

DRAFT SCOTTISH STATUTORY INSTRUMENTS

**2011 No.**

**The Storage of Carbon Dioxide  
(Inspections) (Scotland) Regulations 2011**

**Inspections**

4. After regulation 13 (post-closure obligations) insert—

*“Inspections and enforcement*

**Inspections**

**14.**—(1) The authority must carry out an inspection (a “routine inspection”) of a storage complex—

(a) during the initial period—

(i) no later than 1 year from the date that period commences; and

(ii) subsequently, no later than 1 year from the date of the immediately previous inspection;

and

(b) during the post-closure period—

(i) no later than 5 years from the date that period commences; and

(ii) subsequently, no later than 5 years from the date of the immediately previous inspection.

(2) A routine inspection must include an examination of—

(a) the injection and monitoring facilities; and

(b) the effects on the environment and human health of the activities carried out under the relevant licence.

(3) The authority must carry out an inspection of a storage complex if—

(a) the authority becomes aware of—

(i) leakages or significant irregularities; or

(ii) a breach of the terms or conditions of the storage permit; or

(b) a complaint is made to the authority about the effects of activities carried out under the relevant licence on the environment or to human health unless, in the opinion of the authority, that complaint is frivolous or vexatious.

(4) The authority may carry out an inspection other than when required under paragraphs (1) or (3) as the authority considers appropriate.

(5) An inspection carried out in accordance with paragraph (3) or (4)—

(a) does not constitute a routine inspection for the purposes of paragraph (1); but

(b) may be carried out simultaneously with a routine inspection.

- (6) In this regulation, in relation to any storage complex—
- (a) “initial period” means the period commencing on the date on which injection commences at the storage site and ending on the third anniversary of the date of closure of the storage site;
  - (b) “monitoring facilities” means facilities used to carry out a programme of monitoring in accordance with paragraph 2 of Schedule 2; and
  - (c) “post-closure period” means the period commencing on the day after the third anniversary of the date of closure of the storage site and ending on the date on which the relevant licence is terminated.

### **Inspectors**

**15.**—(1) An inspector may exercise any of the powers described in Schedule 3 to assist the authority in carrying out the functions in paragraph (2).

- (2) The functions referred to in paragraph (1) include—
- (a) investigating whether—
    - (i) the provisions of a licence or of any consent granted under a licence; or
    - (ii) any requirements, restrictions or prohibitions imposed by or under Chapter 3 of Part 1 of the Energy Act 2008,
 have been, or are being, complied with; and
  - (b) monitoring the effects on the environment and on human health of activities authorised by or under a licence.

(2) An inspector must report to the authority in such manner as the authority may direct.

(3) An inspector must, before exercising any of the powers described in Schedule 3, produce evidence of appointment if requested to do so.

### **Inspection reports**

**16.**—(1) The authority must prepare a written report (an “inspection report”) of the results of an inspection.

- (2) An inspection report must include—
- (a) the authority’s assessment of whether, in respect of the storage complex inspected—
    - (i) the provisions of a licence and of any consent granted under a licence; and
    - (ii) any requirements, restrictions or prohibitions imposed by or under Chapter 3 of Part 1 of the Energy Act 2008,
 have been, or are being, complied with; and
  - (b) a statement as to what action (if any) the authority considers is required to ensure compliance.

(3) A statement made in an inspection report in accordance with paragraph (2)(b) does not preclude the authority from requiring the licence holder or any other person to take any other action.

- (4) The authority must within two months of the completion of an inspection—
- (a) provide a copy of the inspection report to the operator of the relevant storage site; and
  - (b) make the inspection report available for inspection by the public.

## **Evidence**

17.—(1) An answer given by a person in compliance with a requirement imposed under paragraph 1(i) of Schedule 3 is admissible in Scotland against that person in criminal proceedings.

(2) In criminal proceedings in which a person mentioned in paragraph (1) is charged with an offence to which this paragraph applies, no evidence relating to that person's answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person.

(3) Paragraph (2) applies to any offence other than one—

- (a) under regulation 18(1)(c); or
- (b) under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath).

(4) Nothing in Schedule 3 compels the production by any person of a document of which that person would, on ground of legal professional privilege, be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

## **Offences**

18.—(1) It is an offence for a person to—

- (a) wilfully obstruct an inspector in the exercise of the powers or duties conferred on the inspector by these Regulations;
- (b) fail, without reasonable excuse, to comply with a requirement imposed in pursuance of Schedule 3 or to prevent another person from complying with such a requirement; or
- (c) knowingly or recklessly make a statement which that person knows to be false or misleading in a material particular where such a statement is made for the purposes of satisfying any requirement under Schedule 3 for the supply of information to an inspector.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding £5,000; or
- (b) on conviction on indictment, to a fine.

(3) Where—

- (a) an offence under paragraph (1) has been committed by a body corporate or a Scottish partnership; and
- (b) it is proved that the offence was committed with the consent or connivance of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual,the individual as well as the body corporate or Scottish partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) In paragraph (3), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body;
  - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner.

(5) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.”.