

# Swedish Environmental Law

An introduction to the Swedish legal  
system for environmental protection

REPORT 6790 • OCTOBER 2017



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ISBN 978-91-620-6790-8

ISSN 0282-7298

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Print: Arkitektkopia AB, Bromma 2017



# Preface

Pollution knows no borders and environmental challenges increasingly have to be addressed at regional and global levels. The overall goal of Sweden's environmental policy, as declared by the Swedish Parliament, is "to hand over to the next generation a society in which the major environmental problems in Sweden have been solved, without increasing environmental and health problems outside Sweden's borders" (*The Generational Goal*). The Swedish Parliament has also adopted sixteen environmental quality objectives, which describe the state of the Swedish environment which environmental action is to result in. International cooperation is necessary for attaining these national environmental objectives. Furthermore, such cooperation is fundamental for fulfilling regional as well as global environmental objectives, such as the sustainable development goals set out by the United Nations.

The Swedish Environmental Protection Agency (Swedish EPA), one of the three main national authorities in Sweden for environmental protection, conducts international cooperation with numerous countries and in various regional and multilateral forums. Such cooperation generally focuses on the agency's core competence area, i.e. the development and strengthening of public environmental administration and environmental governance based on legislation and other policy instruments. This cooperation improves Sweden's ability to achieve its national environmental objectives and at the same time helps partner countries and organizations to achieve their environmental goals.

This report offers an introduction to the Swedish system for environmental protection and the legal framework that governs it. The report has been compiled primarily to meet the needs of the Swedish EPA and its partners in their collaborative activities. However, we hope it will also be relevant and useful for other authorities and organizations in Sweden who are engaged in international cooperation in the environmental field as well as anyone outside Sweden with an interest in the Swedish legal system for environmental protection.

This report has been prepared by Björn Thews, environmental legal advisor, Ping Höjding and Bo Jansson, senior environmental advisers, all with the Swedish EPA.<sup>1</sup>

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<sup>1</sup> The report is an expanded and revised edition of an earlier draft compiled by Per Hallström, then environmental legal advisor with the Swedish EPA.



## Summary

This report gives an introduction to the Swedish system for environmental protection and the legal framework that governs it. To provide a better understanding of the motives and purpose of the system, the report starts with a brief look at how environmental legislation in Sweden has evolved over time to become the system of today.

Swedish environmental law has developed out of general principles of civil law. It was not until Swedish industrialisation in the late 19<sup>th</sup> century that the first “real” environmental legislation started to emerge. The development of environmental legislation in Sweden was to a large extent driven by the new challenges that society was facing due to industrialisation.

A major consolidation and reform of the environment legal framework in Sweden took place in 1999 when the Environmental Code entered into force, replacing fifteen previous environmental acts. The aim of this reform was to reduce the number of acts dating from various eras which made the environmental legislation complex and fragmented, and therefore harder to enforce. Sweden’s membership in the European Community in 1995 also necessitated a review of the legal framework structure.

The purpose of the Environmental Code is to promote sustainable development. It is applicable to all persons and operators who undertake activities or measures which could impact on the fulfilment of the objectives of the Environmental Code. Its provisions concern, amongst other, management of land and water, nature conservation, protection of flora and fauna, environmentally hazardous activities, water operations, genetic engineering, chemical products and waste management. Consequently, the Environmental Code has a broad scope.

Apart from material provisions, the Environmental Code also sets out the basic framework for implementing environmental protection through its provisions on procedure, supervision, sanctions as well as provisions on compensation and environmental damages. This includes provisions which set out a permit regime for environmentally hazardous activities as well as for water operations.

Many activities and operations are subject to permit, and may not commence until a permit has been issued by the competent authority. The permit for environmentally hazardous activities and/or water operations sets out the scope for the activity concerned. It must also state the conditions under which the activity may be carried out.

The legal framework governing the permit regime, as well as supervision and sanctions, is described in this report. This will hopefully provide the reader with an overview of the whole system for environmental protection in Sweden.

## Abbreviation

CAB	County Administrative Board
EPC	Environmental Permitting Committee
EPHC	Environmental and Public Health Committee
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EQS	Environmental Quality Standard
SMP	Swedish Portal for Environmental Reporting
Swedish EPA	Swedish Environmental Protection Agency

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# 1. Swedish Environmental Law

## 1.1. Legal and institutional framework

### 1.1.1. National level

Sweden is a constitutional monarchy. The Swedish Constitution (*grundlagarna*) consists of four fundamental laws: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The Instrument of Government sets out the basic principles of Sweden's form of government: how the Government is to work, the fundamental freedoms and rights of the Swedish people and how elections to the Parliament (*riksdagen*) are to be implemented. It also contains some principles of relevance to environmental matters. Sweden has been a Member of the European Union since 1995.

The Parliament, which is elected every four years, is the national law-making body responsible for adopting all laws.

The executive power rests with the Government (*regeringen*), and the Government is in turn responsible to the Parliament. The Government is led by the Prime Minister (*Statsminister*) and comprises several ministers, each responsible for a certain ministry, e.g. the Ministry of the Environment and Energy. Each ministry has politically nominated staff. However, most ministry staff are apolitical civil servants, serving as experts in various areas.

The Government is assisted in its work by the Government Offices, comprising all ministries, and some 400 central government agencies and public authorities. Each government agency is assigned various tasks and areas of responsibility. These agencies answer to the Government, unless they are authorities subordinated under the Parliament. Administrative functions may furthermore be entrusted to regional or local authorities, or delegated to other public as well as private bodies.

Government agencies carry out their tasks independently under the laws and other legislation. The relevant ministry is therefore not permitted to intervene in an individual matter that is being handled by an agency. The influence over the government agencies is instead exercised in a general way, through the budget and annual instructions for each agency.

The main authorities for the protection of the environment are the Swedish Environmental Protection Agency (*Naturvårdsverket*), hereafter referred to as the *Swedish EPA*, the Swedish Chemicals Agency (*Kemikalieinspektionen*), and the Swedish Agency for Marine and Water Management (*Havs- och vattenmyndigheten*).

However, it should be noted that environmental concerns are integrated in all relevant sectors of the society. Many agencies are therefore engaged in environmental protection to various degrees. Among them are the *Swedish Radiation Safety Authority*, the *Swedish National Board of Housing, Building and Planning*, the *Swedish Forest Agency* and the *Swedish Board of Agriculture*,

as well as the three government agencies for Air, Land and Sea transport respectively. Each of these agencies is responsible for environmental issues relating to their respective sector of administration.

### 1.1.2. Regional and local level

Sweden is divided into 21 counties (*län*) and 290 municipalities (*kommuner*). Each county has a County Administrative Board (*länsstyrelsen*), hereafter referred to as CAB, which is appointed by the Government with the task of implementing and administering national political goals for the respective county.<sup>2</sup> The CABs are furthermore assigned specific regional duties and areas of responsibility. Constitutionally, each CAB constitutes a government agency subordinate to the Government with expert staff in various areas, such as environmental protection.

Each municipality has an elected assembly, the municipal council (*kommunfullmäktige*), which is the decision-making body for municipal matters. The municipal council appoints the municipal executive board (*kommunstyrelsen*), which leads and coordinates the municipal tasks and responsibilities. The municipal council furthermore appoints committees within various areas, e.g. the Environmental and Public Health Committee (EPHC). The legal framework governing the organization of the municipalities is set out in the *Local Government Act*.

The Swedish municipalities are responsible for executing and providing a significant proportion of all public tasks and services, including environmental and health protection. In order to fulfil this responsibility they have considerable autonomy and independent powers for levying taxes and fees.

