts of adverse effects from one protected resource to another; a high level of protection shall be ensured for the environment as a whole.

(2) The ordinance may determine the degree to which the requirements set out in paragraph (1) above as a precaution against any harmful effects on the environment must be met at the end of given transitional periods, insofar as less exacting requirements had been set forth in a provisional decision or a licence at the time of entry into force of such ordinance. When fixing the duration of such transitional periods and defining any such requirements, special regard shall be paid to the nature, volume and hazardousness of the emissions originating from the installations as well as to the useful life and the characteristic technical features thereof. The first and second sentences above shall apply *mutatis mutandis* to installations which require

notification under Article 67 (2) or Article 67 a (1) or which, before entry into force of this Act, required such notification under Article 16 (4) of the Industrial Code.

(3) Where the ordinance sets forth any specific requirements pursuant to Article 5 (1) No. 2 , it may give permission, with respect to such installations as are specified in paragraph (2) above, for a deviation to be made from the requirements specified in paragraphs (1) and (2) above as a precaution against any harmful effects on the environment. This shall apply only if any technical measures taken within the operator's or third parties' installations result in an overall reduction of emission levels for the same substances or for substances having a comparable impact on the environment which is substantially higher than any such reduction achieved by compliance with the requirements set on the basis of paragraphs (1) and (2) above, thus contributing to the advancement of the purpose referred to in Article 1 . The ordinance may furthermore determine whether and to what extent, for the purpose of performing intergovernmental agreements with states adjoining the Federal Republic of Germany, the second sentence above may equally apply to any such technical measures taken at installations located in such adjoining states.

(4) In order to implement any binding decisions of the European Communities, the Federal Government may, for the purpose referred to in Article 1 and with the consent of the *Bundesrat*, require by ordinance specific requirements regarding the construction, nature and operation, cessation of operation and supervision by the operator of installations subject to licensing. For installations subject to licensing and falling under the scope of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ EC No. L182 p. 1), the Federal Government may, with the consent of the *Bundesrat*, issue an ordinance to define the same requirements as are applicable to landfills within the meaning of Article 3 (10) of the Closed Substance Cycle and Waste Management Act, in particular requirements for provision of security, for closure and for the technical and professional qualification of the operator.

(5) As far as the requirements specified in paragraph (1) Nos. 1 to 4 above, also in conjunction with paragraph (4) above, are concerned, reference may be made to generally accessible publications by expert bodies; for this purpose,

1. the ordinance shall indicate the date of such publication and specify its source of reference;
2. such publication shall be lodged in the archives of the German Patents Office for safe custody, and reference thereto shall be made in the ordinance.

## **Article 8** **Partial Licence**

Upon application, a licence may be granted for construction of an installation or part of an installation or for construction and operation of part of an installation if

1. there is a legitimate interest in granting a partial licence;
2. the licensing requirements are fulfilled for the object applied for in the partial licence and

3. a preliminary assessment shows that there are no fundamental, unremovable obstacles to the construction and the operation of the entire installation with regard to fulfilling the licensing requirements.

The binding character of the provisional overall assessment shall not apply if any change in the factual or legal situation or any individual examinations within the framework of subsequent partial licences result in an assessment differing from the provisional overall assessment.

**Article 8 a**  
**Permission of Early Start**

(1) In a licensing procedure, the licensing authority may, upon application, provisionally permit construction of an installation, including all measures necessary for ensuring its fitness for operation, to start even prior to the issue of a licence if

1. a decision in favour of the applicant for the licence can be expected;
2. such early start is in the public's interest or in the legitimate interest of the applicant and if
3. the applicant undertakes to compensate for any damage caused by construction of the installation prior to the decision and, if the project is not licensed, to restore the previous status quo.

(2) The permission may be revoked at any time. It may be made subject to compliance with certain obligations or be issued under the proviso that subsequent obligations be fulfilled. The competent authority may request the provision of security where this is necessary to ensure that the applicant's obligations complied with.

(3) In a procedure for the issue of a licence pursuant to Article 16 (1) , the licensing authority may provisionally permit the installation to be operated under the conditions set out in paragraph (1) above if the alteration serves the purpose of meeting an obligation derived from this Act or from an ordinance issued on the basis of this Act.

**Article 9**  
**Provisional Decision**

(1) Upon application, a provisional decision may be rendered with regard to particular prerequisites for issue of a licence and the choice of the site for the installation in question, provided that the implications resulting from the proposed installation can be adequately assessed and that there exists a legitimate interest in the issue of such a provisional decision.

(2) The provisional decision shall become invalid if the applicant fails to apply for a licence within two years from the date on which the provisional decision has become final; upon application, this term may be extended to up to four years.

(3) The provisions of Articles 6 and 21 shall apply *mutatis mutandis*.

**Article 10**  
**Licensing Procedure**

(1) Institution of the licensing procedure shall be subject to submission of a written application. Any drawings, explanations and other supporting documents required for verification purposes in accordance with Article 6 shall be added to this application. If the documents submitted are not sufficient for such verification, the applicant shall, if so requested by the competent authority,

furnish additional documents within a reasonable period. If the application is submitted in electronic form, the competent authority may order the applicant to produce copies thereof and submit the documents to be attached to the application in written form as well.

(2) Where any documents presented contain any industrial secrets, such documents shall be marked accordingly and submitted separately. Where this can be done without disclosing the secret contained in such document, the contents thereof must be described in sufficient detail to enable any third parties to assess whether and to what extent they may be affected by the installation in question.

(3) If the documents submitted are complete, the competent authority shall give public notice of the project in its official gazette and, additionally, in any local daily newspapers that are widely read in the area where the installation is to be constructed. With the exception of the documents referred to in paragraph (2) first sentence above, the application and the supporting documents shall be laid open for public inspection for a period of one month following such notice; any objections raised against the project may be lodged in writing with the competent authority within two weeks after expiry of the inspection period. At the end of the period allowed for objections, no further objections shall be admissible unless they are based on any special titles under civil law.

(4) The notice pursuant to paragraph (3) first sentence above shall

1. indicate the date when and the place where the application for the issue of a licence and the supporting documents will be laid open for public inspection;
2. invite those concerned to lodge any objections with an authority to be specified in the notice within the period allowed for such objections; in this connection, reference shall be made to the legal consequences ensuing from paragraph (3) third sentence above;
3. fix a date for public discussion and announce that all objections duly submitted will be discussed even in the event that the applicant or any person having lodged any such objection should be absent;
4. point out that service of any decision taken regarding the objections raised may be replaced by a public notice.
5. (Repealed)

(5) The authority responsible for the issue of the licence (licensing authority) shall seek the opinion of any other authorities affected by the project. Insofar as a permission in accordance with any other laws is required for the project itself or for any other projects in direct spatial or operational connection with it which may have any effects on the environment and be of relevance to the issue of the licence, the licensing authority shall ensure full coordination of the permission procedures as well as of the substantive and collateral provisions.

(6) After expiry of the period allowed for objections, the licensing authority shall discuss the arguments against the project with the applicant and with those having raised them. As regards objections lodged on the basis of special titles under civil law, recourse shall be had to a court of general jurisdiction.

(6a) The application for a licence shall be decided upon within a period of seven months, and in simplified procedures, within a period of three months, after receipt of the application and the documents to be presented pursuant to paragraph (1) second sentence above. The competent authority may in each case extend this period by three months, if this is necessary due to the difficult nature of the examination or for reasons attributable to the applicant. The reason for such an extension of the period shall be specified vis-à-vis the applicant.

(7) The final decision on the issue of a licence shall be notified in writing, including a written statement of the grounds, and be served on the applicant and on any persons having lodged objections.

(8) Service of the licensing decision to the persons having raised objections may be replaced by public notice. Publication shall take the form of notice being given of the mandatory part of the final decision and the necessary information on legal remedies, with paragraph (3) first sentence above being applied accordingly; any additional obligations imposed shall be indicated. In that case, a copy of the complete decision shall be laid open for public inspection for a period of two weeks following such notice. The public notice shall contain all details as to where and when the final decision and the statement of the grounds thereof may be inspected and copies requested pursuant to the sixth sentence below. Such final decision shall be deemed to be served, including to third parties who have not made any objections, with the expiry of the inspection period; this information shall be included in the public notice. As soon as the public notice has been given, copies of the final decision including the statement of grounds may be requested in writing until the end of the period fixed for raising objections by any person having lodged an objection.

(9) Paragraphs (1) to (8) above shall apply *mutatis mutandis* to the issue of a provisional decision.

(10) The Federal Government is authorised to regulate the licensing procedure by ordinance, with the consent of the *Bundesrat*; provision may be made in such ordinance for the procedure to be used for licensing under the simplified procedure (Article 19) as well as for the issue of a provisional decision (Article 9), of a partial licence (Article 8) and of a permission of an early start (Article 8 a). Such ordinance shall also specify the requirements to be met by the licensing procedure for installations which have to undergo an environmental impact assessment pursuant to the Act on the Assessment of Environmental Impacts.

(11) The Federal Ministry of Defence is authorised to regulate by ordinance, in agreement with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and with the consent of the *Bundesrat*, the licensing procedure for installations serving national defence purposes, notwithstanding paragraphs (1) to (9) above.

**Article 10 a<sup>3</sup>**  
**(Administrative Assistance)**  
(Repealed)

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<sup>3</sup> Expired on 30 June 1994.

### **Article 11**

#### **Objections by Third Parties in the Case of Partial Licences or Provisional Decisions**

Where a partial licence has been granted or a provisional decision has been rendered and where such partial licence or provisional decision has become final, third parties shall not be entitled, in any subsequent licensing procedure for construction and operation of such installation, to raise any objections on the basis of facts which were presented in due time in the previous procedure or which could have been presented in view of the documents laid open for public inspection.

### **Article 12**

#### **Collateral Licensing Provisions**

(1) The granting of a licence may be tied to specific conditions and obligations where this is necessary to warrant compliance with the conditions for licensing referred to in Article 6 .

In the case of waste disposal facilities within the meaning of Article 4 (1) first sentence , provision of security may be imposed to ensure compliance with the requirements of Article 5 (3).

(2) Upon application, the licence may be granted for a limited period. It may be granted with the proviso that it can be revoked if an installation subject to licensing is intended for test purposes only.

(2a) With the consent of the applicant, the licence may be granted with the proviso that subsequent obligations may be imposed, insofar as this is to serve a more detailed specification of any requirements with regard to construction and operation of an installation at a point in time following the granting of the licence which have already been sufficiently defined and laid down in general terms in the licence. This provision shall, under the conditions set out in the first sentence above, also be applicable if the authority concerned fails to submit its comments in time.

(2b) In the case of Article 6 (2) , the applicant shall be bound by an obligation to inform the competent authority without undue delay of the first-time production or use of any other substance under the permitted mode of operation.

(3) The partial licence may be granted for a limited period or with the proviso that it may be revoked or tied to specific conditions pending final decision on the granting of a licence.

### **Article 13**

#### **Licence and Other Official Decisions**

The licence shall include other official decisions with a bearing on the installation, in particular public-law licences, approvals, grantings, permits and authorisations – with the exception of plan approvals, approvals of operation plans under mining law, official decisions based on the Atomic Energy Act and permits and authorisations under water law pursuant to Articles 7 and 8 of the Federal Water Act.

#### **Article 14**

##### **Exclusion of Civil-Law Claims to Protection against Abridgement of Legal Rights**

Nobody shall have the right to request cessation of operation at any installation on grounds of civil-law claims, not based on specific titles, to protection against the detrimental impacts emanating from any piece of land on neighbouring premises, insofar as the licence for such an installation has become final; it shall only be admissible to insist on such precautionary measures as are necessary to prevent such detrimental impacts. If such measures are not technically feasible according to the best available techniques or not economically viable, compensation may only be claimed for the actual damage suffered.

#### **Article 14 a**

##### **Simplified Procedure for Bringing an Action**

Unless the specific conditions of the case warrant a shorter period of time, the applicant may bring an action to an administrative court if his objection has not been decided upon within a period of three months of lodging it.

