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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**The Emissions Performance Standard Regulations 2015**

**PART 3**

**Monitoring and Enforcement in England**

**Emissions limit notification duty**

**9.—**(1) If any of the conditions in paragraph (3) are met in relation to a relevant fossil fuel plant, the operator of the plant must submit a notification (“an emissions limit notification”) to the Environment Agency within 31 days of the date on which the condition is met (or if more than one condition is met, within 31 days of the date on which the earliest condition is met).

(2) An emissions limit notification must contain—

- (a) the emissions limit (in tonnes of carbon dioxide) for the relevant fossil fuel plant, calculated in accordance with section 57(1) of the Act and as modified, if applicable, by regulations 4 and 6;
- (b) the installed generating capacity (in MW) of the relevant fossil fuel plant; and
- (c) the date on which the relevant fossil fuel plant commenced or is expected to commence generation.

(3) The conditions referred to in paragraph (1) are—

- (a) that a Greenhouse Gas Emissions Permit in relation to the relevant fossil fuel plant—
  - (i) is held by the operator on the date these Regulations come into force;
  - (ii) is granted to the operator after the date these Regulations come into force; or
  - (iii) is varied in relation to the amount of installed generating capacity covered by that permit after the date these Regulations come into force; or
- (b) the emissions limit for the relevant fossil fuel plant is modified by regulation 4.

(4) An emissions limit notification must be submitted in such form and manner as the Environment Agency may reasonably require.

**CCS notification**

**10.—**(1) For the purposes of section 58 of the Act, the Environment Agency must not consider a complete CCS system to be ready for use unless it has first received from the operator a notification (“a CCS notification”) in respect of the system.

(2) A CCS notification must state—

- (a) each generating unit within the relevant fossil fuel plant to which the complete CCS system relates;
- (b) the installed generating capacity of all the generating units stated under sub-paragraph (a); and

- (c) the date on which the operator wishes the complete CCS system to be considered ready for use.
- (3) A CCS notification must be submitted in such form and manner as the Environment Agency may reasonably require.

**EPS annual emissions notification**

**11.**—(1) If the condition in paragraph (2) is satisfied in relation to a relevant fossil fuel plant, the operator of the plant must submit a notification (“an EPS annual emissions notification”) to the Environment Agency in accordance with paragraphs (4) and (5).

- (2) The condition referred to in paragraph (1) is that the total of—
  - (a) the total emissions of carbon dioxide for the relevant fossil fuel plant reported in a verified Greenhouse Gas Emissions Report; and
  - (b) if applicable and where not otherwise included in the total under sub-paragraph (a), the total emissions of carbon dioxide directly attributable to the production of fuel produced from fossil fuel in any associated gasification plant used by the relevant fossil fuel plant for the same period as the report,

is greater than the emissions limit for that plant for the year covered by the report.

- (3) For the purposes of paragraph (2)—
  - (a) only emissions of carbon dioxide which relate to generating units reported in a verified Greenhouse Gas Emissions Report are to be included; and
  - (b) “emissions limit” means the emissions limit for the relevant fossil fuel plant calculated in accordance with section 57(1) of the Act and as modified, if applicable, by regulations 4 and 6.
- (4) An EPS annual emissions notification must—
  - (a) state the EPS annual emissions for the relevant fossil fuel plant for the same period as the verified Greenhouse Gas Report referred to in paragraph (2), and for this purpose, the EPS annual emissions are to be calculated or measured in accordance with the methodology of the Monitoring and Reporting Regulation;
  - (b) identify source streams for each generating unit at the relevant fossil fuel plant to which the emissions limit duty applies;
  - (c) be submitted to the Environment Agency within 10 days of the submission of the verified Greenhouse Gas Emissions Report referred to in paragraph (2); and
  - (d) be submitted in such form and manner as the Environment Agency may reasonably require.

**Charges**

**12.**—(1) The Secretary of State may make, and from time to time revise, a scheme for the charging by the Environment Agency of fees or other charges for the carrying out of functions conferred on it by these Regulations (“an EPS charging scheme”).