However, it should be noted that Sweden is not a federal state. There are no law-making powers at regional or local level. The regional and local authorities must always exercise their powers in accordance with national legislation. Nor is there any hierarchical relation between the counties and the municipalities.

### 1.1.3. Court system

The Swedish judicial system includes a three-instance structure of judicial procedures. There are three kinds of courts in Sweden: the *general courts*, which comprise district courts, courts of appeal and the Supreme Court; the *general administrative courts*, that is to say, administrative courts, administrative courts of appeal and the Supreme Administrative Court; and the *special courts*, which determine disputes within specific areas, e.g. the Labour Court. The courts have an independent status within the Swedish constitution. Neither the Parliament nor any other authority may decide on, or otherwise interfere in, matters handled by the courts.

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<sup>2</sup> In each County, there is also a County Council. Unlike the CAB, the County Council is a regional government, i.e. a political assembly appointed by the regional electorate to handle the affairs of the county. However, since environmental protection falls outside the competence of the County Council, the CAB is the competent authority for environmental protection at regional level.

For matters pertaining to environmental law as well as matters of property registration, planning and building, Sweden has developed a unique three-instance system of special courts.<sup>3</sup> This system consists of five *Land and Environment Courts*, the *Land and Environment Court of Appeal* and the *Supreme Court*. The five Land and Environment Courts are each incorporated as a special branch within five designated district courts located in various parts of Sweden, each responsible for their respective part of the country. The Land and Environment Court of Appeal is part of the Svea Court of Appeal and is responsible for the entire country. The Supreme Court in turn hears virtually all cases, including matters of environmental law, of precedential significance.

The system with Land and Environment Courts is specifically designed to deal with the technical complexity of the matters under its authority, e.g. environmental matters. The Land and Environment Courts rule on cases with one legally trained judge presiding over the case and a technically trained judge providing the special competence often needed due to the distinctive nature of the matters. In cases relating to environmental permitting (see Section 2 below), the two judges are assisted by two technical counsellors. The Land and Environment Court of Appeal rules on cases with three legally trained judges, one of whom presides over the case, and one technically trained judge.

## 1.2. Development of Swedish environmental law

### 1.2.1. Background

To gain an understanding of Swedish environmental law as it is today, it is useful to begin by briefly looking at how it has evolved over time. Swedish environmental law has developed out of general principles of civil law. Such principles often constituted the basic legal framework for regulating issues arising from the use of neighbouring properties, e.g. use of natural resources (trees, animals and water). Historically, such principles were applied as case law by the courts but were rarely codified as written laws. From the 16<sup>th</sup> to the 18<sup>th</sup> centuries, these principles began to emerge as written laws, forming part of the property laws of that time.

It was not until Sweden's industrialisation in the late 19<sup>th</sup> century that the first "real" environmental legislation started to emerge. The development of environmental legislation in Sweden was largely driven by the new challenges that the society was facing due to industrialisation. Until the late 19<sup>th</sup> century, most of Sweden's population still lived in rural areas and was dependant on agriculture. However, industrialisation led to a wave of urbanisation. The huge influx of people to urban areas, with the poor living and working

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<sup>3</sup> Certain matters may be handled by more than three instances, e.g. matters which are handled by the EPHC in the first instance are generally appealed to the CAB before the case can be tried in the three-instance Land and Environment Court system.

conditions that followed, caused sanitary problems. These problems involved insufficient treatment of drinking water and wastewater, as well as negative impacts from industries often located in or near urban areas. As a way of tackling these problems, the first *Health Protection Act* was enacted in 1874, which – amongst other things – included provisions concerning the location of industry facilities. Industrialisation also brought with it other environmental problems due to the huge demand for natural resources and increased exploitation, which caused negative impacts on the environment.

In principle, the legislation that developed to tackle these new problems can be divided into three categories: 1) *natural resource legislation*, with the purpose of regulating who had the right to extract natural resources, and later, also the conservation of such resources; 2) *environmental protection legislation*, with the purpose of protecting humans, and later also the environment, from negative impacts caused by environmentally hazardous activities; and 3) *planning and building legislation*, with the purpose of regulating land use for different purposes. To some extent, the *infrastructure legislation* (transport as well as energy generation and distribution) can also be viewed as part of the environmental legislation that emerged in Sweden following the industrialisation.

### 1.2.2. Legislation on natural resources

In 1909, the Swedish Parliament enacted the first *Nature Protection Act*. This act contained various forms of protection for certain areas through National Parks, Nature Reserves and other forms of nature protection areas. Furthermore, Sweden in 1909 became the first nation in Europe to establish nine national parks, which still remain protected to this day. This was the first time that legislation had been directly aimed at protecting nature itself. The Act was revised in 1952 and again in 1964.

Sweden has a long tradition of regulating the exploitation of natural resources, e.g. mining and extraction of minerals. The initial laws on minerals and mining activities were, in the economic interests of Sweden, generally aimed at providing opportunities for the exploitation of such resources. Over time, the mining laws have seen more and more provisions for safeguarding the environment. A new *Mineral Act* was enacted in 1991.

With the enactment of the *Water Act*, in 1918, a specific system was established for the use of water resources, including a permit regime for water operations. This act was very much aimed at providing opportunities for expanding hydropower to an industry sector with growing demand for electricity. Five specific *Water Courts* were established to deal with the complex cases which arose concerning water operations and hydropower plants. The exploitation of Swedish rivers brought with it a major source of renewable energy, but also presented significant environmental problems. The new *Water Law* of 1983 introduced a higher level of environmental protection, but in many ways retained the character of an exploitative legislation.

Forestry, as an important supplier of raw materials for Swedish industry, has been regulated in various ways since the beginning of the 20<sup>th</sup> Century. The first law on forestry was enacted in 1903. As was the case for minerals, the initial legislation focused on securing the production of raw material through efficient forest management. In 1979, a more modern law on forestry, the *Forestry Act*, was enacted. According to this act, both the production objectives and the environmental objectives are to be observed.

The use of pesticides has been an environmental concern since the 1960s. However, as regards agriculture, other environmental aspects were regulated relatively recently. A law on the management of agricultural businesses was enacted in 1979.

### **1.2.3. Legislation on environmental protection**

As mentioned previously, the first law on health protection was enacted in 1874 (see section 1.2.1 above). Later, in 1941, certain provisions on water contamination were included in the *Water Act* of 1918 (see section 1.2.2 above). However, it was not until 1969 that Sweden got its first *Environmental Protection Act*.

The Environmental Protection Act dramatically strengthened the role of the State in the protection of the environment. Amongst other things, it included a permit regime for environmentally hazardous activities. This permit regime was based on an integrated approach, which was aimed at regulating essentially all negative environmental impacts from an activity, in a single permit. A specific permitting body, the *National Licensing Board*, was established to handle permits for activities involving significant negative environmental impacts, e.g. industries. In return for having to apply for a permit, the industries were protected from further restrictions from authorities as long as they kept their operations in conformity with the conditions of the permit. Nuclear activities were intentionally left outside the act and are subject to two separate acts, the *Nuclear Activities Act* and the *Radiation Protection Act*.

The Environmental Protection Act furthermore introduced provisions concerning environmental damages and compensation.

Another new feature of the Environmental Protection Act was provisions concerning the remediation of polluted areas. Initially limited to cases where the pollution of one area could potentially lead to the pollution of other land or water areas, these provisions essentially stipulated that anyone who had polluted an area was also responsible for the remediation, or clean-up, of that area. In 1989, these provisions were strengthened so as to assign responsibility for remediation of areas solely on the basis that an area was polluted.