#### **Article 15**

##### **Alterations to Installations Subject to Licensing**

(1) Unless no licence is applied for, any alteration to the location, nature or operation of an installation subject to licensing shall be notified to the competent authority in writing at least one month before this alteration is due to be undertaken, if the alteration may have an effect on any of the protected resources referred to in Article 1. This notification shall include documents as defined in Article 10 (1) second sentence, insofar as these documents may be necessary for determining whether the project is subject to licensing. The competent authority shall without undue delay inform the party carrying out the project in writing of receipt of the notification and the relevant documents. Upon receipt of the notification, it shall also, without undue delay, inform the party carrying out the project of which additional documents it needs to determine to what extent the requirements pursuant to Article 16 (1) have been fulfilled. The first to fourth sentences shall apply *mutatis mutandis* to installations which have to be notified in accordance with Article 67 (2) or Article 67 a (1) or which have to be notified prior to the entry into force of this Act in accordance with Article 16 (4) of the Industrial Code (*Gewerbeordnung*).

(2) The competent authority shall examine without undue delay, but no later than one month after receipt of the notification and the documents required pursuant to paragraph (1) second sentence above, whether the alteration is subject to licensing. The party carrying out the project shall be allowed to perform the alteration as soon as the competent authority advises him that the alteration does not require licensing or if it does not comment on it within the period of time referred to in the first sentence above. Paragraph (1) third sentence above shall apply *mutatis mutandis* to any documents presented subsequently.

(3) If the operator plans to cease operation of an installation subject to licensing, he shall notify the competent authority without undue delay of the planned cessation and state the date of cessation. The notification shall also include documents on the measures which the operator plans to take in order to fulfil the obligations arising from Article 5 (3). The first and second

sentences above shall apply *mutatis mutandis* to the installations described in paragraph (1) fifth sentence above.

(4) The exact details for the procedure pursuant to paragraphs (1) to (3) above may be covered in the ordinance pursuant to Article 10 (10) .

**Article 15 a<sup>4</sup>**  
**Permission of Early Beginning**  
(Repealed)

**Article 16**  
**Major Alterations to Installations**  
**Subject to Licensing**

- (1) Any alteration of the location, nature or operation of an installation subject to licensing shall require a licence if it may lead to any adverse effects which may be of relevance with regard to an examination pursuant to Article 6 (1) No. 1 (major alteration). A licence shall not be necessary if the adverse effects due to the alteration are obviously minor and fulfilment of the obligations arising from Article 6 (1) No. 1 can be guaranteed.
- (2) The competent authority shall refrain from informing the public of the project and from laying open the application and the documents for public inspection if the party carrying out the project files an application to this effect and if there is no reason to fear any significant adverse effects on the protected resources referred to in Article 1. This shall be deemed to be the case in particular where it is recognisable that these effects can be ruled out due to the measures taken or planned to be taken by the party carrying out the project or if the disadvantages are minor in relation to the comparable advantages in the individual case. If the major alteration refers to an installation subject to licensing in a simplified procedure this major alteration shall also be licensed within the framework of a simplified procedure. Article 19 (3) shall apply *mutatis mutandis*.
- (3) The application for a licence shall be decided upon within a period of six months or, in the case of paragraph (2) above, within the period of three months. In all other respects, Article 10 (6a) second and third sentences shall apply *mutatis mutandis*.
- (4) The party carrying out the project may apply for a licence with respect to any alteration subject to notification requirements pursuant to Article 15 (1) hererof. This licence shall be granted in a simplified procedure; paragraph (3) above and Article 19 (3) shall apply *mutatis mutandis*.
- (5) A licence shall not be required if a licensed installation or parts of a licensed installation are to be replaced or substituted within the framework of a previously granted licence.

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<sup>4</sup> Repealed by Article 1 of the Act of 9 October 1996 (BGBl. I p. 1498)



## **Article 17**

### **Subsequent Orders**

(1) In order to perform the obligations resulting from this Act or from any ordinance issued hereunder, orders may be issued following the granting of the licence or an alteration notified pursuant to Article 15 (1) . If after the issue of such a licence or after an alteration notified pursuant to Article 15 (1), the protection of the general public or the neighbourhood against any harmful effects on the environment or any other hazards, significant disadvantages and significant nuisances turns out to be inadequate, the competent authority shall issue subsequent orders.

(2) The competent authority shall not issue any subsequent order if such order would lack proportionality, above all if the effort needed to comply with an initial order is not commensurate with the desired effect; in this respect, special attention shall be paid to the nature, volume and hazardousness of the emissions originating from the installation and the immissions released by it as well as to the useful life and the characteristic technical features of the installation. Where a subsequent order is not permitted for lack of proportionality, the competent authority shall revoke the licence wholly or in part in accordance with the provisions of Article 21 (1) Nos. 3 to 5 ; Article 21 (3) to (6) shall be applicable.

(3) Where the requirements referred to in Article 5 (1) No. 2 are definitely laid down by ordinance, no subsequent orders shall be issued to impose any additional requirements as a precaution against any harmful effects on the environment.

(3a) The competent authority shall refrain from issuing any subsequent orders where a plan submitted by the operator provides for technical measures to be taken at the operator's or any other party's installations which result in a reduction of emission levels for the installations concerned which is substantially higher than the aggregate of reductions which would be attainable by issuing subsequent orders for the performance of the obligations ensuing from this Act or from any ordinance issued hereunder, thus promoting the advancement of the purpose referred to in Article 1 . This shall not apply where the operator is already under an obligation to reduce emissions following the issue of a subsequent order pursuant to paragraph (1) above or imposition of an obligation under Article 12 (1) or where such subsequent order is to be issued pursuant to paragraph (2) second sentence above. Compensation shall only be permitted among substances of the same type or substances having a comparable impact on the environment. The first, second and third sentences above shall also be applicable to installations not ready for operation for which a licence covering construction and operation has already been granted or for which any specific requirements pursuant to Article 5 (1) No. 2 have been laid down in a provisional decision or a partial licence issued. The implementation of the measures provided for in such a plan shall be ensured by means of an order.

(4) If the performance of the order calls for a major alteration in the location, nature or operation of the installation and if the order does not contain any definitive instructions as to how it is to be performed, such alteration shall be subject to licensing in accordance with Article 16 .

(4a) In the case of waste disposal facilities within the meaning of Article 4 (1) first sentence, provision of security may be imposed to ensure compliance with the requirements of Article 5 (3).

(5) Paragraphs (1) to (4a) above shall apply *mutatis mutandis* to installations which are subject to notification under Article 67 (2) or which were subject to notification pursuant to Article 16 (4) of the Industrial Code before entry into force of this Act.

### **Article 18** **Expiry of the Licence**

(1) The licence shall expire if

1. construction and operation of the installation have not been commenced within a reasonable period fixed by the licensing authority or if
2. the installation has on longer been operated for a period of more than three years.

(2) Furthermore, the licence shall expire if the requirement to obtain a licence has ceased to exist.

(3) The licensing authority may extend the periods specified in paragraph (1) above for good cause, provided that this is without prejudice to the purpose of this Act.

### **Article 19** **Simplified Procedure**

(1) It may be provided by ordinance under Article 4 (1) third sentence that licensing of installations of a specific type or size is subject to a simplified procedure insofar as, in view of the nature, extent and duration of the harmful effects on the environment and of any other hazards, significant disadvantages and significant nuisances caused by such installations, this is compatible with the protection of the general public and the neighbourhood. The first sentence above shall apply *mutatis mutandis* to waste disposal installations.

(2) Article 10 (2), (3), (4), (6), (8) and (9) and Articles 11 and 14 shall not be applicable to the simplified procedure.

(3) Notwithstanding paragraphs (1) and (2) above, the licence shall not be granted in a simplified procedure, if so requested by the party carrying out the project.

### **Article 20** **Prohibition, Closure and Dismantling**

(1) If the operator of an installation subject to licensing fails to comply with an additional condition imposed on him, an enforceable subsequent order given or a definitive obligation ensuing from an ordinance issued under Article 7, and if any such condition, order or obligation has a bearing on the nature or operation of the installation, the competent authority may wholly or in part prohibit that operation pending compliance with the condition, order or obligation ensuing from the ordinance issued under Article 7.

(1a)<sup>5</sup> The competent authority shall, wholly or in part, prohibit the commissioning or continued use of an installation subject to licensing which is an establishment or part of an establishment and serves commercial purposes or is used within the framework of business undertakings when and if the measures taken by the operator to prevent major accidents within the meaning of Article 3 No. 5 of Council Directive 96/82/EC or to limit the consequences of such accidents are clearly inadequate. The competent authority may, wholly or in part, prohibit the commissioning or continued use of an installation as defined in the first sentence above if the operator fails to submit in time the communications, reports or any other information required by any ordinance issued for the implementation of Directive 96/82/EC.

(2) The competent authority shall issue orders to close down or dismantle any installation constructed, operated or materially altered without the required licence to do so. It shall order the dismantling of the installation where the general public or the neighbourhood cannot be adequately protected in any other way.

(3) The competent authority may prohibit the continued operation of an installation subject to licensing by the operator or any person in charge of operation if there are proven facts supporting the incompetence of such persons to observe the legal provisions concerning the protection against any harmful effects on the environment and if such prohibition is deemed to be advisable in view of the public welfare. Upon application, the operator of such installation may be granted permission to have the installation operated by some other person who warrants normal operation the installation. Such permission may be subject to specific conditions.

## **Article 21** **Revocation of the Licence**

(1) Even after having become final, a licence duly granted under this Act may only be revoked wholly or in part for any future operation if

1. such revocation has been made a proviso pursuant to Article 12 (2) second sentence or (3) ;
2. the licence has been granted subject to a specific condition which the beneficiary has either failed to comply with or has been unable to comply with within the time-limit set;
3. the licensing authority were entitled by virtue of facts having occurred subsequently to refuse to grant such a licence and if non-revocation would put the public interest at risk;
4. the licensing authority were entitled by virtue of a revised legal provision to refuse to grant such a licence, where the operator has not yet made use of the licence, and if non-revocation might be of prejudice to the public interest;

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<sup>5</sup> In accordance with Article 3 of the Act of 19 October 1998 (BGBl. I, p. 3178), this paragraph will enter into force on 3 February 1999.

5. this helps to prevent or eliminate any serious impairments of the public welfare.
- (2) If the licensing authority obtains knowledge of any facts justifying revocation of a licence, such revocation shall only be admissible within a period of one year after such facts have become known.
- (3) When revoked, the licence shall become invalid as soon as the revocation takes effect, unless the licensing authority specifies a later date.
- (4) If a licence is revoked in any of the cases referred to in paragraph (1) Nos. 3 to 5 above, the licensing authority shall, if so requested, compensate the party concerned for the financial prejudice suffered by the party as a result of his trusting in the continued validity of the licence, where such trust is deemed to be worthy of protection. However, any such financial prejudice suffered shall not be compensated beyond the value of the interest which the party concerned has in the continuance of the licence. The financial prejudice subject to compensation shall be fixed by the licensing authority. Any claims may only be filed within a period of up to one year; such period shall start as soon as the licensing authority has given notice to the parties concerned.
- (5) The *Länder* may deviate from the provision specified in paragraph (4) first sentence above, in respect of the party liable for payment of compensation.
- (6) Any disputes arising out of the payment of compensation may be settled in a court of general jurisdiction.
- (7) Paragraphs (1) to (6) above shall not be applicable if a licence challenged by a third party is revoked during the preliminary proceedings or during legal proceedings in an administrative court, insofar as this remedies any such objection or action.

**Section II**  
**Installations not Subject to**  
**Licensing**

**Article 22**  
**Obligations of Operators of Installations**  
**not Subject to Licensing**

- (1) Installations not subject to licensing shall be constructed and operated in such a way that
1. any harmful effects on the environment which are avoidable with the use of the best available techniques are prevented;
  2. any harmful effects on the environment which are unavoidable with the use of the best available techniques are kept to a minimum and
  3. any wastes produced during the operation of such installations can be properly disposed of.

The Federal Government shall be authorised, after hearing the parties concerned (Article 51), to define the installations to which the requirements of Article 5 (1) No. 3 apply *mutatis mutandis* on grounds of the nature and the volume of all or individual wastes through an ordinance with the consent of the *Bundesrat*.

In the case of installations which do not serve commercial purposes and are not used within the framework of business undertakings, the obligation referred to in the first sentence above shall only apply where its aim is to prevent or limit any harmful effects on the environment caused by air pollution or noise.

- (2) Nothing herein contained shall affect any other legal provisions under public law.