- (2) An EPS charging scheme may, in particular—
  - (a) make different provision for different cases, including different provision in relation to different persons in different circumstances or localities,
  - (b) provide for the times at which and the manner in which the payments required by the scheme are to be made, and
  - (c) make such incidental, supplementary and transitional provisions as appear to the Secretary of State to be appropriate.

(3) The Environment Agency may charge for the carrying out of functions conferred on it by these Regulations only as provided by an EPS charging scheme.

(4) An operator must pay a charge imposed under an EPS charging scheme on the operator and where there is a failure to do so—

- (a) the notification to which the charge relates is to be treated as not having been made; and
- (b) the amount of the charge an operator fails to pay may be recovered from the operator by the Environment Agency as a civil debt.

(5) An EPS charging scheme must be made publically available by the Secretary of State before it has effect.

### **Information notices**

**13.**—(1) For any of the purposes mentioned in paragraph (2), the Environment Agency may, by notice served on an operator or the operator of an associated gasification plant (“an information notice”), require that person to furnish to the Environment Agency such information as is stated in the notice, in such form and within such period following service of the notice or at such time as is so stated.

(2) The purposes referred to in paragraph (1) are—

- (a) investigating whether or not the operator has breached the emissions limit duty;
- (b) investigating whether or not an operator has failed to comply with either or both of the duties in regulations 9 and 11;
- (c) investigating whether a complete CCS system is ready for use; and
- (d) investigating any of the following in relation to an associated gasification plant, for the purposes of calculating the emissions of a relevant fossil fuel plant—
  - (i) the carbon dioxide emissions of the associated gasification plant; and
  - (ii) the amount of fuel produced by the associated gasification plant and used by the relevant fossil fuel plant.

### **Enforcement notices**

**14.**—(1) Where the Environment Agency is of the view that an operator has breached the emissions limit duty, the Environment Agency may serve a notice (“an enforcement notice”) on that operator.

(2) An enforcement notice may only be served in respect of a breach of the emissions limit duty in relation to—

- (a) the year in which the notice is served; or
- (b) the preceding year.

(3) An enforcement notice must state—

- (a) the Environment Agency’s view under paragraph (1);
- (b) the remedial action which the operator must take in respect of the breach; and
- (c) the time by which the remedial action stated under sub-paragraph (b) must be taken.

(4) The time stated under paragraph (3)(c) must not be earlier than 21 days after the date of service of the enforcement notice.

(5) Subject to paragraph (6) and regulation 17, where an enforcement notice has been served on an operator, the operator must comply with the requirements of the enforcement notice.

(6) The Environment Agency may vary or withdraw an enforcement notice at any time by further notice served on the operator.

### **Civil penalty notices**

**15.**—(1) Subject to paragraph (7), where the Environment Agency is of the view that an operator has breached the emissions limit duty, the Environment Agency may serve a notice (“a civil penalty notice”) on that operator which states—

- (a) the financial penalty which is payable in respect of that breach; and
- (b) the costs of the Environment Agency which are payable in respect of that breach, being the costs reasonably incurred in investigating and assessing the breach of the emissions limit duty.

(2) A civil penalty notice must state—

- (a) how the amount of the financial penalty imposed was calculated;
- (b) how the costs of the Environment Agency under paragraph (1)(b) were calculated; and
- (c) the date by which the amounts payable under the civil penalty notice are to be paid in full.

(3) The financial penalty is to be set at a level that the Environment Agency considers will, if possible—

- (a) remove any benefit derived by the operator from the breach of the emissions limit duty;
- (b) be fair; and
- (c) be proportionate.

(4) An operator must pay the amount payable under a civil penalty notice and if it is not paid in full by the date stated in the civil penalty notice, the amount payable may be recovered from the operator by the Environment Agency as a civil debt.

(5) The Environment Agency may vary or withdraw a civil penalty notice before it has been paid by further notice served on the operator.

(6) The Environment Agency may not impose a financial penalty in respect of a breach of the emissions limit duty in any year which began more than 5 years before the year in which the notice imposing the penalty is served.