### **1.2.4. Planning and building legislation**

Increasing demand for land and water brought with it a growing need to regulate the use of land and water areas. In 1874, the first *Building Act* was passed by the Parliament. In 1947, this act was succeeded by a new building act which

was based on the principle that the public, rather than the individual, should determine the purpose of the use of land and water within certain areas, i.e. urban areas where unexploited sites were becoming a limited resource, known as “planned areas”. This principle was taken further in the new *Planning and building Act* of 1987. Under this act, responsibility for planning was made a matter for the municipalities.

Another essential piece of the planning legislation was the *Resource Management Act*, of 1987. The purpose of this act was to plan the use of limited resources on a national, rather than local, level. General restrictive norms for areas with a specific character, e.g. areas containing natural resources, were therefore introduced through this law. It also contained a permit requirement for certain activities and installations. This permit requirement applied to certain types of infrastructure projects, nuclear activities and other activities with potentially significant negative impact on the environment.

The infrastructure legislation which developed out of the planning legislation has emerged as a separate area of legislation which specifically regulates transport by rail and road, in the air and at sea respectively.

Another area of legislation that developed simultaneously was the laws enacted for regulating power lines, pipes and pipelines. This legislation was primarily enacted to pave the way for necessary exploitation rather than addressing environmental concerns.

## 1.3. The Environmental Code

### 1.3.1. Background

As explained above (see Section 1.2), the emergence of environmental legislation in Sweden was driven by the need to manage new environmental problems. With some exceptions, each problem gave rise to separate new legislation. Because new environmental challenges were constantly arising, it became increasingly clear that this approach was not efficient. In addition, the fragmented character of the environmental legislation and its complexity made it harder to enforce and thus less useful. Another factor affecting this area of legislation was the emergence of environmental legislation from the European Community (EC). Sweden became a full member of the EC in 1995. To meet the concerns outlined above, several commissions were appointed to draft new legislation. This eventually led to the *Environmental Code* (the Code) being enacted. The Code, which entered into force on 1 January 1999, was based on the provisions of 15 environmental acts, which were all reviewed and consolidated into a single act.

As a result, the Code has a broad scope. Apart from material provisions, the Code also sets out the basic framework for implementing environmental protection through its provisions concerning procedure, supervision, sanctions, compensation and environmental damages.

### 1.3.2. Purpose and scope

The purpose of the Code is to promote sustainable development. Its provisions concern, amongst other things, the management of land and water, nature conservation, protection of flora and fauna, environmentally hazardous activities, water operations, genetic engineering, chemical products and waste management.

The Code applies to all persons and operators who undertake activities or measures which may have an impact on the fulfilment of the objectives of the Code. The Code consequently applies to all activities which could cause negative impacts on human health or the environment.

Providing a basic framework, the provisions of the Code generally do not specify limits on emissions for various activities, nor do they go into detail as regards striking a balance between different interests. More detailed provisions are laid down in ordinances issued by the Government or in regulations issued by government agencies, such as the Swedish EPA. Much of Sweden's transposition of the European Union's legislative acts is done through governmental ordinances and regulations by government agencies. Furthermore, government agencies, including the Swedish EPA, issue general guidelines providing assistance concerning the interpretation of the Code and underlying legislation.

An important feature of the Code in relation to provisions regarding emission limits, is the permit procedure, particularly the conditions concerning the use of a permit (see Section 2 below). Conditions are set out for each individual activity with regard to the specific circumstances under which it operates and emission limits are therefore, with some exceptions, not set out in generally binding legislation.

It should furthermore be noted that the Code did not replace all the various acts that involve environmental legislation (see Section 1.4 below). Much of the specific legislation for certain sectors and activities, which did not have environmental protection as its principal purpose, remained in force following enactment of the Code. Such legislation is referred to as sectorial legislation. Even if an activity is covered by sectorial legislation, the provisions of the Code may still apply. The fact that an activity may be covered by two parallel applicable legal frameworks implies that some activities could require permits under two separate permit regimes (i.e. sectorial legislation and the Code, respectively). It could also mean that the operator of a certain activity which in itself does not require a permit under the sectorial legislation may be obliged to take certain actions in order to comply with the Code, e.g. reducing noise along a railway line or road.

### 1.3.3. Environmental objectives

To supplement the Code, the Swedish Parliament adopted a system of national environmental objectives in 1999. These environmental objectives are of three different types: *the Generational goal, the Environmental*



*quality objectives* and *the Milestone targets*.<sup>4</sup> The environmental objectives are non-binding, but perform an important function as a policy document to the Government and the government agencies as well as other actors when applying environmental legislation.

The generational goal is intended to guide environmental action at every level of society. It indicates the types of changes that need to take place within one generation in order to fulfil the environmental quality objectives. It focuses environmental policy on the recovery of ecosystems, conserving biodiversity and the natural and cultural environment, protecting human health, establishing efficient material cycles free from dangerous substances, achieving a sustainable use of natural resources and an efficient use of energy, and furthering sustainable consumption patterns.

Sixteen environmental quality objectives describe the state of the Swedish environment which environmental action and measures are to result in. These objectives are to be met within one generation, i.e. by 2020 (2050 in the case of the climate objective). The environmental quality objectives cover different areas, from unpolluted air and lakes free from eutrophication and acidification, to functioning forest and farmland ecosystems. For each objective, there is a number of ‘specifications’, which clarify the state of the environment that is to be attained.

To facilitate progress towards the generational goal and the environmental quality objectives, the Government adopts milestone targets in priority areas. These are designed to set out the changes in society that need to occur in order to attain the generational goal and the environmental quality objectives.

#### **1.3.4. Content of the Environmental Code**

To provide an overview of the content of the Code, a brief description of the structure of the Code and its principal provisions is presented below.

##### OBJECTIVES AND SCOPE, CHAPTER 1

The first section of this chapter sets out the basic objectives of the Code. It states that the purpose of the Code is to promote sustainable development which will assure a healthy and sound environment for present and future generations. It states furthermore that the Code shall be applied so as to ensure that:

*Human health and the environment are protected against damage and nuisance, whether caused by pollutants or other impacts;*

*Valuable natural and cultural environments are protected and preserved;*

*Biological diversity is preserved;*

*The use of land, water and the physical environment in other respects is such as to secure a long term good management in ecological, social, cultural and economic terms; and*

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<sup>4</sup> For more information, visit <http://www.miljomal.se/sv/Environmental-Objectives-Portal/>.

*Reuse and recycling, as well as other management of materials, raw materials and energy are encouraged with a view to establishing and maintaining natural cycles.*

As described previously (see Section 1.3.2 above), the Code is applicable to all persons and operators who undertake activities or measures that come into conflict with the objectives of the Code. The provisions of the Code consequently apply to all activities which could cause negative impacts on human health or the environment.

## GENERAL RULES OF CONSIDERATION, CHAPTER 2

The so-called ‘general rules of consideration’ constitute fundamental principles for the application of the Code. These principles apply to all activities that have an impact on the environment, regardless of the extent or scale of the activity. Consequently, these principle must, for example, be applied when setting conditions for permits or in matters regarding environmental supervision.

One of the most fundamental principles is the *Burden of proof principle*, which states that it is the party who pursues an activity that must prove that the obligations arising out of the Code are complied with. According to the *Proportionality principle*, the general rules of consideration apply as long as they are not unreasonable; application of the general rules of consideration should be environmentally justifiable and financially reasonable in each case.