**Article 23**  
**Requirements Concerning the Construction, Nature and Operation of Installations not**  
**Subject to Licensing**

(1) The Federal Government is authorised, after hearing the parties concerned (Article 51), to require by ordinance, with the consent of the *Bundesrat*, that the construction, nature and operation of installations not subject to licensing meet specific requirements with a view to protecting the general public and the neighbourhood from any harmful effects on the environment and - where these installations serve commercial purposes or are used within the framework of business undertakings and are establishments or parts of establishments - from any other hazards arising from major accidents within the meaning of Article 3 No. 5 of Council Directive 96/82/EC or for limiting the consequences of such accidents for humans and the environment, as well as taking precautions against such harmful effects on the environment, which means in particular that

1. such installations shall meet specific technical requirements;

2. the emissions released from the installations shall not exceed certain specific limits;
3. the operators of the installations shall take measurements of emissions and immissions using methods to be particularised in the ordinance, or have such measurements taken by an agency to be specified in the ordinance;
4. the operators of specific installations shall without undue delay notify the competent authority of the commissioning or of an alteration of the installation which may be relevant for fulfilling the obligations prescribed in the ordinance and
  - 4a. within an appropriate period of time prior to the construction, commissioning or any alteration of these installations which may be relevant for meeting the obligations defined in the ordinance, the operators of installations which are establishments or parts of establishments shall notify the competent authority of this and that
5. certain installations may only be operated after certification from an expert nominated publicly by the authority responsible under *Land* law has been submitted stating that the installation meets the requirements of the ordinance or of a construction type approval pursuant to Article 33.

The ordinance pursuant to the first sentence above may also define the requirements that experts have to satisfy with regard to their technical qualification, reliability and technical equipment. Article 7 (5) shall apply *mutatis mutandis* to the requirements set out in the first sentence Nos. 1 to 3 above.

(1a) An ordinance pursuant to paragraph (1) above may prescribe for specific installations not subject to licensing that upon request of the party carrying out the project, a procedure for granting a licence pursuant to Article 4 (1) first sentence in conjunction with Article 6 shall be completed. In the case of an application pursuant to the first sentence above, the provisions governing installations subject to licensing, rather than the provisions on installations not subject to licensing, shall be applied to the installation concerned. Article 19 (2) and (3) shall apply *mutatis mutandis* to this procedure.

(2) Where the Federal Government does not make use of the authorisation, the *Land* governments are authorised to lay down by ordinance appropriate provisions in compliance with paragraph (1) above. The *Land* governments may delegate such authorisation to one or several supreme *Land* authorities.

#### **Article 24** **Orders on a Case-to-Case Basis**

The competent authority may, on a case-to-case basis, issue such orders as are necessary to ensure compliance with Article 22 and the ordinances issued under this Act. If the objective of any such order can also be achieved by a measure intended for labour protection, such measure shall be ordered.

## **Article 25 Prohibition**

(1) If the operator of an installation does not comply with an enforceable official order pursuant to Article 24 first sentence, the competent authority may wholly or in part prohibit the operation of such installation pending compliance with such order.

(1a)<sup>6</sup> The competent authority shall, wholly or in part, prohibit the commissioning or the continued use of an installation not subject to licensing which is an establishment or part of an establishment and serves commercial purposes or is used within the framework of business undertakings when and if the measures taken by the operator to prevent major accidents within the meaning of Article 3 No. 5 of Council Directive 96/82/EC or to limit the consequences of such accidents are clearly inadequate. The competent authority may, wholly or in part, prohibit the commissioning or the continued use of an installation as defined in the first sentence above if the operator fails to submit in time the communications, reports or any other information required by any ordinance issued for the implementation of Directive 96/82/EC.

(2) If the harmful effects on the environment caused by an installation are deemed to threaten the life or health of human beings or are likely to cause damage to valuable material assets, the competent authority shall wholly or in part prohibit the construction or operation of such installation where the general public or the neighbourhood cannot be adequately protected in any other way.

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<sup>6</sup> In accordance with Article 3 of the Act of 19 October 1998 (BGBl. I, p. 3178), this paragraph will enter into force on 3 February 1999.

**Section III**  
**Determination of Emissions**  
**and Immissions**  
**Safety Checks**  
**Installations Safety Commission**

**Article 26**  
**Measurements Taken for Special Reasons**

The competent authority may order that the operator of an installation subject to licensing or, insofar as Article 22 is applicable, of an installation not subject to licensing, shall have the nature and type of the emissions released from such installation and the immissions occurring within the sphere of influence of such installation determined by one of the agencies designated by the authority responsible pursuant to *Land* law if there is reason to fear that any harmful effects on the environment may be caused by such installation. The competent authority is authorised to specify details regarding the type and extent of the measurements to be made and regarding the presentation of the results thereof.

**Article 27**  
**Emission Declaration**

(1) The operator of an installation subject to licensing shall, within a period to be fixed by the authority or on the date fixed in the ordinance issued pursuant to paragraph (4) below, be liable to provide the competent authority with information on the type and volume and the spatial and temporal distribution of air pollutants emitted from the installation within a specified period, including the conditions governing such emission (emission declaration); he shall update the emission declaration in accordance with the ordinance referred to in paragraph (4) below. Article 52 (5) shall apply *mutatis mutandis*. The first sentence above shall not be applicable to operators of installations emitting only minor quantities of air pollutants.

(2) Articles 93, 97, 105 (1), Article 111 (5), in conjunction with Article 105 (1) and Article 116 (1) of the Fiscal Code (*Abgabenordnung*), shall not be applicable to the information and documents obtained pursuant to paragraph (1) above. This shall not apply where the tax authorities need such information for the institution of proceedings on grounds of a fiscal offence and tax assessment proceedings ensuing therefrom for the prosecution of which there exists a compelling public interest, or where deliberately false information has been given by the person liable to furnish such information or by any other person acting on his behalf.

(3) The content of the emission declaration shall be disclosed to third parties upon request. No details of the emission declaration shall be published or disclosed to third parties if these could be used to draw conclusions concerning industrial secrets. When submitting the emission declaration, the operator shall contact the competent authority and specify which of the details contained in the emission declaration would allow such conclusions to be drawn.

(4) The Federal Government is authorised to establish by ordinance, with the consent of the *Bundesrat*, the content, scope, form and time of the emission declaration, the procedure to be observed when determining emissions and the deadline for completing the update of the

emission declaration. Provision shall also be made in such ordinance as to which of the operators of installations subject to licensing are to be exempted from the obligation to submit an emission declaration pursuant to paragraph (1) third sentence above. In addition, to ensure compliance with any obligations arising from binding decisions of the European Communities, the ordinance may require the competent authorities to provide the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety with emission data from the emission declarations, to be forwarded via the authorities responsible under *Land* law at a previously determined time.

**Article 28**  
**Initial and Recurrent Measurements**  
**in the Case of Installations Subject to Licensing**

In the case of installations subject to licensing, the competent authority may,

1. after the commissioning or any alteration within the meaning of Article 15 or Article 16 , and then,
2. at the end of a period of any three-year period,

issue orders pursuant to Article 26 even in the absence of the requirements specified therein. If, in view of the type, volume and hazardousness of the emissions released from the installation, the authority deems it necessary to carry out any measurements even during the period specified in No. 2 above, it shall provide, upon application by the operator, for such measurements to be carried out by the immission control officer, provided that he has the requisite technical qualification, reliability and technical equipment for such purpose.

**Article 29**  
**Continuous measurements**

(1) In the case of installations subject to licensing, the competent authority may order specific emissions or immissions to be determined continuously by means of measurement loggers in lieu of individual measurements pursuant to Article 26 or Article 28 or in addition to such measurements. In the case of installations with substantial mass flows of air pollutants, orders pursuant to the first sentence above shall be issued, taking into account the type and hazardousness of these substances, if, owing to the nature of the installation, the possibility of exceeding any emission limits specified in any legal provisions adopted, conditions imposed or orders issued cannot be ruled out.

(2) In the case of installations not subject to licensing, the competent authority may, where Article 22 is applicable, order specific emissions or immissions to be determined continuously by means of measurement loggers in lieu of individual measurements pursuant to Article 26 or in addition to such measurements, if this is deemed necessary to establish whether or not the installation causes any harmful effects on the environment.

### **Article 29 a** **Orders Regarding Safety Checks**

(1) The competent authority may order the operator of an installation subject to licensing to entrust one of the experts designated by the authority responsible under *Land* law with the performance of certain safety checks as well as of audits of safety-related documents. The order may provide for such checks and audits to be carried out by either the hazardous incidents officer (Article 58 a), a licensed supervisory body pursuant to Article 14 (1) of the Safety of Equipment Act or an expert appointed pursuant to any ordinance issued for installations pursuant to Article 2 (2a) of the Safety of Equipment Act, provided that these have the requisite technical qualification, reliability and technical equipment for such purpose; the same shall apply to any expert appointed pursuant to Article 36 (1) of the Industrial Code who can furnish proof of his specific professional qualification in the field of safety checks. The competent authority is authorised to prescribe details regarding the type and scope of such safety checks and the presentation of the result thereof.

(2) Orders for the performance of such checks may be issued

1. for a specific date during the construction of the installation or else before commissioning at the installation;
2. for a specific date after such commissioning;
3. at regular intervals;
4. in the event of a cessation of operation or
5. if there is any evidence to suggest that certain safety-related requirements are not met.

The first sentence above shall apply *mutatis mutandis* in the case of an alteration within the meaning of Article 15 or Article 16 .

(4) The operator shall submit the results of the safety checks to the competent authority no later than one month after completion of the checks; he shall present the results without undue delay if this is deemed necessary for averting imminent dangers.

### **Article 30** **Costs of Measurements and Safety Checks**

The costs for the determination of emissions and immissions as well as for the safety checks shall be borne by the operator of the installation. In the case of installations not subject to licensing, the operator shall bear the costs for measurements carried out pursuant to Article 26 or Article 29 (2) only if it becomes evident from the measurements that

1. certain conditions imposed or orders issued in accordance with the provisions of this Act or of any ordinance issued hereunder have not been complied with or that

2. such orders issued or conditions imposed in accordance with the provisions of this Act or of any ordinance issued hereunder are deemed necessary.

### **Article 31** **Information regarding Emissions and Immissions Measured**

The operator of an installation shall, if so requested, inform the competent authority of the result of any measurements taken by virtue of an order given pursuant to Article 26, 28 or 29 and shall keep the recordings of the measuring equipment pursuant to Article 29 in safe custody for five years. The competent authority may prescribe the mode of transmission of such results. The results of the monitoring of emissions submitted to the authority shall be made accessible to the general public in accordance with the provisions of the Environmental Information Act of 8 July 1994 (BGBl. I p. 1490), with the exception of Article 10 of that Act, as last amended by Article 21 of the Act on the Implementation of the EIA Amendment Directive, the IPPC Directive and other EC Directives for the Protection of the Environment of 27 July 2001 (BGBl. I p. 1950).

### **Article 31 a** **Installations Safety Commission**

- (1) An Installations Safety Commission shall be constituted at the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. The Installations Safety Commission shall advise the Federal Government or the competent Federal Ministry on any safety-related issues concerning the prevention of hazardous incidents and the limitation of their impacts. It shall work out appropriate rules in accordance with the best available techniques of safety technology (safety rules), taking into account any such rules as already exist in respect of other objectives for protection.
- (2) As well as representatives of the Federal authorities and the supreme *Land* authorities concerned and the chairmen of the sub-committees pursuant to paragraph (3) below, appointments to the Installations Safety Commission shall in particular include representatives from the scientific world, the experts referred to in Article 29 a , the operators of installations, the trade associations, the chairmen of the committees set up pursuant to Article 11 (2) of the Safety of Equipment Act and pursuant to Article 44 (1) of the Ordinance on Hazardous Substances as well as the chairman of the Hazardous Incidents Commission. The Installations Safety Commission may set up sub-committees; appointments to such sub-committees may include experts who do not belong to the Installations Safety Commission.
- (3) The Installations Safety Commission shall adopt its own rules of procedure and elect a chairman from among its members. The rules of procedure and the election of the chairman shall be subject to approval by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety.
- (4) Safety rules may be published by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety in the *Bundesanzeiger* (Federal Gazette) after hearing the *Land* authorities responsible for installations safety.



