SIMPLIFICATIONS IN ENVIRONMENTAL AUTHORIZATIONS: THE SOLE ENVIRONMENTAL LICENSE SETS FORTH BY PRESIDENTIAL DECREE DATED MARCH 13, 2013 NO. 59.

Presidential Decree no. 59 dated March 13, 2013, named «Rules and regulations on the Sole Environmental License and environmental administrative procedure simplification with reference to small and medium enterprise, pursuant to Article 23 of Law Decree dated February 9, 2012, no. 5, confirmed and amended by Law dated April 4, 2012, no. 35» hereinafter also referred to as the “Regulation”, regulates the Sole Environmental License (“SEL”), a new environmental license that replaces, in a series of situations, various environmental authorizations.

The Regulation was gazetted on May 29, 2013 and will enter into force on June 13, 2013.

Scope of application
Pursuant to the Regulation, the provisions concerning the SEL apply to the small and medium enterprises, «as well as to those installations which are not subject to Integrated Pollution Prevention and Control [hereinafter “IPPC”]».

In light of the above, it results that the SEL replaces those authorizations concerning (i) activities carried out by small as well as medium enterprises and (ii) installations operated by enterprises of whatsoever nature, which are not subject to IPPC.

Furthermore, the SEL may not concern those projects which are subject to Environmental Impact Assessment procedure, should the same assessment include and replace, pursuant to both national and regional rules and regulations, all the other environmental assent titles, howsoever named.
**Effectiveness**

The SEL will replace the following authorizations and communications:

- wastewater discharges authorization referred to under head II, title IV, section II of the Third Part of Legislative Decree dated April 3, 2006, no. 152;
- preventive communication provided for by Article 112 of Legislative Decree no. 152/2006 for agronomic use of breeding effluents, vegetation water produced by oil presses and wastewater coming from plants provided therein;
- air emission authorization concerning plants provided for by Article 269 of Legislative Decree no. 152/2006;
- general authorization provided for by Article 272 of Legislative Decree no. 152/2006;
- communication or the declaration attesting that there is no impediment provided for by Article 8, paragraphs 4 or 6, of Law dated October 26, 1995, no. 447;
- authorization concerning the use of mud deriving from agricultural depuration process referred to under Article 9 of Legislative Decree dated January 27, 1992, no. 99;
- communications on waste according to Articles 215 and 216 of Legislative Decree no. 152/2006.

As a consequence of the above-mentioned simplification purposes, the SEL becomes optional whenever the activities that it replaces be less burdensome than the ones provided for by the SEL itself.

In such regard, Article 3, paragraph 3, of the Regulation provides that, should the interested party be subject to mere communication duties, or should he be subject to the release of a “general authorization”, he may have recourse to the specific ordinary procedure provided for with respect to said communication and authorization.

Even though the term “general authorization” (which makes no reference as to Article 272, paragraph 2, of Legislative Decree no. 152/2006) is not exemplary from a stylistic standpoint, we may deduce, by way of interpretation, that the SEL is not mandatory, should the activity be subject to mere communication duties or to the issuance of a general authorization, pursuant to Article 272, paragraph 2, of Legislative Decree no. 152/2006. In such case, the operator will have recourse to the ordinary administrative procedure.
Therefore, it is possible to make the following distinctions:

- **Mandatory SEL**, the SEL becomes mandatory should the operator be required to obtain one authorization among those mentioned under Article 3, paragraph 1, of the Regulation, different from the general authorization, provided for by Article 272, paragraph 2, of Legislative Decree no. 152/2006.

- **Optional SEL**, the SEL remains optional should the operator be required to obtain, so as to carry out his activity, a general authorization, pursuant to Article 272, paragraph 2, of Legislative Decree no. 152/2006, as well as to file mere communications. Should it be the case, the operator may decide (presumably after a specific costs/benefits analysis) to follow (i) the SEL procedure as well as (ii) the ordinary procedure provided for with reference to the general authorization or communication required.

According to the above, it is plain that the SEL is mandatory should the operator be subject, so as to carry out his activity, to both communication duties as well as to the issuance of an authorization different from the general one provided for by Article 272, paragraph 2, of Legislative Decree no. 152/2006.

Should the SEL be optional, communications provided for by Article 3 of the Regulation, which the enterprise may decide to individually file with no recourse to the SEL procedure, shall be filed with the relevant public authority through the productive activities desk (in Italian, “Sportello Unico delle Attività Produttive”, hereinafter “SUAP”), which represents, according to the Regulation «the only point the applicant may access to for any administrative fulfillments his productive activity may be concerned with».

**The SEL issuance procedure**

The SEL application shall be filed with the SUAP, which immediately transfers, via computer, the same application to the relevant public authority as well as to the environmental experts (*i.e.* public administrations and public entities which, according to the current applicable rules and regulations, intervene with respect to those procedures replaced by the SEL) and verifies the application formal completeness, in accordance with the relevant public authority.

The time required for the issuance of the SEL may vary depending on whether it concerns authorizations the issuance time of which is lower/equal or higher than ninety days.