Arguably, the general rules of consideration all relate back to the *Precautionary principle*, which sets out the fundamental requirement for anyone who pursues an activity to take all necessary environmental precautions in order to limit the impact on human health and the environment. The mere risk of damage and detriment triggers this obligation. Such precautions may, for example, involve limiting the scale of operations or applying the best possible technique, the *Best Possible Techniques Principle* (interpreted together with the Proportionality principle, this corresponds to the requirement of applying *Best Available Techniques*, BAT).

Other general rules of consideration that relate to the precautionary principle are: 1) the *Knowledge requirement*, according to which everyone who pursues an activity must acquire the knowledge necessary to protect human health and the environment against damage or detriment, 2) the *Appropriate location principle*, according to which the site for an activity must be suitable with respect to the purpose of the activity being achieved with a minimum of damage, detriment or nuisance to human health and the environment, and 3) the *Product choice principle*, which requires operators to refrain from the use or sale of chemical products that could involve hazards to human health or the environment if other less dangerous products can be used instead.

Further to the principles described above, the *Polluter pays principle* requires anyone who takes a measure that could have an impact on human health or the environment to be responsible for complying with the provisions concerning remediation set out in the Code and to pay any resulting

expenses. Finally, the *Resource management and eco-cycle principle* stipulates that an activity must be carried out in such a way so as to ensure the efficient use of raw materials and energy and to minimize waste generation. The use of renewable energy sources should be preferred and the extraction of natural resources should be economized. Waste should be recycled, reused or recovered insofar as is possible, and disposal should be carried out without damaging the environment. The ultimate objective of this principle is to maintain closed material cycles.

Even if the general rules of consideration are applied, some activities can still cause substantial damage to human health or the environment. To avoid such consequences, the general rules of consideration are supplemented by a so-called “*stopping*” rule. According to this rule, which applies to all activities under the Code, an activity or measure which is likely to cause considerable damage, detriment or nuisance to human health or the environment may only be undertaken if the Government deems that special circumstances so warrant. Furthermore, an activity or measure must not be undertaken if it is liable to lead to a considerable deterioration in the living conditions of a large number of people or a considerable deterioration in the environment. Only if it is of utmost importance for the public interest and provided the activity or measure is unlikely to be detrimental to public health may such an activity or measure be allowed by the Government.

#### RESOURCE AND LAND MANAGEMENT, CHAPTERS 3 AND 4

The provisions of the Resource Management Act (see Section 1.2.4 above) were integrated in Chapters 3 and 4 of the Code. The purpose of these provisions is to prioritize and preserve, insofar as is possible, the use of certain areas for specific interests and protect those areas from activities that are detrimental to such purposes. These interests are in principle reserved for conservation and/or utilization purposes. Consequently, areas of great natural value and/or of recreational value, as well as areas of value for agriculture, forestry, reindeer breeding, industrial production and mining etc. are among the interests listed in these chapters. Some geographical areas are designated areas of specific national interest. These interests enjoy a higher level of protection and include unexploited coastlines and mountain areas as well as certain rivers that are to be protected from exploitation by hydropower activities.

#### ENVIRONMENTAL QUALITY STANDARDS, CHAPTER 5

The Government may issue *Environmental Quality Standards (EQSs)* with respect to certain geographical areas or the country as a whole, concerning the quality of land, water, air or the environment in general, if it is necessary in order to provide lasting protection for human health or the environment or to remedy adverse effects on human health or the environment. EQSs are adopted to address actual or potential environmental problems. The standards are established on the basis of scientific criteria and may stipulate levels of

pollution or other impacts that humans or the environment may be exposed to without risk of significant nuisance or detriment. It is important to note that these standards do not establish permissible emission levels, but rather set limits for disturbances within a particular area. EQSs have so far been adopted for air, water and noise.

With certain limited exceptions, permits, approvals and exemptions cannot be granted for activities which are likely to lead to non-compliance with the EQSs. The permit authority may revise a permit for an activity with respect to the permissible volume of production or the scope of the activity, alter or cancel conditions or other provisions, or issue new provisions where the activity is to a significant extent responsible for an infringement of an EQS.

Authorities at national, regional and local level are responsible for overseeing compliance with EQSs, which must be considered in planning and in environmental permitting and supervision. If necessary to ensure compliance with EQSs, the Government may decide to implement a programme of measures for a specific area. The action program may be implemented by the Government or, after delegation by the Government, by one or more of the authorities at national, regional or local level.

#### ENVIRONMENTAL IMPACT STATEMENTS, CHAPTER 6

Provisions regulating when *Environmental Impact Statements (EISs)* are required and what information they should contain are set out in Chapter 6 of the Code and in an underlying ordinance. An EIS must be prepared before the application is made, and should be submitted as a supplement to the application. An EIS is required also for certain activities other than those for which a permit must be obtained (see Section 1.4 below, for example) as well as for new planning decisions (so-called *Strategic Environmental Assessments*). The purpose of an EIS is to establish and describe the direct and indirect impacts of the planned activity or plan, so that an adequate assessment of the environmental impacts of the activity or plan can be made (*Environmental Impact Assessment (EIA)*). Consequently, the EIS must describe the impact of the activity or plan on people, flora and fauna, land, water, air, the climate, the landscape and the cultural environment, on the management of land, water and the physical environment in general and on the management of materials, raw materials and energy.

When preparing the permit application and the EIS, the applicant is obliged to consult the CAB, the supervisory authority and the private individuals likely to be particularly affected by the activity. For activities which typically have a significant environmental impact, the applicant is also obliged to consult central government agencies and the municipality, the public and the organizations that are likely to be affected by the activity. Prior to the consultation, the applicant should provide information about the activity with regard to location, scope, design and possible environmental impacts.

The purpose of the consultation is to present and obtain input on the location, extent and nature of the activity and its environmental impact, as well as the content and design of the EIS. To a large extent, these consultations determine the scope and scale of the EIS. Therefore, the consultations must be carried out in good time before the EIS is finalised. Furthermore, there are mandatory provisions concerning the minimum details that an EIS must contain. Upon receiving the EIS, the permit authority is obliged to publicly announce the EIS and make it available to the general public, who should be given the opportunity to comment on it.

It should furthermore be noted that for environmentally hazardous activities or water operations which require a permit, the EIS is reviewed alongside all other documents in the application. The EIA is thus an intrinsic part of the permit procedure, and this assessment is not made separately to the decision regarding permit for an activity (see Section 2.3 below). The EIS shall be approved only if the direct and indirect impacts of the planned activity are deemed to be adequately described in accordance with the provisions of Chapter 6 of the Code, and if approved this will normally be noted in the decision concerning the permit.

#### NATURE PROTECTION – PROTECTION OF AREAS AND FLORA AND FAUNA, CHAPTERS 7–8

Chapter 7 stipulates a broad variety of protection for certain areas such as:

- *National Parks* – large contiguous areas belonging to the State consisting of land or water of a certain landscape type in its natural state or essentially unchanged, which is designated – with the consent of the Parliament – a National Park by the Government. For these areas, a high level of protection applies.
- *Nature and Culture Reserves* – land or water areas designated a nature or cultural heritage reserve by the CAB or the municipality for the preservation of biological diversity or valuable natural or cultural environments or in order to meet recreational needs. Furthermore, an area needed for the purpose of protecting, restoring or establishing valuable natural environments or habitats for species which are to be preserved may also be designated a nature reserve. Specific protective provisions regulate the use of the areas, which can be established either on private land (following economic compensation made to the owner) or on public land.
- *Natura 2000 sites* – areas within the EU Natura 2000 network, representing different types of natural environment worthy of protection due to their function as habitats for certain species of birds, animals or plants. The protection is in many ways similar and often parallel to that of National Parks and Nature Reserves.