**Part III**  
**Nature of Installations, Substances, Products, Fuels and Lubricants**

**Article 32**  
**Nature of Installations**

(1) The Federal Government is authorised, after hearing the parties concerned (Article 51), to require by ordinance, with the consent of the *Bundesrat*, that series-produced parts of operating plants and of any other stationary facilities and the installations referred to in Article 3 (5) No. 2 , including series-produced parts thereof, shall not be placed on the market or imported, be it commercially or within the framework of business undertakings, unless they satisfy specific requirements for the protection against any harmful effects on the environment caused by air pollution, noise or vibration. In any ordinance pursuant to the first sentence above, it may in particular be provided that

1. the emissions released from the installations or series-produced parts thereof shall not exceed certain emission values;
2. the installations or series-produced parts thereof shall comply with certain technical requirements for the control of emissions.

The emission values referred to in the second sentence No. 1 above may be fixed for some future date after the entry into force of the ordinance, taking into account the latest technological developments. Article 7 (5) shall apply *mutatis mutandis* to the requirements set out in the first, second and third sentences above.

(2) It may furthermore be required by ordinance that no installations or series-produced parts thereof shall be placed on the market or imported, be it commercially or within the framework of business undertakings, unless they carry a label indicating the amount of emissions caused by them.

**Article 33**  
**Construction Type Approval**

(1) In order to protect the environment from any harmful effects and to take precautionary action against any environmental damage, the Federal Government, after hearing the parties concerned (Article 51), is authorised, by ordinance and with the consent of the *Bundesrat*,

1. to stipulate that installations described in Article 3 (5) No. 1 or 2 , or specific parts of such installations, may be generally permitted after a pattern examination and that construction type approval may be made conditional upon compliance with additional requirements concerning the construction and operation of the installations;
2. to require that certain installations produced in series or specific parts produced in series for these installations may be placed on the market commercially or within the framework of business undertakings only if the construction type of the installation or the part in question has been generally approved and the installation or the part corresponds to the approved pattern;

3. to regulate the construction type approval procedure;
4. to stipulate which fees and expenses must be paid for the construction type approval; the fees charged shall only serve to cover the personnel and operating expenses incurred in connection with the tests which include in particular the costs of experts, test equipment and test materials as well as the cost for developing suitable test procedures and exchanging experience; provision may be made for a fee to be raised even if an examination was not commenced at all or not completed, if responsibility for the reasons for this lies with the party having applied for the examination; the amount of the fee shall depend on the average number of hours which an expert spends on the different tests required for the type of installation in question; matters such as cost exemption, definition of the parties entitled to receive and obliged to pay a fee, the extent to which expenses must be reimbursed and the way in which costs must be charged may all be regulated by the ordinance in derogation of the provisions of the Act on Administrative Expenses (*Verwaltungskostengesetz*) of 23 June 1970 (BGBl. I p. 821).

(2) The approval of the construction type shall only be made conditional upon compliance with the requirements set out in Article 32 (1) and (2) or in any other ordinances, as well as upon provision of proof concerning the level of emissions from the installation or part of the installation.

#### **Article 34** **Nature of Fuels and Lubricants**

(1) The Federal Government is authorised, after hearing the parties concerned (Article 51), to require by ordinance, with the consent of the *Bundesrat*, that fuels, lubricants or any additives thereto shall not be produced, placed on the market or imported, be it commercially or within the framework of business undertakings, unless they meet certain requirements for the protection against any harmful effects on the environment caused by air pollution. In any ordinance pursuant to the first sentence above, it may in particular be provided that

1. any natural constituents of fuels or lubricants or any additives thereto pursuant to the first sentence above which, in the case of normal use of such fuels, lubricants or additives thereto for the intended purpose, are deemed to give rise to air pollution or obstruct measures aimed at combating air pollution shall not be added or shall not exceed a certain maximum content;
  - 1a. additives to fuels or lubricants shall not contain any of a list of substances which are deemed to give rise to air pollution or obstruct measures aimed at combating air pollution, or shall only contain special compositions of these substances;
2. fuels or lubricants pursuant to the first sentence above shall contain certain additives which help limit the formation of air pollution;
3. fuels, lubricants or any additives thereto pursuant to the first sentence above shall undergo special treatment which helps limit the formation of air pollution;

4. anyone who produces or imports liquid fuels, lubricants or any additives thereto or in any other way moves them into the jurisdiction of this Act, be it commercially or within the framework of business undertakings, shall notify the competent supreme Federal authority of
  - a) any additives to such liquid fuels or lubricants that are composed of any chemical elements other than carbon, hydrogen and oxygen, and
  - b) any details still to be particularised of the type and quantity used and the potentially harmful effects of these additives or any combustion products thereof on the environment.

Such requirements as are referred to in the second sentence above may also be fixed for some future date after the entry into force of the ordinances, taking into account the latest technological developments. Article 7 (5) shall apply *mutatis mutandis* to the requirements set out in the first, second and third sentences above.

(2) The Federal Government is authorised to require by ordinance, with the consent of the *Bundesrat*,

1. that for imports of fuels, lubricants or any additives thereto which are the subject of any such requirements as are specified in paragraph (1) first sentence above, a written statement by the manufacturer indicating the nature of such fuels, lubricants or additives thereto must be submitted to the customs authorities, and subsequently carried along during conveyance until the consignment has reached its first place of destination and kept available at the place of destination until the consignment is dispatched therefrom;
2. that the importer must file this written statement with his business records;
3. which details regarding the nature of the fuels, lubricants or additives thereto must be given in the written statement;
4. that any fuels, lubricants or additives thereto pursuant to paragraph (1) first sentence above, when moved into the jurisdiction of this Act, except for customs exclaves, must be notified by the importer, upon being moved, to the competent authorities at the place of destination;
5. that in the case of storage of any such fuels, lubricants or additives thereto pursuant to paragraph (1) first sentence above, tank voucher registers must be kept, indicating the suppliers of the fuels, lubricants or additives thereto pursuant to paragraph (1) first sentence above;
6. that anyone who sells any substances or additives thereto pursuant to paragraph (1) first sentence above to consumers, be it commercially or within the framework of business undertakings, must label them in a clearly visible and easily readable manner, indicating the specific properties and

7. that anyone who places any substances or additives thereto pursuant to paragraph (1) first sentence above on the market, be it commercially or within the framework of business undertakings, must inform the party liable to label such items pursuant to No. 6 above of any such specific properties.

### **Article 35** **Nature of Substances and Products**

(1) The Federal Government is authorised, after hearing the parties concerned (Article 51), to require by ordinance, with the consent of the *Bundesrat*, that certain substances or products therefrom which, when used for the intended purpose or combusted for the purpose of disposal or recovery of particular constituents, are likely to cause harmful effects on the environment caused by air pollution, shall not be produced, imported or otherwise placed on the market, be it commercially or within the framework of business undertakings, unless they meet certain requirements regarding composition and the process used for their production with a view to affording protection against any such harmful effects on the environment caused by air pollution. The authorisation contained in the first sentence above shall not refer to installations, fuels, vehicles and craft.

(2) Such requirements as are specified in paragraph (1) first sentence above may also be fixed for some future date after the entry into force of the ordinance, taking into account the latest technological developments. Article 7 (5) shall apply *mutatis mutandis* to the requirements set out in paragraph (1) and paragraph (2) first sentence above.

(3) Where this is compatible with the protection of the general public from any harmful effects on the environment caused by air pollution, provision may also be made in the ordinance specified in paragraph (1) above, in lieu of the requirements regarding the composition and the production process, for such substances and products to be labelled in a clearly visible and easily readable manner, indicating that harmful effects on the environment may arise in the case of normal use for the intended purpose or during combustion or that such harmful effects can be avoided by having resort to particular types of use.

### **Article 36** **Exports**

In the ordinances pursuant to Articles 32 to 35, it may be required that the provisions concerning production, importation and placing on the market shall not apply to any installations, substances, products and fuels which are intended for delivery into areas outside the jurisdiction of this Act.

### **Article 37** **Implementation of Intergovernmental Agreements and of Decisions of the European Communities**

In order to implement any obligations arising from intergovernmental agreements or binding decisions of the European Communities, the Federal Government may, for the purpose

referred to in Article 1 and with the consent of the *Bundesrat*, require by ordinance that no installations, substances, products or fuels shall be placed on the market, be it commercially or within the framework of business undertakings, unless they meet certain requirements in accordance with Articles 32 to 35 . In an ordinance pursuant to the first sentence above which serves the purpose of implementing binding decisions of the European Communities on measures for controlling emissions of gaseous pollutants and air-pollutant particles from combustion engines for off-road vehicles and machines, the Federal Office for Motor Traffic may be designated as licensing authority and, in this capacity, be subjected to the technical supervision of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety.

**Part IV**  
**Nature and Operation of Vehicles and Craft,**  
**Construction of and Alterations to Roads and Railtracks**

**Article 38**  
**Nature and Operation of Vehicles and Craft**

(1) The nature of motor vehicles including their trailers and of railborne vehicles, aircraft and watercraft as well as of floating bodies and floating installations shall be such that in the case of normal use for the intended purpose, the emissions resulting from their participation in traffic do not exceed the limits which must be observed to ensure protection from harmful effects on the environment. They must be operated in such a manner that any avoidable emissions are prevented and any unavoidable emissions are kept to a minimum.

(2) The Federal Ministry of Transport and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall, after hearing the parties concerned (Article 51), define by ordinance, with the consent of the *Bundesrat*, the requirements to be met regarding the nature, equipment, operation and testing of such vehicles, craft and installations, as defined in paragraph (1) first sentence above, to ensure protection from any harmful effects on the environment, also where such vehicles, craft and installations are subject to current Federal traffic regulations. In this respect, emission limits may also be fixed for some future date after the entry into force of the ordinance, taking into account the latest technological developments.

(3) Article 7 (5) shall apply *mutatis mutandis* to the requirements set out in paragraph (2) above.

**Article 39**  
**Implementation of Intergovernmental Agreements and of Decisions of the European Communities**

In order to implement any obligations arising from intergovernmental agreements or binding decisions of the European Communities, the Federal Ministry of Transport and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may, for the purpose referred to in Article 1 and with the consent of the *Bundesrat*, require by ordinance that the

vehicles and craft specified in Article 38 shall satisfy particular requirements as regards their nature, equipment, testing and operation. Article 7 (5) shall apply *mutatis mutandis* to the requirements set out in the first sentence above.

#### **Article 40 Traffic Restrictions**

(1) The competent road traffic authority shall restrict or ban motor vehicle traffic in accordance with relevant road traffic regulations, if such is provided for by a clean air plan or action plan pursuant to Article 47 (1) or (2). The road traffic authority may, in agreement with the competent authority responsible for immission control, grant exemptions from any bans or restrictions on motor vehicle traffic, if so required by overriding and unpostponable reasons related to the common good.

(2) The competent road traffic authority may restrict or ban motor vehicle traffic on certain roads or in certain areas in accordance with relevant road traffic regulations, where such motor vehicle traffic contributes to any immission values laid down in ordinances pursuant to Article 48 a (1) being exceeded and where the authority responsible for immission control deems this necessary in view of local conditions, in order to reduce any harmful effects on the environment caused by air pollution or prevent the formation thereof. Traffic-related and urban planning aspects shall be duly taken into account. Article 47 (6) first sentence shall remain unaffected.

(3) The Federal Government is authorised, after hearing the parties concerned (Article 51), to decree by ordinance, with the consent of the *Bundesrat*, that motor vehicles with low pollutant emissions are or may be wholly or in part exempted from traffic bans and to determine the relevant criteria for that purpose and the official marking of these motor vehicles. Such ordinance may also determine that certain journeys or persons are or may be exempted if so required by the common good or by unpostponable and overriding reasons related to an individual's interests.

#### **Article 40 a<sup>7</sup> Traffic Bans in the Case of Increased Ozone Concentrations (Repealed)**

(1) Traffic of motor vehicles on public roads shall, under the terms of Article 40 b to 40 e , be prohibited in a *Land* or parts of a *Land*, if at least three measuring stations in the Federal territory which are more than 50km and less than 250km apart in distance and of which at least two, in the case of the *Länder* Berlin, Bremen, Hamburg and Saarland at least one, are situated in the said *Land* or in a neighbouring district of another *Land*

1. measure an ozone concentration of 240 micrograms/m<sup>3</sup> of air as a mean value during one hour on the same day and if

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<sup>7</sup> Ceased to be effective as of 31 December 1999.

2. there is reason to assume, on the basis of the meteorological knowledge of the German Meteorological Service, that the concentration referred to in No. 1 above will be measured by these measuring stations in the course of the following day.