(7) The Secretary of State may issue guidance (“EPS penalty guidance”) on the calculation of financial penalties.

(8) Where EPS penalty guidance is issued, the Environment Agency must have regard to that guidance when calculating the amount of a financial penalty to be imposed.

(9) Before issuing guidance under paragraph (7), the Secretary of State must consult—

- (a) the Scottish Ministers;
- (b) the Welsh Ministers;
- (c) the Department of Environment; and
- (d) such other persons or bodies as the Secretary State considers appropriate.

(10) Where EPS penalty guidance is issued, it must be made publically available by the Secretary of State before it has effect.

(11) The Environment Agency may state the manner and form in which any amount required to be paid by a civil penalty notice must be paid.

(12) Any sum received by the Environment Agency under this regulation must be paid into the Consolidated Fund.

### **Directions under section 59(2) of the Act**

16. Where the Secretary of State makes a direction under section 59(2) of the Act, the Environment Agency must—

- (a) treat the emissions limit duty as suspended or modified as required by the direction; and
- (b) comply with any requirement imposed on it by the direction.

### **Appeals**

17.—(1) An operator may appeal to the First-tier Tribunal against—

- (a) an enforcement notice; or
- (b) a civil penalty notice.

(2) An appeal must be made within 28 days beginning with the day on which the notice subject to the appeal is served.

(3) Where an operator appeals under paragraph (1), any enforcement notice or civil penalty notice subject to that appeal is suspended until the appeal is determined by the First-tier Tribunal in accordance with paragraph (4).

(4) The First-tier Tribunal may—

- (a) affirm the enforcement notice or civil penalty notice;
- (b) direct the Environment Agency to vary or withdraw the enforcement notice or civil penalty notice; or
- (c) impose such other enforcement notice or civil penalty notice as the First-tier Tribunal thinks fit.

### **Publication of information**

18.—(1) Subject to paragraph (3), the Environment Agency may publish any of the information stated in paragraph (2) in relation to an enforcement notice or civil penalty notice on or after the later of—

- (a) the day following expiry of the period for making an appeal against the imposition of the notice, if no appeal is made; or
- (b) the determination or withdrawal of the appeal, if an appeal is made.

(2) The information referred to in paragraph (1) is—

- (a) the identity of the operator subject to the enforcement notice or civil penalty notice;
- (b) in the case of an enforcement notice, remedial action required to be taken to remedy the breach of the emissions limit duty;
- (c) in the case of a civil penalty notice, the amount payable under the civil penalty notice; and
- (d) if the notice has been the subject of an appeal under regulation 16, the result of that appeal.

(3) The Environment Agency must not publish the information stated in paragraph (2) in relation to an enforcement notice or civil penalty notice if—

- (a) the operator is found on appeal not to have breached the emissions limit duty; or
- (b) the enforcement notice or civil penalty notice has been withdrawn.

### **Enforcement by the High Court**

19.—(1) Subject to paragraph (2), if an operator fails to comply with a relevant obligation, the Environment Agency may certify that non-compliance in writing to the High Court.

- (2) The Environment Agency may not certify non-compliance to the High Court if—
  - (a) the time for an appeal relating to the relevant obligation has not elapsed; or
  - (b) any appeal relating to the relevant obligation has not been determined.
- (3) In paragraph (1), “a relevant obligation” means any obligation included in—
  - (a) an information notice;
  - (b) an enforcement notice; or
  - (c) a civil penalty notice.
- (4) If the High Court is satisfied that the operator has failed without reasonable excuse to comply with a relevant obligation, the court may deal with the operator as if the operator were in contempt.

#### **Amendment of the GGETS Regulations**

- 20.**—(1) At the end of regulation 46(1)(a)(ii) of the GGETS Regulations, after “;” omit “or”.
- (2) After regulation 46(1)(a)(iii) of the GGETS Regulations insert—
  - “(iv) necessary for the performance of the Environment Agency’s functions in England under the Emissions Performance Standard Regulations 2015, or”

#### **Documents**

- 21.** The Schedule (documents) has effect.