- *Shore protection areas* – the shores of seas, lakes and watercourses are protected in buffer zones extending 100 to 300 meters from the shore. The purpose of this protection is to safeguard public access to shore areas and maintain habitats for flora and fauna on land and in water.
- *Habitat Protection Areas and Animal and plant sanctuaries* – specific forms of protection, generally for smaller areas that are valuable for certain animals and/or plants.
- *Environmental Protection Areas* – large area of land or water designated an environmental protection area by the Government due to the fact that the area is polluted or an EQS has not been complied with. In order to fulfil the purpose of the area, the Government or CAB shall issue provisions concerning protective measures, restrictions and other precautions with respect to activities in the area.
- *Water Protection Areas* – area of land or water designated a Water Protection Area by the CAB or the municipality for the purpose of protecting surface water or groundwater supplies, which are or are likely to be used as a water catchment. Specific provisions concerning the conservation and protection of the water supplies apply in these areas.

Chapter 8 contains provisions concerning the protection of flora and fauna. The provisions in this chapter cover a wide variety of measures, activities and prohibitions in order to protect species from extinction or overexploitation, or in order to fulfil international undertakings with respect to the protection of such species. The provisions in this chapter are supplemented by a governmental ordinance with detailed provisions.

It should be noted that the rules governing hunting and fishing are set out in sectorial legislation (see Section 1.4 below) and are not included in the Code.

#### SPECIFIC ACTIVITIES, CHAPTERS 9–15

Chapter 9 to 15 contains provisions concerning certain specific activities, namely i) environmentally hazardous activities (Chapter 9), ii) polluted areas (or groundwater, buildings and installations) and the remediation thereof (Chapter 10), iii) water operations (Chapter 11), iv) agriculture and other corresponding activities (Chapter 12), v) genetic engineering (Chapter 13), vi) chemical products and biotechnical organisms (Chapter 14) and vii) waste management (Chapter 15). Many of these provisions are supplemented by governmental ordinances and regulations issued by government agencies which contain more detailed legislation. Furthermore, many of these provisions are based on various EU legislative acts. Environmentally hazardous activities and water operations are subject to a specific permit regime (see Section 2 below).

#### PROCEDURAL PROVISIONS, CHAPTERS 16–25

As mentioned above, the Code not only sets out material provisions concerning environmental protection, it also contains rules of procedure. This includes rules governing the permit regime and the role and responsibility of the permit authorities (see Section 2 below), as well as the procedure for the Government's consideration of permissibility for certain matters (now limited to certain major infrastructure projects and nuclear activities).

#### PROVISIONS CONCERNING SUPERVISION, FEES AND ACCESS FOR PUBLIC AUTHORITIES, CHAPTERS 26–28

A general outline of the provisions concerning supervision, including inspection and enforcement, is presented in Sections 3 and 4 below.

#### SANCTIONS, CHAPTERS 29–30

A general outline of the provisions concerning sanctions, including environmental sanction charges and penal provisions, is presented in Section 4 below.

#### PROVISIONS CONCERNING COMPENSATION AND ENVIRONMENTAL DAMAGES, CHAPTERS 31–32

The final part of the Code contains provisions concerning compensation and environmental damages. According to these provisions, a landowner may for example be entitled to compensation for intervention by the public administration to protect certain natural assets. In cases where such intervention effectively prevents the landowner from using the property as intended, the landowner will be entitled to compulsory purchase instead of compensation.

Furthermore, this part of the Code contains general provisions pertaining to liability and damages for injury and loss caused by pollution, noise, vibration and other similar disturbances.

#### **1.3.5. Development of the Environmental Code**

Since its entry into force in 1999, the Code has been subject to regular changes and amendments. This reflects the rising importance and rapid development of environmental aspects in governance and administration. In a way, these revisions illustrate the fact that the development and improvement of environmental legislation is a continuing and long-term project.

## 1.4. Other legislative acts concerning the environment

As mentioned previously (see Section 1.3.2 above), much of the sectorial legislation concerning activities with potentially harmful environmental impacts have remained in force even after the Code was enacted. Such legislation, which generally regulates certain sectors and falls under the competence of

specific authorities, is not primarily intended to advance environmental protection. Some examples of the sectorial legislation that is in force as of today are presented below.

- *The Act on Measures to Prevent and Limit the Consequences of Major Chemical Accidents* contains provisions referring to the Environmental Code and vice versa. The *Civil Contingencies Agency* and the CABs are responsible for the supervision of this act, including the performance of inspections.
- *The Planning and Building Act* constitutes the legal framework for the municipalities on planning matters. This act sets out the general requirements that must be observed with respect to planning and property development. The act refers to the Code, e.g. regarding EISs and EQSs in many of its provisions. Furthermore, this act and the Code are interconnected as regards the appropriate siting of certain activities.
- *The Minerals Act* sets out certain provisions and a permit regime for the exploitation of minerals under the *Mining Inspectorate*. It contains several references to the Code. It should furthermore be noted that, in addition to a permit under the Mineral Law, mining operations require a separate permit under the Code.
- The *Nuclear Activities Act* and the *Radiation Protection Act* are the main legal frameworks that regulate nuclear safety and radiation protection. The *Radiation Safety Authority* is the competent authority under these acts. However, it should be noted that the operation of nuclear power plants and other activities that cause radiation requires a separate permit under the Code.
- *The Forestry Act* is a separate law for the regulation of forestry management, with the *Swedish Forest Agency* as the competent authority. Conversely, environmental aspects of agriculture are now mainly integrated in Chapter 12 of the Code (see Section 1.3.4 above).
- *The infrastructure legislation on Road, Railway, Air and Sea Transportation* sets out specific provisions for the planning, construction and operation of roads and railways, air and sea traffic respectively. Like other sectorial legislation, this legislation contains references to the Code on many issues, such as EISs. Specific aspects of the construction and operation of such activities also require a permit under the Code, i.e. ports, airports and certain road and railway installations.



## 2. The environmental permitting system

### 2.1. Permit purpose and requirements

When the Code was enacted in 1999, the integrated permit regime stipulated in the Environmental Protection Act which covered environmentally hazardous activities was transferred to Chapter 9 of the Code. Furthermore, the permit regime for water operations was transferred from the Water Act to Chapter 11 of the Code. In principle, the material provisions of both of these two permit regimes remained relatively unchanged, with separate permits for environmentally hazardous activities on the one hand, and water operations on the other. However, the procedural provisions were modified so as to provide for an integrated permit review covering both environmentally hazardous activities and water operations. Furthermore, a new system for permit decisions with a new instance structure for the judicial procedure was introduced.

To ensure effective compliance with the general rules of consideration, many activities and operations are subject to permit. Such activities and operations may not commence without a permit from a competent authority, e.g. the Land and Environment Court. The permit sets out the scope of the activity concerned and must include the conditions under which the activity may be carried out. The permit authority may also reject a permit application if it deems that the activity is not permissible under the Code.

In return, the permit essentially protects the operator from any claims or actions due to disturbances caused by the activity, provided that the activity is carried out in compliance with the conditions of the permit. However, it should be noted that the scope of the permit can be limited and conditions altered due to requirements implemented through new legislation. The binding effect of a permit can also be limited due to provisions concerning the withdrawal of permits or the revision of permits in certain circumstances, e.g. when an activity is to a significant extent responsible for an infringement of an EQS.