Before determining the area affected by the traffic ban, the *Land* shall contact and come to an agreement with the neighbouring *Länder*. Ozone concentrations shall be determined by the *Land* concerned in accordance with the procedure set out in Council Directive 92/72/EEC of 21 September 1992 on air pollution by ozone (Official Journal EC No. L 297 p. 1), and the other *Länder* shall be informed thereof.

(2) The competent authorities are to request the drivers and owners of motor vehicles as well as the operators of internal combustion engines in the non-commercial field not to use them, if in any way possible, as soon as an ozone concentration of 180 micrograms/m<sup>3</sup> of air is measured.

**Article 40 b<sup>8</sup>**  
**Steps to be taken in the Case of Traffic Bans**  
(Repealed)

(1) The highest road traffic authority of the *Land* or the public authority designated by it shall publicly announce traffic bans pursuant to Article 40 a (1) by radio, television, daily newspapers or in any way other than by traffic signs or traffic installations.

(2) In the announcement according to paragraph (1) above, those parts of a *Land* which, on account of the nature and extent of the emissions from motor vehicles, do not contribute to the increased ozone concentration or do so only insignificantly can be exempted from the traffic ban pursuant to Article 40 a (1).

**Article 40 c<sup>9</sup>**  
**Motor Vehicles with Low Exhaust Emissions**  
(Repealed)

(1) The traffic ban pursuant to Article 40 a (1) shall not apply to motor vehicles with low exhaust emissions as set forth in the Annex to this Act.

(2) In the case of a traffic ban, motor vehicles with low exhaust emissions may only be operated if they are marked with an official sticker. Details shall be regulated by the law of the *Land* concerned.

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<sup>8</sup> Ceased to be effective as of 31 December 1999.

<sup>9</sup> Ceased to be effective as of 31 December 1999.

**Article 40 d<sup>10</sup>**  
**Journeys for Special Purposes**  
(Repealed)

(1) The traffic ban pursuant to Article 40 a (1) shall not apply to

1. motor vehicles used in regular services in accordance with Articles 42 and 43 Nos. 1 and 2 of the Passenger Transport Act or in transport operations in accordance with Article 1 No. 4 d, e or g of the Exemption Regulation;
2. hire buses pursuant to Article 49 (1) of the Passenger Transport Act used for the transport of employed persons to and from their places of work;
3. passenger cars used for the transport of passengers in accordance with Articles 47 and 49 (4) of the Passenger Transport Act;
4. ambulances and doctors' cars clearly recognisable as such when on duty for the medical care of the population;
5. motor vehicles driven by persons or carrying persons who are extremely mobility-handicapped, helpless or blind and can prove this handicap by the letters "aG", "H", or "BI" in their identity papers in accordance with Article 4 (5) of the Disabled Persons Act;
6. emergency, support and supply vehicles of local public passenger transport and the railways, of public power and water supplies and of domestic waste disposal, if the journeys are necessary for the fulfilment of their duties and cannot be delayed;
7. motor vehicles employed
  - a) for maintaining the production process of farms,
  - b) for the execution of forest protection measures that cannot be delayed,
  - c) for the transport of live animals,
  - d) for the transport of perishable goods.

(2) The traffic ban pursuant to Article 40 a (1) shall not apply to any journeys of commuters to and from their places of work nor to journeys of holidaymakers to and from their holiday destinations, if they cannot be carried out in any other reasonable way; all other details shall be regulated by the road traffic authorities.

(3) Vehicles to which special rights pursuant to Article 35 of the German Road Traffic Regulations are applicable shall be exempted. The special rights set out in Article 35 (5) of the German Road Traffic Regulations shall, to the extent intended, also apply to non-German troops of non-contracting states to the North Atlantic Treaty who are staying in Germany

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<sup>10</sup> Ceased to be effective as of 31 December 1999.

within the framework of military co-operation, as well as to civilian motor vehicles used on behalf of the *Bundeswehr* and whose journeys in pursuance of statutory powers or duties of the *Bundeswehr* cannot be delayed.

**Article 40 e<sup>11</sup>**  
**Exemptions**  
(Repealed)

(1) In individual cases, the road traffic authority may grant exemptions from the traffic ban set out in Article 40 a (1), insofar as the use of the motor vehicles is necessary in the public interest or in the predominant private interest, especially for maintaining the production process or for the supply of the population with goods and services essential to life.

(2) Moreover, the road traffic authority may in individual cases grant exemptions from the traffic ban set out in Article 40 a (1) for two-wheel or three-wheel motor vehicles with low exhaust emissions over and above the provisions of Article 40 c above.

(3) The motor vehicles exempted in accordance with paragraphs (1) and (2) above shall be marked according to the law of the *Land* concerned.

**Article 41**  
**Roads and Railways**

(1) Notwithstanding Article 50 , provision shall be made in the case of any construction or major alteration of public roads as well as of railways, magnetic levitation trains and tramways that this does not involve any harmful effects on the environment caused by traffic noise which is avoidable with the use of the best available techniques.

(2) Paragraph (1) above shall not apply where the costs of the protective measure would not be commensurate with the desired protection goal.

**Article 42**  
**Compensation for Sound-Proofing Measures**

(1) Where the immission limits laid down in Article 43 (1) first sentence No. 1 are exceeded in any of the cases referred to in Article 41 , the owner of the construction works affected thereby shall be entitled to claim adequate financial compensation from the person(s) responsible for the construction put in place, except where such impairment is deemed to be reasonable in view of the specific purpose for which the construction works are used. This shall also apply to any construction works which had already been approved by the supervisory building authority when the pertinent plans were laid open for public inspection in the course of the plan approval procedure or when the draft development plans including the road system plans were laid open for public inspection.

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<sup>11</sup> Ceased to be effective as of 31 December 1999.

(2) The compensation shall be paid for sound-proofing measures at construction works to cover the actual expenditure incurred where such expenditure is within the limits imposed by an ordinance pursuant to Article 43 (1) first sentence No. 3 . Nothing herein contained shall affect any other legal provisions establishing more extensive compensation payments.

(3) If the person(s) responsible for the construction put in place and the person(s) affected thereby fail to reach agreement on the amount of compensation payable, the authority competent under *Land* law shall, upon application by one of the parties concerned, fix such compensation by a written notice. In all other respects, the expropriation laws of the *Länder* shall apply *mutatis mutandis* to such procedure.

### **Article 43** **Ordinance Issued by the Federal Government**

(1) The Federal Government is authorised, after hearing the parties concerned (Article 51), to adopt by ordinance, with the consent of the *Bundesrat*, any such provisions as are necessary to implement Article 41 and Article 42 (1) and (2) , especially with respect to

1. specific limits which must not be exceeded so as to warrant the protection of the neighbourhood from any harmful effects on the environment caused by noise, as well the procedure to be used to measure emissions or immissions;
2. specific technical requirements regarding the construction of roads, railways, magnetic-levitation trains and tramways so as to prevent any harmful effects on the environment caused by noise and
3. the type and extent of any sound-proofing measures at construction works needed to protect the environment from any harmful effects caused by noise.

In the ordinances referred to in the first sentence above, due regard shall be paid to the characteristic features of railborne traffic.

(2) Article 7 (5) shall apply *mutatis mutandis* to the requirements set out in paragraph (1) above.

**Part V**  
**Monitoring and Improving Air Quality, Clean Air Plans and Noise Abatement Plans**

**Article 44**  
**Monitoring Air Quality**

(1) In order to monitor air quality, the competent authorities shall conduct tests at regular intervals in accordance with the requirements of the ordinances pursuant to Article 48 a (1) or (1a).

(2) The *Land* governments or the competent authorities designated by them are authorised to determine by ordinance such areas subject to investigation in which the nature and extent of certain types of air pollution other than those covered by paragraph (1) above which may cause harmful effects on the environment must be determined either over a specified period or continuously and in which the circumstances that are conducive to the development and dispersion of such pollution must be investigated.

**Article 45**  
**Improving Air Quality**

The competent authorities shall take the necessary measures to ensure compliance with the immission values laid down in an ordinance pursuant to Article 48 a. These include in particular plans pursuant to Article 47.

- (2) The measures pursuant to paragraph (1) above
- a) shall be in line with an integrated approach for the protection of air, water and soil;
  - b) shall not contravene any provisions for the protection of health and safety in the workplace;
  - c) shall not cause any significant impairment to the environment in other member states.

**Article 46**  
**Emission inventory**

The competent authorities shall prepare emission inventories where such is necessary to implement any binding decisions of the European Communities.

**Article 46 a**  
**Provision of Information to the Public**

The public shall be provided with relevant information on air quality as required by any ordinances pursuant to Article 48 a (1). The competent authority shall without undue delay announce to the public any non-compliance with alert thresholds determined as immission values in ordinances pursuant to Article 48 a (1) through radio, television, the press or in other ways.

**Article 47**  
**Clean Air Plans, Action Plans, *Land* Ordinances**

(1) If the immission limits specified in an ordinance pursuant to Article 48 a (1) including any margins of tolerance defined therein are exceeded, the competent authority shall draw up a clean air plan that defines the necessary measures for achieving a durable reduction of air pollution and conforms to the requirements of the ordinance.

(2) If there is a risk that the immission limits or alert thresholds defined in an ordinance pursuant to Article 48 a (1) are exceeded, the competent authority shall draw up an action plan defining the measures to be taken in the short term. The measures defined in the action plan shall be such as to ensure that the risk of these values being exceeded is reduced or that the period during which these values are exceeded is shortened. Action plans may be part of clean air plans pursuant to paragraph (1) above.

(3) If there is any evidence that any immission values laid down in an ordinance pursuant to Article 48 a (1) are not complied with, or if any other harmful effects on the environment are to be expected in an area subject to investigation pursuant to Article 44 (2), the competent authority may draw up a clean air plan. When drawing up such plans, due regard shall be paid to the objectives, principles and other requirements of regional planning.

(4) The measures shall, on the basis of a pro-rata allocation of costs and in accordance with the principle of proportionality, be applied to all those emitters who are partly responsible for immission values being exceeded or for any other harmful effects on the environment caused in an area subject to investigation pursuant to Article 44 (2). Where plans pursuant to paragraphs (1) and (2) above involve any road traffic measures, these shall be adopted in agreement with the competent road construction and road traffic authorities. Where any immission values are exceeded with regard to more than one pollutant, a plan covering all relevant pollutants shall be drawn up. Where immission values are exceeded due to emissions caused outside the planning area, the competent authority responsible for that area shall also draw up such a plan in the cases referred to in paragraphs (1) and (2) above.

(5) The plans to be drawn up pursuant to paragraphs (1) to (4) above shall meet the requirements laid down in Article 45 (2). The public shall be involved in drawing up such plans. The plans shall be made accessible to the public.

(6) The measures laying down plans pursuant to paragraphs (1) to (4) above shall be enforced by orders issued or any other decisions taken by the competent public administrative authorities in conformity with this Act or any other applicable legal provisions. Where such plans contain any specific decisions under planning law, the competent planning bodies shall take these into consideration in their planning activities.

(7) If there is a risk that any immission limits specified in an ordinance pursuant to Article 48 a (1) are exceeded, the *Land* governments or the authorities designated by them are authorised to require by ordinance that in certain areas to be specified, it shall not be permissible to

1. operate certain non-stationary installations,

2. construct certain stationary installations,
3. operate certain non-stationary or stationary installations unless they are operated at fixed times only or meet more stringent technical requirements or
4. use certain fuels in installations or to use them on a larger scale,

where such installations or fuels are likely to contribute to the immission values being exceeded. Paragraph (4) first sentence above and Article 49 (3) shall apply *mutatis mutandis*.

#### **Article 47 a** **Noise Abatement Plans**

(1) In areas in which any harmful effects on the environment have been caused or are expected to be caused by noise, the local authorities or the authorities competent under *Land* law shall measure the noise levels resulting from the various noise sources and determine their effects on the environment.

(2) The local authority or the authority competent under *Land* law shall draw up noise abatement plans for residential areas and any other areas worthy of protection if the harmful effects on the environment due to noise that have occurred or are expected to occur in such areas are not only temporary and if the abatement or reduction of such harmful effects on the environment calls for concerted action against various types of noise sources. When drawing up such plans, due regard shall be paid to the objectives, principles and other requirements of regional planning.

(3) Noise abatement plans shall contain information on

1. the noise levels, both recorded and expected;
2. the sources of such noise levels and
3. any measures envisaged to reduce or prevent a further increase in noise levels.

(4) Article 47 (6) shall apply *mutatis mutandis*.