- In the first case, the relevant public authority will (i) adopt a decision concerning the SEL within ninety days starting from the date in which the SEL application was filed, and (ii) immediately transfer the same decision to the SUAP, which issues the relevant authorization. The same SUAP may also call a steering committee (the same steering
committee is to be called anytime the circumstances provided for by Law dated August 7, 1990, no. 241, occur as well as in the cases provided for by regional and specific rules and regulations concerning the issuance, approval, renewal or updating of those titles referred to by Article 3, paragraphs 1 and 2, of the Regulation).

- On the contrary, in the second case, the SUAP is bound to call a steering committee. In such case, the relevant public authority shall take a decision upon the SEL within the term of one hundred and twenty days from the application receipt date (should a documental integration be required, the same term is postponed up to one hundred and fifty days from the date in which the SEL application was filed).

The SEL lasts fifteen years; with regard to dangerous substances discharges, enterprises and authorized plants operators are required to communicate, at least every four years, to the relevant public authority the results of the assessment individually carried out. Such updating, anyway, does not modify the total length of the authorization.

**The SEL renewal procedure**
The SEL renewal application shall be filed by the owner of the SEL at least six months before its expiration date.

The owner of the SEL files with the relevant public authority, through the SUAP, a specific application form, including the (updated) documentation provided for by Article 4, paragraph 1, of the Regulation.

Article 5, paragraph 2, of the Regulation sets out the possibility to make reference as to the documentation already owned by the relevant public authority, should the information provided therein as well as the operation requirements be always the same. The relevant public authority will express its opinion on the renewal application through the procedure set forth by Article 4 of the Regulation.

**Modifications afterwards the SEL issuance**
The provisions set forth by the Regulation with regard to the activities the operator is required to carry out so as to modify the activity or the installation authorized vary depending on whether such modification may be deemed “substantial” or not.

Indeed, should the modification be deemed “substantial”, it is necessary to obtain a new authorization. Therefore, the enterprise shall file a SEL application (pursuant to Article 4 of the Regulation). Otherwise, should the same modification be deemed non “substantial”, a mere communication is sufficient.
In such regard, it is worth noting that the definition of “substantial modification” referred to within the Regulation is rather different from the one provided for within Legislative Decree no. 152/2006.

Article 2 of the Regulation defines “modification” «any variation to the authorized installation project, already realized or to be realized, which may produce environmental effects». On the other hand, the same Regulation defines “plant substantial variation” «any modification deemed substantial according to specific rules and regulations which govern environmental communication, filing and authorization included within the Sole Environmental License which may produce negative and considerable impacts on the environment».

Should an interpretation of the Regulation consistent with Legislative Decree no. 152/2006 be adopted (in such regard, please note that Legislative Decree no. 152/2006 bans any derogation from the provisions set forth therein by rules which are not included within primary legislative sources), the definition provided for within Presidential Decree no. 59/2013 is to be interpreted as a mere reference to the term “substantial modification” provided for within Legislative Decree no. 152/2006. Based on the above, a modification shall be deemed “substantial” (ex Article 3, paragraph 1, letter l-bis, of Legislative Decree no. 152/2006), according to the SEL provisions, should it «have negative and considerable impacts on the environment according to the assessment of the relevant public authority».

Therefore, in light of the above, we may conclude that the “substantial modification” procedure provided for by the Regulation applies to any modification which the relevant public authority considers suitable to produce negative and considerable effects on the environment.

Notwithstanding the above, pursuant to the provisions set forth by the Regulation (which seem to be rather inconsistent with the definitions provided therein), the SEL application shall be filed by the «operator who is going to carry out a substantial modification».

In this way, the preliminary assessment about the substantial nature of the modifications to be implemented is up to the operator, rather than to the relevant public authority. Therefore, it is the same operator who evaluates whether having recourse to a mere communication or to a new SEL application.

Such inconsistency is partially overcome by the provision set forth by paragraph 3 of the same Article 6 of the Regulation, which provides that, «should the relevant public authority deem the modification, communicated according to paragraph 1, substantial, the same authority requires the operator, within thirty days from the communication filing date, to file an authorization application pursuant to Article 4 and the same modification cannot be carried out before the new authorization has been issued ».
Based on the above, it results that the provisions introduced by the Regulation partially derogate from the scheme set forth by Legislative Decree no. 152/2006. Indeed, in case of modifications concerning activities as well as installations subject to SEL, operator may decide, at his own discretion, whether communicate the modifications themselves or file a new SEL application, depending on his assessment about the nature (substantial or not) of the modifications to be carried out.

In such a way, on the one hand, the operator is required to make a decision which may be not confirmed by the relevant public authority (it makes the operator decision uncertain) and, on the other hand, there is a risk that, should the relevant public authority give no answer on the communicated modification, operator may proceed further with the implementation of those modifications which, even if substantial, he deems not substantial, according to his understanding.

**Temporary provisions**

The SEL provisions do not apply with respect to those procedures which started before the date in which the Regulation entered into force (i.e.: on June 13, 2013). In such cases, indeed, the rules and regulations enforceable at that time still apply. According to Article 10 of the Regulation, the SEL may be requested afterwards one of the authorizations replaced by the same SEL expires.

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The Administrative department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest for you.

Filippo Pacciani
Tel. +39 06.93.18.271
fpacciani@legance.it

Luca Geninatti Satè
Tel. +39 02.89.63.071
lgeninatti@legance.it

or Your direct contact at Legance.

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