The general rules of consideration are of fundamental importance for the Code's permit regime, and they provide the basis for determining whether and, if so, under what conditions a permit can be issued. It is often the case that specific types of conditions are required, e.g. conditions setting out emission limits or conditions concerning how emissions must be monitored.

In principle, the permit stipulates that an activity, e.g. the production of a certain quantity of a specified product, the use of a certain amount of a specified product for a certain purpose etc., is permissible subject to certain conditions. The conditions set out in the permit vary depending on the activity in question. Because conditions are set out for each individual activity based on the specific circumstances, such conditions may vary even within the same

category or type of activity. For example, conditions for one pulp and paper factory may vary from those applicable to another pulp and paper factory depending for example on the technology and processes applied, as well as the environment around each factory.

The activities or operations for which permits are compulsory are specified either in the Code or in ordinances issued under the Code. Based on their typical environmental impact, environmentally hazardous activities are divided into three main categories: i) *A activities*, which cover all activities with a significant environmental impact, ii) *B activities*, which are of a lesser scope and/or have less environmental impact, but still require a permit, and iii) *C activities*, which do not require a permit, but fall under a specific notification regime. The total numbers of activities in Sweden, as of today, is approximately 500 A activities, 5 500 B activities and some 15 000 C activities. About 1 300 of the A and B activities are subject to mandatory EU requirements in accordance with the Industrial Emission Directive (IED).

## 2.2. Permit authorities

For permitting and notification procedures, the Code divides competence between the Land and Environment Courts and the regional and local authorities (see the flow chart below). The *Permit authorities* are the Land and Environment Courts and the Environmental Permitting Committees (EPC), the latter being a special branch of the CAB. In general, the division of competences for permitting is based on the activity concerned, its typical environmental impact and the significance of the impact.

As set out above, C activities are not subject to permit requirements, but they are covered by a mandatory *notification regime*. This means that the operator must notify the local EPHC in the relevant municipality before it commences the activity in question. The EPHC may decide to require precautionary measures to be taken as conditions for carrying out such activities.

The application and appeals structure can be illustrated as follows:

**A. Permit for A activities and water operations (permit authority underlined)**  
Land and Environment Courts → Land and Environment Court of Appeal  
(leave to appeal) → Supreme Court (leave to appeal)

**B. Permit for B activities**  
CAB (EPC) → Land and Environment Courts → Land and Environment  
Court of Appeal (leave to appeal)

**C. Decisions on Notifications of C activities**  
EPHC → CAB (EPC) → Land and Environment Courts → Land and  
Environment Court of Appeal (leave to appeal)

## 2.3. Permit procedure

In accordance with the general rules of consideration, it is the applicant who is responsible for preparing and compiling the permit application. This is usually performed with the assistance of technical and legal consultants.

### 2.3.1. Consultations

Among other things, the application must include an EIS and a technical description of the planned activity or operation. As part of the process of preparing an EIS, the applicant is obliged to consult the CAB and EPHC and other stakeholders, such as the general public in the area affected by the activity as well as environmental organisations, etc. (see Section 1.3.4, *Chapter 6*, above).

### 2.3.2. The procedure

Once the application has been prepared, the applicant will submit it to the competent permit authority. Upon receiving the application, the permit authority will refer it to the key stakeholders, i.e. relevant authorities. The purpose of this *first briefing round* is to determine whether or not the application adequately covers all aspects of relevance to the review of the application. If not, the applicant may be requested to provide additional material. This phase gives the authorities, including the Swedish EPA, an opportunity to participate in the permit procedure at an early stage and thereby influence the content of the application and the EIS.

As and when the permit authority deems the application to be complete, it will publicly announce the application and make it available to the general public. During a *second briefing round*, authorities and other stakeholders are invited to comment on the application with regard to its permissibility and, where applicable, under what conditions it may be permissible. It should be noted that from this phase onwards the participants in the proceedings, e.g. the Swedish EPA, have a standing as a party, which gives the right to submit claims and to respond to other parties' claims. In addition, the general public can submit opinions regarding permissibility and the conditions for the permit.

When the applicant and the other parties have had the opportunity to present their respective claims and facts and arguments in support thereof, the permit authority will schedule a public hearing. During this hearing, the applicant and the other parties will present their respective positions, as well as the facts and arguments in support of their case. The public hearing is open to anyone who wishes to participate, including the media. The public hearing normally concludes the proceedings and the permit authority will then decide on the matter through a judgment.

### 2.3.3. The decision

The permit authority can essentially reach one of three conclusions in its decision: 1) Permit should be *granted*, 2) The activity concerned is *not permissible* due to its environmental impact and the application will consequently be *rejected*, or 3) The application does not contain sufficient information to determine the environmental impact and the application must therefore be *dismissed*.

If a permit is granted, the decision must always stipulate the conditions for the permit. As mentioned above, the permit review is largely based on an application of the general rules of consideration. The *Precautionary principle*, for example, stipulates that the mere risk of damage or detriment implies an obligation to take necessary measures to mitigate or prevent adverse health and environmental effects. This in turn must be weighed against the *Proportionality principle*, which aims to achieve conditions that are environmentally justifiable and financially reasonable (see Section 1.3.4, *Chapter 2*, above). Since the integrated permit regime covers all relevant environmental impacts from an activity or operation, such precautionary actions, prescribed through permit conditions, can include a wide range of options. Examples are conditions limiting and reducing the risk of emissions and other damage, choosing appropriate production methods, limiting the scale of the operation, choosing suitable raw materials and fuels, using monitoring equipment, avoiding emissions under certain meteorological conditions, etc.

### 2.3.4. Right to appeal

The applicant and the other parties in the procedure, as well as certain other stakeholders, can appeal against a permit decision. The right to appeal also applies to non-profit organisations or other legal persons with the primary purpose of promoting nature conservation and environmental protection interests, who also meet certain other specified requirements.

## 3. Supervision

### 3.1. Purpose and requirements

For the purpose of overseeing compliance with the requirements set out in the Code and legislation issued under the Code, as well as the requirements set out in permits, the Code contains provisions concerning supervision. The term ‘supervision’ is broad and covers inspection, enforcement and issuing guidelines. The supervision is conducted by certain supervisory authorities whose authority and responsibility are set out in the Code and in an ordinance issued under the Code.

To supplement the supervision by authorities, operators of environmentally hazardous activities are obliged to conduct self-monitoring. This obligation is based on the general rules of consideration (see Section 1.3.4, *Chapter 2*, above). The supervisory regime thereby corresponds to the system of self-monitoring, and supervisory actions are often based on information gathered from reports from self-monitoring.

To obtain an understanding of the Swedish system for supervision, it is therefore useful to start with an overview of the obligation to conduct self-monitoring.

### 3.2. Self-monitoring by operators

As mentioned above, the general rules of consideration assign a responsibility for operators to minimize and control the environmental impact of their activities. This, combined with the fact that it would be costly and inefficient for the supervisory authorities to regularly scrutinize all the activities, installations and processes to which the Code applies (and all the parameters set out in the conditions in the environmental permits in particular) has led to the establishment of a system of compliance based on self-monitoring by operators.

This system is largely implemented through the Ordinance on Operators’ Self-monitoring, issued under the Code. This ordinance stipulates a mandatory requirement for operators to use and apply a self-monitoring management system. The purpose of this system is to oversee compliance with the Code and legislation issued under the Code, as well as permits, applicable to a specific activity.