### **Part VI** **Joint Provisions**

#### **Article 48** **Administrative Provisions**

After hearing the parties concerned (Article 51), the Federal Government shall issue, with the consent of the *Bundesrat*, general administrative provisions for the implementation of this Act and of the ordinances issued by the Federal Government hereunder, concerning in particular

1. immission values which must not be exceeded in the light of the purpose defined in Article 1 ;
2. emission limits the exceeding of which is avoidable with the use of the best available techniques;
3. the method to be used to determine emissions and immissions;
4. the measures to be taken by the competent authority with respect to installations for which provision may be made in an ordinance pursuant to Article 7 (2) or (3) , due regard being paid to the requirements specified therein.

When defining such requirements, account shall in particular be taken of any possible shifts of adverse effects from one protected resource to another; a high level of protection shall be ensured for the environment as a whole.

#### **Article 48 a** **Ordinances on Emission and Immission Values**

(1) In order to implement any binding decisions of the European Communities, the Federal Government may, for the purpose defined in Article 1 and with the consent of the *Bundesrat*, issue ordinances governing the establishment of immission and emission values, including the methods to be used to determine these values, and the measures to ensure compliance with these values as well as the monitoring and measuring thereof. Such ordinances may also regulate the way in which the public is to be informed.

(1a) Above and beyond implementing binding decisions of the European Communities, the Federal Government may, for the purpose referred to in Article 1, issue ordinances, with the consent of the *Bundesrat*, to define immission values for further pollutants, including the procedures for determining relevant values, as well as measures to ensure compliance with these values and monitoring and measurements. Such ordinances may also regulate the way in which the public is to be informed.

(2) The measures laid down in any ordinance issued pursuant to paragraph (1) above shall be enforced by means of orders or any other decisions to be issued by the competent public administrative authorities under this Act or any other legal provisions; where any decisions under planning law are required, the competent planning bodies shall decide whether and to what extent such planning is to be taken into consideration.

(3) In order to implement any binding decisions of the European Communities, the Federal Government may, for the purpose specified in Article 1 and with the consent of the *Bundesrat*, issue ordinances governing the duties of public authorities and vest them with powers for collecting, processing and utilising personal data, insofar as these are required for evaluating and controlling the requirements set out in the decisions.

#### **Article 48 b** **Participation of the *Bundestag* in Issuing Ordinances**

Ordinances issued pursuant to Article 7 (1) first sentence No. 2, Article 23 (1) first sentence No. 2, Article 43 (1) first sentence No. 1, Article 48 a (1) and Article 48 a (1a) of this Act shall be forwarded to the *Bundestag*. This shall be done prior to their forwarding to the *Bundesrat*. The ordinances may be amended or rejected by the *Bundestag*. The decision of the *Bundestag* shall be forwarded to the Federal Government. If the *Bundestag* has not dealt with the ordinance within three weeks in session after its submission, the unaltered ordinance shall be forwarded to the *Bundesrat*.

#### **Article 49** **Protection of Specific Areas**

(1) The *Land* governments are authorised to require by ordinance that in specific areas still to be identified which require special protection against any harmful effects on the environment caused by air pollution or noise, it shall not be permissible

1. to operate certain non-stationary installations,
2. to construct certain stationary installations,
3. to operate certain non-stationary or stationary installations unless they are operated at fixed times only or meet more stringent technical requirements or
4. to use certain fuels in such installations or to use them on a larger scale,

where such installations or fuels are likely to cause any harmful effects on the environment caused by air pollution or noise which are not compatible with the specific protective needs of such areas and where the air pollution and noise cannot be prevented by imposing any additional conditions.

(2) The *Land* governments are authorised to designate by ordinance specific areas in which a considerable increase in air pollution is to be feared during weather conditions characterised by poor air circulation. Provision may be made in such ordinance that in such areas,

1. non-stationary or stationary installations may be operated at fixed times only or
2. fuels which are particularly likely to cause air pollution shall not be used in such installations or may be used on a limited scale only,

as soon as public notice is given by the competent authority of any such weather conditions.

(3) This shall not affect any powers under *Land* law delegated to local authorities or associations of local governments in respect of the issue of by-laws governing the protection of the public against any harmful effects on the environment caused by air pollution or noise.

#### **Article 50** **Planning**

In the case of regional planning projects and associated measures, the land earmarked for specific types of use shall be zoned in such a manner that harmful environmental effects and the effects of major accidents within the meaning of Article 3 No. 5 of Directive 96/82/EC in establishments and on areas that are exclusively or predominantly used for residential purposes as well as on any other areas worthy of protection are kept to a minimum. In the case of regional planning projects and associated measures carried out in areas in which the immission limits specified in ordinances pursuant to Article 48 a (1) are not exceeded, one aspect to be taken into account shall be maintenance of optimum air quality.

### **Article 51** **Hearing of the Parties Concerned**

Where an authorisation for the issue of ordinances and general administrative provisions requires a hearing of the parties concerned, an ad-hoc group to be constituted in each individual case from representatives of the parties directly affected, the scientific community and, where applicable, the business community and the transport sector, as well as of the supreme *Land* authorities responsible for immission control shall be heard.

### **Article 51 a** **Hazardous Incidents Commission**

(1) A Hazardous Incidents Commission shall be set up at the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety to render expert advice to the Federal Government. This Commission shall include as members the chairman of the Installations Safety Commission and, in agreement with the Federal Ministry of Labour and Social Affairs, representatives of the scientific community, of environmental associations, of trade unions and, where applicable, of the business community, as well as representatives of the supreme *Land* authorities responsible for immission control and occupational safety and health.

(2) The Hazardous Incidents Commission shall identify potential ways and means of perfecting installations safety through its expert opinions delivered at regular intervals as well as due to certain events.

(3) The Hazardous Incidents Commission shall adopt its own rules of procedure and shall elect its chairman from among its members. The rules of procedure and the election of the chairman are subject to the approval of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, to be given in agreement with the Federal Ministry of Labour and Social Affairs.

### **Article 51 b** **Ensuring Reception of Delivered Information**

The operator of an installation subject to licensing shall ensure that any documents addressed to him within the jurisdiction of this Act can be delivered to him. If the documents can only be received via a proxy, the operator shall present the name of the proxy to the competent authority.

### **Article 52** **Supervision**

(1) The competent authorities shall supervise the implementation of this Act and of any ordinance issued hereunder. They shall review any licences as defined in Article 4 at regular intervals and, where necessary, update them by means of subsequent orders pursuant to Article 17 . A review pursuant to the second sentence above shall in any case be performed if

1. there is evidence that the protection of the neighbourhood and of the general public is not sufficient and that the emission limits specified in the licence have to be reviewed or redefined;
2. major changes in the best available techniques allow a significant reduction of emissions;
3. improvements in operating safety are required, especially through the use of other methods, or if
4. it is so required by any new environmental provisions.

(2) Owners and operators of installations as well as owners and operators of premises where such installations are operated shall grant the staff members of the competent authority and any person commissioned by them free access to the premises and, where the prevention of imminent danger to law and order so requires, to their private accommodation, and enable such persons to carry out tests including the determination of emissions and immissions and, finally, furnish such information and produce any such supporting documents as are needed by such persons to perform their duties. The fundamental right of inviolability of the home as laid down in Article 13 of the Basic Law shall be restricted in this regard. Operators of installations for which an immission control officer or a hazardous incidents officer has been appointed shall call in that officer, if so requested by the competent authority, to assist in any supervisory action to be taken in accordance with the first sentence above. Within the scope of the obligations pursuant to the first sentence above, the owners and operators of such installations shall provide personnel and auxiliary materials, especially fuels and drive assemblies.

(3) Paragraph (2) above shall apply *mutatis mutandis* to owners and holders of installations, materials, products, fuels and lubricants insofar as these are subject to the provisions of the ordinance issued under Articles 32 to 35 or 37 . Such owners and holders shall permit samples to be taken at random by staff members of the competent authority and any person

commissioned by such staff members, provided that this is necessary for the fulfilment of their duties.

(4) Any costs incurred by tests carried out in the course of the licensing procedure shall be borne by the applicant. Any costs incurred by random sampling pursuant to paragraph (3) above, including the analysis thereof, shall be borne by the party liable to furnish information. Any costs for other supervisory measures taken pursuant to paragraph (2) or (3) above shall be borne by the party liable to furnish information unless the measure is aimed at measuring emissions and immissions or supervising an installation not subject to licensing outside the supervisory system pursuant to the Twelfth Ordinance on the Implementation of the Federal Immission Control Act; in such cases, the costs incurred shall only be imposed on the party liable to furnish information if it becomes obvious from such investigations that

1. any conditions imposed or orders issued under this Act or under any ordinance issued hereunder have not been complied with or that
2. such conditions to be imposed or orders to be issued under this Act or under any ordinance issued hereunder are deemed necessary.

(5) The party liable to furnish the information may refuse to answer any questions which would render this party or any of its dependants referred to in Article 383 (1) Nos. 1 to 3 of the Code of Civil Procedure liable to criminal prosecution or any other action under the Act on Administrative Offences.

(6) Where the implementation of this Act or any ordinance issued hereunder requires determination of immission levels, even the owners and holders of premises which are not used for the operation of installations shall grant the staff members of the competent authorities and any person commissioned by them free access to the premises and, where the prevention of imminent danger to law and order so requires, also to their private accommodation, and enable them to carry out tests. The fundamental right of inviolability of the home as laid down in Article 13 of the Basic Law shall be restricted in this regard. When exercising such powers as are referred to in the first sentence above, due account shall be taken of the legitimate concerns of the owners and holders of the premises; any damage sustained shall be compensated by the *Land* concerned or, in the case of Article 59 (1), by the Federal Government. If such damage was the unavoidable result of the supervisory action and if such action involved orders by the competent authority against the operator of an installation, the latter shall be liable to indemnify the *Land* or the Federal Government for such compensation paid.

(7) Articles 93, 97, 105 (1), Article 111 (5) in conjunction with Articles 105 (1) and Article 116 (1) of the Fiscal Code (*Abgabenordnung*) shall not be applicable to any information and documents obtained pursuant to paragraphs (2), (3) and (6) above. This shall not apply where the tax authorities need such information for the institution of proceedings on the ground of a fiscal offence and for tax assessment proceedings ensuing therefrom, the prosecution of which constitutes a compelling public interest, or where any deliberately false information by the person liable to furnish such information or by any other person acting on his behalf is involved.

**Article 52 a**  
**Obligation to Furnish Information**  
**on the Organisation of the Enterprise**

(1) If in the case of a corporation, the board entitled to represent such corporation consists of several members, or if in the case of a partnership, several partners are entitled to represent the partnership, notice shall be given to the competent authority as to which of these persons performs the duties of operator of an installation subject to licensing on behalf of the corporation or partnership in accordance with the regulations governing the management authority, such duties being incumbent on the said operator pursuant to this Act and any ordinance or general administrative provision issued hereunder. Nothing contained herein shall affect the collective responsibility of the members of the board or the partners in question.

(2) The operator of the installation subject to licensing or, by virtue of his management authority, the person to be notified pursuant to paragraph (1) first sentence above, shall inform the competent authority about the way of ensuring that the provisions and orders for protecting against any harmful effects on the environment and any other hazards, significant disadvantages and significant nuisances are observed during operation.

**Article 53**  
**Appointment of an Immission Control Officer**

(1) Operators of installations subject to licensing shall appoint one or several officers responsible for immission control (immission control officers) if this is deemed necessary in view of the type and size of the installations on account of

1. the emissions released by the installations;
2. technical problems concerning emission control or
3. the susceptibility of the products, if used for the intended purpose, to causing any harmful effects on the environment due to air pollution, noise or vibrations.

After hearing the parties concerned (Article 51), the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall specify by ordinance, with the consent of the *Bundesrat*, the types of installations subject to licensing whose operators are required to appoint immission control officers.

(2) The competent authority may order that operators of any installations subject to licensing for which the appointment of an immission control officer is not expressly required by ordinance, as well as operators of installations not subject to licensing appoint one or several immission control officers if, in the individual case, the necessity to require such appointment ensues from the aspects specified in paragraph (1) first sentence above.