The ordinance stipulates that an operator must continuously monitor the operation of the activity in order to mitigate or prevent detrimental impacts on human health or the environment. This may require different methods depending on the activity concerned; it could involve conducting studies, analysis, samples and measurements or other means. In order to adequately fulfil this obligation, the operator is required to establish and document the monitoring procedures needed for compliance, and maintain the equipment

in good condition. The operator is furthermore required to establish routines for responding to the information that is produced, e.g. by taking appropriate measures. In effect, the above implies routines and procedures for the calibration of measuring devices and other equipment, checks to ascertain the condition of relevant equipment, as well as routines for non-compliance response.

In addition, the operator is required to systematically examine, identify and assess the environmental risks associated with the activity and take adequate action as necessary in order to prevent detrimental impacts. This includes identifying situations that could lead to non-compliance. Actions taken and the results must be documented.

The operator must also keep records of chemicals and genetically modified organisms used in the operation of the activity. The register must state the name of the product, the quantity used and information about risks to human health and the environment. If accidents or emergencies occur that could cause detriment to human health or the environment, the operator must immediately notify the relevant authorities.

The ordinance furthermore stipulates that environmental accountability in the operator's organisation must be defined and documented.

The Swedish EPA has issued regulations which describe the monitoring and compliance requirements in more detail. These regulations require standard international or national methods to be used when available. The results, methods and all measuring data must be documented and retained for a period of five years. During this period, the documents must be made available to the supervisory authorities upon request.

### 3.3. Annual environmental reports

The operator of an environmentally hazardous activity for which a permit is required is obliged to submit an annual environmental report to the supervisory authorities. Since 1989, this has been a requirement under regulations issued by the Swedish EPA.

The annual report must include a summary of all measures taken to ensure compliance with the general rules of consideration and the permit conditions. Results from findings from analysis and studies etc. performed during the year must be included and summarized. Data on emissions to air, water and land, waste generation and, when required by law, on products, energy consumption, use of chemicals and hazardous substances, must be included.

Annual environmental reports are an important source of information not only for the supervisory authorities, but also for the public, policymakers, researchers and other stakeholders with an interest in environmental issues. Information given in environmental reports is considered public pursuant to the Freedom of the Press Act. However, if the information concerns business

interests, e.g. operating conditions, such information may be subject to confidentiality under the Public Access to information and Secrecy Act.

To facilitate the reporting process and make better use of the information in the reports, an electronic reporting system for submitting the annual environmental reports, known as the Swedish Portal for Environmental Reporting (SMP), was launched in 2006. The data in the SMP is used for the monitoring and follow-up of environmental quality objectives and for compiling official environmental statistics, as well as for reporting emissions in Sweden in accordance with various international obligations. The data furthermore provides key information that is used by the supervisory authorities in their work and planning of operative supervisory actions (see Section 3.5 below).

### 3.4. Supervisory authorities

Like the permit and notification regime (see Section 2.2 above), supervision responsibilities rest on three levels: national, regional, and local. The Swedish EPA is the environmental authority responsible for issuing guidelines concerning supervision to authorities that are responsible for operative supervision, e.g. inspection and enforcement. In addition to issuing guidelines, this responsibility includes co-ordinating roles within the supervisory regime, as well as evaluating supervisory actions. This general responsibility of the Swedish EPA is supplemented by specific areas of responsibility assigned to expert authorities within their respective fields, e.g. the Swedish Chemicals Agency or the Swedish Agency for Marine and Water Management.

With some exceptions, the operative supervisory actions, such as inspections and enforcement, are carried out at regional or local level by the CABs or EPHCs. The CABs are generally responsible for the supervision of A and B activities and compliance with legislation based on EU directives (see Section 2.1 above). The duties of the CAB can be transferred to the EPHC according to a special procedure. In turn, the EPHC is assigned general supervisory responsibility for all other environmentally hazardous activities within the municipality. In addition, there are twelve central government agencies, including the Swedish EPA, which are assigned operative supervision responsibilities within specific fields, such as forestry or agriculture.

### 3.5. Supervisory procedures

#### 3.5.1. Supervisory planning and initiation

The operative supervisory authorities are required to plan and carry out inspections on an ongoing basis. However, inspections may also be the result of complaints from the general public or from information provided by the operator.

Since the authorities cannot give priority to all activities under the Code, there must be a methodical approach to the overall supervision. Operative supervisory authorities must therefore issue a list of the planned supervisory priorities and actions every year. This list should be compiled so as to correspond to the overall task of meeting the environmental quality objectives. Furthermore, the authorities must keep records of all supervisory actions carried out within their area of responsibility. The operative supervisory authorities must regularly follow up and evaluate their actions so as to improve the effectiveness of their supervision.

Operative supervisory actions should primarily be concentrated on activities and operations whose environmental impact is of significance to attainment of the environmental quality objectives, and where the operative supervision is expected to improve the operators' system of self-monitoring (see Section 3.2 above). The annual environmental reports submitted by the operators are used as a basis for assessing the need for operative supervisory actions (see Section 3.3 above).

The costs attributable to supervisory actions, including inspections, are partly covered by the State and partly by the operator of the activities concerned. Under the Code, anyone carrying out an activity is obliged to cover the costs incurred by the permit and supervisory authorities, e.g. for handling of permit applications, inspection and enforcement. This is done in part through annual fees and in part through specific fees for handling of permit applications and supervisory actions.

### **3.5.2. Access to sites and information**

Inspectors are entitled to gain access to the site of an activity, e.g. a factory or installation, regardless of whether or not it is currently operating, and to carry out investigations (ask questions, take samples, review documents etc.). Furthermore, the operator of an activity is obliged to submit information to an inspector upon request, provided that the information is necessary for the performance of an inspection task.

All information (e.g. figures concerning emissions or environmental impact reports) in documents given to an inspector or submitted to an authority is considered public (see Section 3.3 above). However, the supervisory authority can classify information as confidential if it concerns business interests.

### **3.5.3. Inspection methodology**

The Swedish EPA has issued a handbook on inspections and enforcement. It contains guidelines for site inspections.

As stated in the handbook, it is recommended that the operative supervisory authorities plan each inspection and the scope of the inspection in advance. Inspections may focus on all aspects of an activity or be limited to a certain aspect or problem.



Two different types of inspections may be distinguished: those concentrating on the operator's self-monitoring system and those concentrating on specific technical issues and compliance with the corresponding provisions, e.g. measures to reduce emissions or disturbances. These two types of inspections may also overlap.

Although there is detailed legislation concerning inspections, there are no legally binding provisions concerning the supervisory authorities' inspection methodology. General guidelines are offered in the abovementioned handbook. However, such methodology is ultimately a question of professionalism that the staff carrying out inspections must acquire and develop. In reality, inspectors should be able to handle many inspection situations and different types of activities, and be able to adapt their knowledge and skills to the situation. Training programmes for inspectors and organized courses to enable inspectors to exchange experiences are important. It is therefore a crucial task for authorities responsible for providing guidelines for the operative supervision, e.g. the Swedish EPA, to organize courses and seminars on training and the sharing of know-how.

See Section 4 below regarding breaches of environmental legislation and supervisory enforcement.

## 4. Enforcement and sanctions

### 4.1. Supervisory enforcement

#### 4.1.1. Injunctions

To ensure compliance with the Code and legislation issued under the Code, the supervisory authority may issue an *injunction*. Such injunctions may differ depending on the activity concerned and the actions that are needed.