**Article 54**  
**Duties**

(1) The immission control officer shall advise the operator and the staff members on all matters that may be of relevance for immission control. He is authorised and required

1. to work towards the development and introduction of
  - a) environmentally compatible processes, including processes for the prevention or proper and safe recovery of wastes resulting from operation or their disposal as waste, and for the utilisation of any waste heat produced,
  - b) environmentally compatible products, including processes for recovery and re-use;
2. to cooperate in developing and introducing environmentally compatible processes and products, especially by appraising the environmental compatibility of such processes and products;
3. unless this is a task incumbent on the hazardous incidents officer pursuant to Article 58 b (1) second sentence No. 3 , to ensure compliance with the provisions of this Act and any ordinance issued hereunder as well as fulfilment of specific conditions and obligations imposed, especially by controlling the operating plant at regular intervals, measuring emissions and immissions, notifying any defects observed and submitting proposals on measures to remedy such defects;
4. to instruct the staff members on the harmful environmental effects caused by their installation and on suitable equipment and measures to prevent such effects, taking into account the obligations ensuing from this Act or any ordinance issued hereunder.

(2) The immission control officer shall give the operator an annual account setting out any measures taken and proposed pursuant to paragraph (1) second sentence Nos. 1 to 4 above.

### **Article 55 Operator's Obligations**

(1) The operator shall appoint the immission control officer in writing, stating the full particulars of the duties incumbent on the officer. The operator shall notify the competent authority without undue delay of the appointment of the immission control officer and the particulars including any changes in the scope of duties, and of revocation of the appointment. A copy of the notification shall be handed over to the immission control officer.

(1a) The operator shall inform the works council or staff council prior to the appointment of the immission control officer, stating the full particulars of the duties incumbent on the officer. The same shall apply in the event of any changes in the immission control officer's scope of duties and in the case of revocation of the appointment.

(2) The operator shall not appoint anyone as immission control officer who does not have the requisite technical qualification and reliability to properly perform the duties incumbent on such officer. If any facts become known to the competent authority indicating that the

immission control officer in charge does not have the requisite technical qualification or reliability, the authority may insist upon the appointment of another immission control officer by the operator. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is authorised, after hearing the parties concerned (Article 51), to prescribe by ordinance, with the consent of the *Bundesrat*, the standards to be set in respect of the immission control officer's technical qualification and reliability.

(3) Where several immission control officers are appointed, the operator shall ensure the necessary coordination of the duties incumbent on such officers, especially by setting up an environmental protection committee. The same shall apply if any other officers are appointed under any other legal provisions in addition to one or more immission control officers. The operator shall furthermore ensure close cooperation between such other officers and any persons entrusted with matters of occupational safety and health.

(4) The operator shall support the immission control officer in the performance of his duties and in particular, where necessary for such performance, provide him with support personnel as well as with rooms, facilities, equipment and other means and enable him to take part in training courses.

#### **Article 56** **Opinion on Operator's Decisions**

(1) Before taking any decisions regarding the introduction of any processes and products as well as any investment decisions, the operator shall obtain the immission control officer's opinion on such decisions if these are deemed to be of relevance for immission control.

(2) Such opinion shall be obtained in due time so that due regard can be paid to it in any decision taken pursuant to paragraph (1) above; it shall then be submitted to the agency which decides on the introduction of processes and products or the investment in question.

#### **Article 57** **Right of Submission**

The operator shall ensure by means of internal organisational measures that the immission control officer can submit his proposals or objections directly to the executive management if he is unable to reach agreement with the plant manager in charge and if he considers a decision by the executive management imperative in view of the particular importance of the matter at issue. If the immission control officer is unable to reach agreement with the executive management on any measure proposed by him within the scope of his duties, he shall be given a detailed explanation of the reasons for their rejection of such measure.

#### **Article 58** **Non-discrimination, Protection against Dismissal**

(1) The immission control officer shall not be discriminated on grounds arising out of the performance of the duties entrusted to him.

(2) If the immission control officer is an employee of the operator liable to appoint such officer, a dismissal shall not be admissible unless there are established facts entitling the operator to terminate such employment for good cause without any period of notice. After revocation of the immission control officer's appointment, dismissal shall not be admissible within a period of one year from the end of such appointment, unless there are any established facts justifying such dismissal by the operator for good cause without any period of notice.

### **Article 58 a** **Appointment of a Hazardous Incidents Officer**

(1) Operators of installations subject to licensing shall appoint one or several hazardous incidents officers if this is deemed necessary in view of the type and size of the installations on account of the potential hazards arising from any disruption of normal operation and affecting the general public and the neighbourhood. After hearing the parties concerned (Article 51), the Federal Government shall specify by ordinance any such installations subject to licensing whose operators are required to appoint hazardous incidents officers.

(2) The competent authority may order that operators of any installations subject to licensing for which the appointment of a hazardous incidents officer is not expressly required by ordinance to appoint one or several hazardous incidents officers if, in the individual case, the necessity to require such appointment ensues from the aspect specified in paragraph (1) first sentence above.

### **Article 58 b** **Duties of the Hazardous Incidents Officer**

(1) The hazardous incidents officer shall advise the operator on any matters which may be of relevance for the safety of the installation. He is authorised and required

1. to work towards the improvement of the installation's safety;
2. to inform the operator without undue delay of any disruption of normal operation made known to him which could result in hazards for the general public or the neighbourhood;
3. to ensure compliance with the provisions of this Act and any ordinance issued hereunder and the fulfilment of any conditions and obligations imposed with a view to preventing a disruption of normal operation of the installation, especially by controlling the operating plant at regular intervals, notifying any defects observed and submitting proposals to remedy these defects;
4. to notify the operator without undue delay of any defects concerning precautionary and preventive fire control and technical assistance.

(2) The hazardous incidents officer shall give the operator an annual account of any measures taken and envisaged pursuant to paragraph (1) second sentence Nos. 1 to 3 above. He shall furthermore keep written records of any measures taken by him in connection with the performance of his duties pursuant to paragraph (1) second sentence No. 2 above. He shall keep such records in safe custody for at least five years.

**Article 58 c**  
**Operator's Obligations and Rights**  
**towards the Hazardous Incidents Officer**

(1) The operator's obligations specified in Articles 55 and 57 shall apply *mutatis mutandis* to the hazardous incidents officer; provision may be made in any ordinance issued under Article 55 (2) third sentence for the standards to be set with respect to a hazardous incidents officer's technical qualification and reliability.

(2) Before taking any investment decisions and before planning any operating facilities and introducing working processes and working materials, the operator shall obtain the hazardous incidents officer's opinion on such decisions if these are deemed to be of relevance for the safety of the installation. Such opinion shall be obtained in due time so that proper account can be taken thereof in any decision taken pursuant to the first sentence above; it shall then be submitted to the agency which takes such decisions.

(3) The operator may vest the hazardous incidents officer with powers of decision for the elimination and limitation of the effects of any disruption of normal operation which may give, or has given, rise to any hazards for the general public and the neighbourhood.

**Article 58 d**  
**Non-discrimination of the Hazardous Incidents Officer,**  
**Protection against Dismissal**

Article 58 shall apply *mutatis mutandis* to the hazardous incidents officer.

**Article 58 e**  
**Facilities for Audited Company Sites**

To encourage private self-responsibility for companies featuring on a list pursuant to Article 6 in conjunction with Article 7 (2) first sentence of Regulation (EC) No. 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ EC No. L 114 p. 1), the Federal Government is authorised to introduce - by means of an ordinance, with the consent of the *Bundesrat* – facilities concerning the content of the application documents for the licensing procedure as well as facilities concerning supervision requirements, insofar as the requirements in this regard contained in Regulation (EC) No. 761/2001 are equivalent to the requirements for supervision and for application documents laid down in this Act or any ordinance issued to implement it, or insofar as such equivalence is ensured by the ordinance in accordance with the provision contained in this sentence. Any ordinance issued

pursuant to the first sentence above may include further prerequisites for the use or withdrawal of facilities or for the full or partial suspension of facilities, if the prerequisites for the granting of such facilities are no longer met. Administrative facilities may be granted if the environmental verifier has verified compliance with environmental requirements without detecting any violations and has certified this result in a validation certificate. Facilities may in particular be introduced for the following:

1. calibrations, measurements, examinations;
2. measurement reports and any other reports and communications of measuring results;
3. duties of immission protection and hazardous incidents officers;
4. reporting duties concerning organisation of the establishment and
5. frequency of official supervision.

#### **Article 59**

#### **Jurisdiction for Installations Serving National Defence Purposes**

The Federal Government is authorised to require by ordinance, with the consent of the *Bundesrat*, that in the case of installations serving national defence purposes the enforcement of this Act and of any ordinance issued hereunder shall come within the jurisdiction of Federal authorities.

#### **Article 60**

#### **Exemptions for Installations Serving National Defence Purposes**

(1) The Federal Ministry of Defence may grant exemptions from the provisions of this Act and from any ordinance issued hereunder for installations serving national defence purposes referred to in Article 3 (5) Nos. 1 and 3 and, in individual cases, also for specific types of installations if any compelling reasons regarding national defence or the fulfilment of intergovernmental commitments so require. Due regard shall also be paid to the aspect of protection from any harmful effects on the environment.

(2) In the case of installations pursuant to Article 3 (5) No. 2 which according to their design are exclusively intended for use by the *Bundeswehr*, the *Bundeswehr* may deviate from the provisions of this Act and any ordinance issued hereunder if any compelling reasons regarding the fulfilment of its specific functions so require. As regards installations referred to in Article 3 (5) No. 2 which are intended for use within the scope of the foreign armed forces stationed in the Federal Republic of Germany under international agreements, these forces may deviate from the provisions of this Act and any ordinance issued hereunder if any compelling reasons regarding the fulfilment of their specific functions so require.

**Article 61<sup>12</sup>**  
**Report of the Federal Government**  
(Repealed)

**Article 62**  
**Administrative Offences**

(1) An administrative offence shall be deemed to have been committed by anyone who, wilfully or negligently,

1. constructs an installation without having obtained the licence required under Article 4 (1) ;
2. contravenes any ordinance issued under Article 7 or any enforceable order issued under any such ordinance, provided that this ordinance refers to this provision concerning administrative fines for a specific offence;
3. fails to comply with an enforceable obligation pursuant to Article 8 a (2) second sentence or Article 12 (1) or fails to do so correctly, completely or in time;
4. materially alters the location, nature or operation of an installation subject to licensing without having obtained the licence required under Article 16 (1) ;
5. fails to comply with an enforceable order pursuant to Article 17 (1) first or second sentence , both in conjunction with paragraph (5) of that Article, Article 24 first sentence, Article 26 (1), Article 28 first sentence or Article 29 , or fails to do so correctly, completely or in time;
6. operates an installation contrary to an enforceable prohibition pursuant to Article 25 (1) ;
7. contravenes any ordinance issued under Article 23, 32, 33 (1) No. 1 or 2, Article 34, 35, 37, 38 (2), Article 39 or Article 48 a (1) first or second sentence or paragraph (1a) or (3) of that Article or any enforceable order issued under any such ordinance where such ordinance refers to this provision concerning administrative fines in respect of a specific offence;
- 7a. contrary to Article 38 (1) second sentence , fails to operate motor vehicles and their trailers not licensed for traffic on public roads, railborne vehicles, aircraft or watercraft or floating bodies or floating installations in such a manner that any avoidable emissions are prevented and any unavoidable emissions are kept to a minimum or
8. constructs a stationary installation contrary to any ordinance issued under Article 49 (1) No. 2 or any enforceable order issued under such ordinance, where such ordinance refers to this provision concerning administrative fines in respect of a specific offence.

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<sup>12</sup> Repealed by Article 2 of the Act of 27 July 2001 (BGBl. I p. 1950) .

(2) An administrative offence shall furthermore be deemed to have been committed by anyone who, wilfully or negligently,

1. contrary to Article 15 (1) or (3), fails to notify, or fails to do so correctly, completely or in time;
- 1.a contrary to Article 15 (2) second sentence, makes an alteration;
2. contrary to Article 27 (1) first sentence in conjunction with any ordinance pursuant to paragraph (4) first sentence above, fails to submit or update an emission declaration or fails to do so correctly, completely or in time;
3. contrary to Article 31 first sentence, fails to inform the competent authority of the result of the measurements or fails to keep the recordings of the measuring equipment in safe custody;
4. contrary to Article 52 (2) first, third or fourth sentence, also in conjunction with paragraph (3) first sentence or paragraph (6) first sentence of that Article, fails to furnish any information or fails to do so correctly, completely or in time, or fails to comply with any measure taken, produce any supporting documents or call in any persons commissioned, or contravenes any other obligations referred to therein;
5. contrary to Article 52 (3) second sentence, fails to permit samples to be taken at random;
6. fails to notify pursuant to Article 67 (2) first sentence, or fails to do so correctly, completely or in time or
7. contrary to Article 67 (2) second sentence, fails to submit any documents or fails to do so correctly, completely or in time.