Should a permit holder disregard a condition set out in the permit or otherwise breach environmental legislation, the supervisory authority may order him to *rectify* the matter. As mentioned previously (see Section 3.5.2 above), the supervisory authority may order an operator to *submit information* required for the supervision. The supervisory authority may also order the operator to *prepare an investigative report* concerning the activity and its environmental impact, as necessary in order to fulfil the objectives of the inspection. Injunctions can also include an order to *cease* operations or to *prohibit* an operator from starting a specific operation. If appropriate, an objective third party may be appointed to carry out further inspections on the activity in question. For example, an environmental auditor could be appointed to carry out further inspections in relation to a self-monitoring system. In accordance with the *Polluter pays principle*, the operator can be required to cover the cost of the study in such cases.

To ensure compliance with an injunction, the supervisory authority may also impose *conditional fines*. Should the operator fail to observe the injunction, the supervisory authority may turn to the Land and Environment Court for a ruling on the fines, which will then be subject to enforcement. The magnitude of the fines should correspond to the costs incurred by the operator in implementing the measures ordered in the injunction.

#### 4.1.2. Environmental Sanction Charges

Injunctions are often used for preventive purposes, while in cases where a breach of environmental legislation has already occurred, the supervisory authorities may resort to imposing what are known as ‘environmental sanction charges’. Such charges may be imposed in cases where operators are in breach of provisions issued pursuant to the Code, e.g. when an operator fails to submit an annual environmental report (see Section 3.3 above). Charges may only be imposed for breaches of certain specified provisions and normally amount to between SEK 1 000 and 1 000 000 (EUR 100 – 100 000).

#### 4.1.3. Withdrawal or revision of permits

In certain specified circumstances, the permit authority may *withdraw* a permit, entirely or partially, and prohibit further activity (see Section 2.1 above). This option may, for example, be triggered in cases where a permit is not complied with and the non-conformity is material. The permit authority may furthermore *revise* a permit with respect to provisions concerning

the permissible production volume or other similar provisions concerning the scope of the activity, and amend or cancel conditions for the permit (see Section 2.1 above). As with the process for the withdrawal of permits, a permit may only be revised in certain specified circumstances, e.g. when an activity is to a significant extent responsible for the infringement of an EQS, or in cases where the applicant for the permit has misled the permit authority regarding information relevant to the permit or the conditions for the permit.

Four designated government agencies at national level, including the Swedish EPA, have the right to initiate a review concerning the possible withdrawal or revision of a permit, by applying to the permit authority. Such applications may also be submitted by the competent CAB and, provided the supervisory duties have been transferred from the CAB to it, the local EPHC. In this way, the supervisory system ultimately links back to the permit regime.

#### **4.1.4. Reporting of environmental offences**

It is incumbent on the supervisory authority to ensure that suspected environmental offences are brought to the attention of the public prosecutor. Consequently, the supervisory authorities are required to report any suspected environmental offences to the police or the public prosecutor. Unless it is ordered to assist the prosecutor in a criminal investigation, the supervisory authority does not take part in investigations of suspected environmental offences.

## **4.2. Environmental penal law**

### **4.2.1. Penal provisions**

Before the Code was enacted, environmental penal provisions were included in the Penal Code and, in some instances, in sectorial legislation. With the introduction of the Code, essentially all environmental penal provisions were transferred to Chapter 29 of the Code. Nevertheless, penal provisions still exist in sectorial legislation. It should furthermore be noted that the penal provisions in the Code are subsidiary to offences in the Penal Code. Penalties for environmental offences range from fines to imprisonment for up to six years.

To illustrate the general scope and formulation of the environmental penal provisions, some key environmental offences are listed here:

- *Environmental offence*; either wilfully or through negligence i) causes the emission to land, water or air of a substance which results in or could result in pollution detrimental to human health, flora or fauna or any other significant detrimental to the environment, ii) stores or disposes of waste or another substance in a manner which could cause pollution detrimental to human health or animal or plant species, iii) causes substantial detriment to the environment as a result of noise, vibration or

radiation, or iv) pursues an activity or takes action which changes the surface water or groundwater level in a manner which damages or could damage human health or animal or plant species, or causes or could cause any other significant detrimental effect to the environment. The penalty for breaching this provision ranges from fines to imprisonment for up to two years, or in the case of gross offences imprisonment for up to six years.

- *Unauthorized environmental activity*; either wilfully or through negligence i) starts or pursues an activity or takes some other action without obtaining a permit or approval or without submitting a notification, or ii) breaches a condition or provision in the permit or in the decision regarding permissibility, approval or exemption which applies to the activity. The penalty for breaching this provision ranges from fines to imprisonment for up to two years.
- *Obstruction of environmental control*; either wilfully or through negligence i) submits inaccurate information which, in terms of health and environmental protection, is of importance for the review of a permit application or supervision by an authority, ii) breaches a provision concerning the obligation to notify the supervisory authority of, among other things, an operational disruption in the activity or of pollution or significant environmental damage, or an imminent risk thereof. The penalty for breaching this provision ranges from fines to imprisonment for up to two years.
- *Species protection offence*; either wilfully or through negligence i) kills, injures, catches or disturbs animals of certain protected species or damages or destroys their eggs, roe, lair, reproductive area or resting place, ii) removes, injures or takes seeds or another part of a plant of certain protected species, iii) unlawfully releases an animal into the natural environment, or iv) transports, imports, exports, stores, displays, processes, uses for commercial gain, acquires, sells, lets out, barter or exchanges, offers to purchase, offers for sale or keeps for the purpose of selling animals, plants, eggs, roe, seeds or lairs, or part or product thereof, of certain animal and plant species protected by national legislation and EU legislative acts. The penalty for breaching this provision ranges from fines to imprisonment for up to two years, or in cases of gross offences imprisonment for up to four years.

#### **4.2.2. Procedure**

It is a matter for the prosecutor to decide whether or not an offence has occurred and is likely to lead to a conviction. If the prosecutor decides to initiate a criminal investigation, the investigation will be carried out with the assistance of the police. Today, most local public prosecution offices have specially trained prosecutors dealing with environmental offences. Many police departments also have specially trained police officers for investigating environmental offences.

Unlike matters relating to injunctions and administrative sanction charges, criminal offences are brought before a general court of law and not before a Land and Environment Court. Appeals are submitted to the Courts of Appeal and then, if leave to appeal is granted, to the Supreme Court.

It should furthermore be noted that while administrative sanctions relate to the operator of an activity as a natural or legal person, charges concerning environmental offences always relate to the natural person, either in the capacity of direct offender or as the representative of a legal person within whose operations the offence has occurred. It should however be noted that the prosecutor may also charge a legal person, within whose operations an environmental offence has occurred, with forfeiture and corporate fines.

# Swedish Environmental Law

REPORT 6790

SWEDISH EPA  
ISBN 978-91-620-6790-8  
ISSN 0282-7298

## An introduction to the Swedish legal system for environmental protection

The Swedish Environmental Protection Agency (Swedish EPA), one of the three main national authorities in Sweden for environmental protection, conducts international cooperation with numerous countries and in various regional and multilateral forums. Such cooperation generally focuses on the agency's core competence area, i.e. the development and strengthening of public environmental administration and environmental governance based on legislation and other policy instruments.

This report offers an introduction to the Swedish system for environmental protection and the legal framework that governs it. The report has been compiled primarily to meet the needs of the Swedish EPA and its partners in their collaborative activities. However, we hope it would also be relevant and useful for other authorities and organizations in Sweden who are engaged in international cooperation in the environmental field as well as anyone outside Sweden with an interest in the Swedish legal system for environmental protection.