(3) Anyone who commits any such administrative offence shall be liable to payment of a fine of up to € 50,000 in the cases referred to in paragraph (1) above, and up to € 10,000 in the cases referred to in paragraph (2) above.

**Article 62 a**  
**Other Administrative Offences**  
(Ceased to be effective)

**Articles 63 to 65**  
(Repealed)

**Part VII**

## Final Provisions

### Article 66 Continuance of Provisions

(1) (Repealed)

(2) Pending the entry into force of appropriate general administrative provisions issued under this Act, the

- Technical Instructions on Air Quality Control of 8 September 1964 (*Gemeinsames Ministerialblatt* of 14 September 1964, p. 433),
- Technical Instructions on Noise Abatement of 16 July 1968 (Supplement to the *Bundesanzeiger* No. 137 of 26 July 1968),
- General Administrative Provision on Building Noise Abatement - Noise Immissions - of 19 August 1970 (Supplement to *the Bundesanzeiger* No. 160 of 1 September 1970),
- General Administrative Provision on Building Noise Abatement - Methods for Measuring Emissions - of 22 December 1970 (*Bundesanzeiger* No. 242 of 30 December 1970),
- General Administrative Provision on Building Noise Abatement - Emission Standards for Concrete Mixing Machines and Truck Mixers - of 6 December 1971 (*Bundesanzeiger* No. 231 of 11 December 1971), as amended on 14 December 1971 (*Bundesanzeiger* No. 235 of 17 December 1971),
- General Administrative Provision on Building Noise Abatement - Emission Standards for Wheel Loaders (RadladerVwV) - of 16 August 1972 (*Bundesanzeiger* No. 156 of 22 August 1972),
- General Administrative Provision on Building Noise Abatement - Emission Standards for Compressors (KompressorenVwV) - of 24 October 1972 (*Bundesanzeiger* No. 205 of 28 October 1972),
- General Administrative Provision on Building Noise Abatement - Emission Standards for Concrete Pumps (BetonpumpenVwV) - of 28 March 1973 (*Bundesanzeiger* No. 64 of 31 March 1973),
- General Administrative Provision on Building Noise Abatement - Emission Standards for Bulldozers (PlaniertraupenVwV) - of 4 May 1973 (*Bundesanzeiger* No. 87 of 10 May 1973),
- General Administrative Provision on Building Noise Abatement - Emission Standards for Track-type Loaders (KettenladerVwV) - of 14 May 1973 (*Bundesanzeiger* No. 94 of 19 May 1973) and the

- General Administrative Provision on Building Noise Abatement - Emission Standards for Excavators (BaggerVwV) - of 17 December 1973 (*Bundesanzeiger* No. 239 of 21 December 1973)

shall be authoritative.

### **Article 67** **Transitional Provision**

- (1) Any licence granted under Article 16 or Article 25 (1) of the Industrial Code prior to the entry into force of this Act shall have continued validity as a licence under this Act.
- (2) Any installation subject to licensing which at the time of entry into force of the ordinance referred to in Article 4 (1) third sentence has been constructed or materially altered or whose construction or major alteration has been commenced, shall be notified to the competent authority within three months after the entry into force of the ordinance unless the installation was subject to licensing pursuant to Article 16 (1) or Article 25 (1) of the Industrial Code or has been notified pursuant to Article 16 (4) of the Industrial Code. Within two months after such notification, the competent authority shall be provided with documents pursuant to Article 10 (1) concerning the type, location, volume and mode of operation of the installation at the time of entry into force of the ordinance referred to in Article 4 (1) third sentence .
- (3) The liability to notify pursuant to paragraph (2) above shall not be applicable to non-stationary installations which may be licensed on the basis of the simplified procedure (Article 19).
- (4) Any ongoing procedures shall be brought to an end in conformity with the provisions of this Act and the legal provisions and administrative provisions based hereon.
- (5) Insofar as any new requirements have been laid down in Article 5 of this Act by the Act on the Implementation of the EIA Amendment Directive, the IPPC Directive and other EC Directives for the Protection of the Environment of 27 July 2001 (BGBl. I p. 1950), these requirements shall be met no later than by 30 October 2007 by any installations which were in operation at the time of entry into force of that act or whose construction had been begun at that time. Any installations for which a complete licensing application had been submitted at the time of entry into force of the Act referred to in the first sentence above in accordance with the provisions applicable up to the time of this entry into force, the first sentence above and the provisions applicable until entry into force of the Act referred to in the first sentence above shall apply.
- (6) Licences granted under this Act for installations handling
  1. genetically altered micro-organisms;
  2. genetically altered cell cultures, except where intended for regeneration into plants;

3. constituents or metabolic products of micro-organisms referred to in No. 1 above or cell cultures referred to in No. 2 above, where they contain biologically active recombinant nucleic acid;

with the exception of installations which exclusively serve research purposes, shall have continued validity even after the entry into force of a specific law covering the field of genetic engineering. Paragraph (4) above shall apply *mutatis mutandis*.

(7) Official approval of the plan or licence under the Waste Avoidance and Waste Management Act shall continue to be valid under this Act. An installation notified to the authorities under the Waste Avoidance and Waste Management Act shall be deemed to have been notified under this Act. Waste disposal installations whose plans have not been officially approved under the Waste Avoidance and Waste Management Act or have not been licensed or notified shall be notified to the competent authority without undue delay. Paragraph (2) second sentence above shall apply *mutatis mutandis*.

(8) Article 27 shall continue to be applicable in the version applicable on 14 October 1996 for the emission declarations to be submitted for 1996.

**Article 67 a**  
**Transitional Arrangement Resulting from**  
**the Establishment of German Unity**

(1) In the territory specified in Article 3 of the Unification Treaty, an installation subject to licensing which was constructed before 1 July 1990 or whose construction was commenced before that date shall be notified to the competent authority within six months from that date. Such notification shall be accompanied by documentation on the nature, size and mode of operation of such installation.

(2) In the territory specified in Article 3 of the Unification Treaty, the granting of a licence for the construction and operation, or for major alterations to the location, nature or operation, of an installation subject to licensing may not be withheld on grounds that an immission value has been exceeded due to an existing immission load if

1. the additional load is but minor and the immission load within the area of influence of the installation is expected to be reduced significantly within five years after licensing or if
2. installations are shut down or improved in connection with the project and this results in a reduction of the existing immission load which, on an annual average, is at least twice as large as the additional load caused by the new installation.

(3) Where the Technical Instructions on Air Quality Control of 27 February 1986 (GMBI. pp. 95, 202) provide for any measures aimed at retrofitting existing installations by a fixed date, the periods resulting therefrom shall be extended by one year for the territory specified in Article 3 of the Unification Treaty; the period shall commence on 1 July 1990.

**Articles 68 to 72**  
**(Amendment of Legal Provisions,**  
**Transition of References,**  
**Repeal of Provisions)**

**Article 73**  
**Berlin Clause**  
(no longer applicable)

**Article 74**  
**Entry into Force**

The provisions of this Act entitling to the issue of ordinances and general administrative provisions as well as Article 51 will enter into force on the day after their promulgation. All other stipulations of this Act will enter into force on the first day of the month following its promulgation. Articles 40 a to 40 e and Article 62 a as well as the Annex shall be repealed on 31 December 1999.

**Annex**  
**(regarding Article 40 c (1))**

**Motor vehicles with low exhaust emissions**

1. Any motor vehicles which meet the provisions
  - 1.1 of Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles (Official Journal EC No. L 76 p. 1) in the version of Council Directive 93/59/EEC of 28 June 1993 (Official Journal EC No. L 186 p. 21) and the test type I referred to in Annex I No. 5.3.1 of the Directive, or
  - 1.2 of Council Directive 88/77/EEC of 3 December 1987 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous pollutants from diesel engines for use in vehicles (Official Journal EC 1988 No. L 36 p. 33) in the version of Council Directive 91/542/EEC of 1 October 1991 (Official Journal No. L 295 p. 1) and which do not exceed, in the emissions of gaseous pollutants and air-polluting particles, the limiting values mentioned in line A of the table under No. 8.3.1.1 of Annex I of the Directive,  
  
shall be deemed to be motor vehicles with low exhaust emissions.
2. Moreover,
  - 2.1 any motor vehicles driven by an electric motor,
  - 2.2 any passenger cars and mobile homes with a permissible total mass not exceeding 2,800 kg which were licensed before 26 July 1995 and at least since that date have met the provisions
    - 2.2.1 of Annex XXIII of the German Road Licensing Regulations or

- 2.2.2 of Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles (Official Journal EC No. L 76 p. 1) in the version of Council Directive 88/76/EEC of 3 December 1987 (Official Journal EC 1988 No. L 36 p. 1) - test type I measured in accordance with Annex III A - or of later amendments by Council Directive 88/436/EEC of 16 June 1988 (Official Journal EC L 214 p. 1), corrected by the correction by means of Directive 88/436/EEC (Official Journal EC No. L 303 p. 36) or of Directive 89/491/EEC of the Commission of 17 July 1989 (Official Journal EC No. L 238 p. 43), or
- 2.2.3 of Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles (Official Journal EC No. L 76 p. 1) in the version of Council Directive 89/458/EEC of 18 July 1989 (Official Journal EC No. L 226 p. 1) and have an engine displacement of less than 1,400cc, or
- 2.2.4 of Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles (Official Journal EC No. L 76 p. 1) in the version of Council Directive 91/441/EEC of 26 June 1991 (Official Journal EC No. L 242 p. 1) - with the exception of those vehicles to which the transitional provisions of Annex I No. 8.1 or 8.3 apply and for which proof cannot be provided that they were fitted with a catalytic converter and closed-loop mixture preparation at the time of their first licensing -
- shall be deemed to be motor vehicles with low exhaust emissions;
- 2.3 Any passenger cars and mobile homes licensed before 26 July 1995 and which have met the provisions of Annex XXV of the German Road Licensing Regulations at least since that date. In the case of vehicles with an engine displacement of up to and including 2,000cc a certificate issued by the vehicle manufacturer shall state that one of the requirements referred to under Nos 2.2.1 to 2.2.4 above has also been met;
- 2.4 Any motor vehicles with spark ignition engines which have an engine displacement of less than 1,400 cc, which were first licensed before 26 July 1995 and were fitted with a catalytic converter and closed-loop mixture preparation and which have been recognised as relatively low-pollutant motor vehicles under Article 47 (4) of the German Road Licensing Regulations,
- 2.5 Any motor vehicles that have been retrofitted with an exhaust-gas purifying system and
- 2.5.1 comply with the requirements of the 52<sup>nd</sup> Ordinance concerning Exemptions from the German Road Licensing Regulations of 13 August 1996 (BGBl I p. 1319) or
- 2.5.2 meet the requirements of the transitional provisions in Article 72 to Article 47 (3) (low emission vehicles) of the German Road Traffic Licensing Regulations.

3. Transitional Provision

Motor vehicles with compression-ignition engines, with the exception of passenger cars and mobile homes with a total mass of up to 2,800kg, shall be treated like the motor vehicles referred to under No. 1 above for a period of 60 months counting from the day on which they were admitted to traffic for the first time. This equal treatment shall end on 1 July 1998 at the latest.

### **Annex (regarding Article 3 (6))**

#### **Criteria for Determining Best Available Techniques**

Criteria to be taken into account when determining best available techniques, bearing in mind the cost and benefit of any measures considered and the principles of precaution and prevention, all in relation to installations of a given type, shall in particular include the following:

1. the use of low-waste technology;
2. the use of less hazardous substances;
3. the furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate;
4. comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;
5. technological advances and changes in scientific knowledge and understanding;
6. the nature, effects and volume of the emissions concerned;
7. the commissioning dates for new or existing installations;
8. the length of time needed to introduce the best available technique;
9. the consumption and nature of raw materials (including water) used in the process and their energy efficiency;
10. the need to prevent or reduce to a minimum the overall impact of the emissions on humans and the environment and the risks to them;
11. the need to prevent accidents and to minimize the consequences for humans and the environment;
12. the information published by the Commission pursuant to Article 16 (2) or by international organisations.