
DRAFT STATUTORY INSTRUMENTS

2015 No.

The Emissions Performance Standard Regulations 2015

PART 1

Citation, commencement, extent and application

- 1.—(1) These Regulations may be cited as the Emissions Performance Standard Regulations 2015, and come into force the day after the day on which it is made.
- (2) Parts 1 and 2 of these Regulations extend to the United Kingdom.
- (3) Part 3 of these Regulations applies to England only.

Interpretation

2. In these Regulations—

“the Act” means the Energy Act 2013;

“associated gasification plant” has the meaning given by regulation 5;

“CCS notification” means a notification under regulation 10;

“CHPQA certificate” means a certificate issued by the Secretary of State in which is reported the amount specified as CHP Qualifying Heat Output (as defined in the CHPQA standard) applying to the relevant fossil fuel plant;

“CHPQA standard” means the Combined Heat and Power Quality Assurance Standard, Issue 5, November 2013⁽¹⁾;

“civil penalty notice” means a notice issued under regulation 15;

“combined heat and power generating station” means a generating station which is (or may be) operated in order to supply to any premises—

(a) heat produced in association with the electricity generated; or

(b) steam produced from, or air or water heated by, such heat;

“emissions limit notification” means a notification under regulation 9;

“enforcement notice” means a notice issued under regulation 14;

“EPS annual emissions” is to be construed in accordance with regulations 7 and 8;

“EPS annual emissions notification” means a notification under regulation 11;

“generating station” means a station which generates electricity;

“generating unit” means any combination of generators, boilers, turbines, or other prime movers that are physically connected as one unit and operated together to produce electricity independently of any other unit;

(1) This document can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335471/CHPQAStandardIssue5.pdf.

“the GGETS Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2012⁽²⁾;

“Greenhouse Gas Emissions Permit” means a permit granted under regulation 10 of the GGETS Regulations;

“Greenhouse Gas Emissions Report” means a report required to be submitted by an operator by Article 67(1) of the Monitoring and Reporting Regulation⁽³⁾;

“information notice” is a notice issued under regulation 13;

“installed generating capacity”, in relation to a generating station or generating unit, means the maximum capacity of electricity generation (in MW) at which that generating station or generating unit could be operated for a sustained period without damage being caused to it (assuming the source of energy used to generate electricity is available without interruption);

“main boiler” means any fired vessel or vessels used to produce steam as part of a generating unit—

- (a) with a total thermal capacity in excess of 300MWth; and
- (b) in which any mixture of fossil fuel in gaseous, liquid or pulverised solid form is combusted;

“the Monitoring and Reporting Regulation” means Commission Regulation (EU) No 601/2012 on the monitoring and reporting of greenhouse gas emissions pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council⁽⁴⁾;

“MW” means megawatts;

“MWth” means megawatt of thermal output;

“operator”, in relation to a relevant fossil fuel plant, means the person required to hold a Greenhouse Gas Emissions Permit for the relevant fossil fuel plant;

“relevant fossil fuel plant” means a fossil fuel plant to which the emissions limit duty applies under the Act or a generating unit to which the emissions limit duty applies by virtue of regulation 3;

“source stream” has the same meaning as in Article 3(4) of the Monitoring and Reporting Regulation.

“the Verification Regulation” means Commission Regulation (EU) No 600/2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council⁽⁵⁾; and

“verified” means verified in accordance with the Verification Regulation.

PART 2

Emissions limit duty

Application of emissions limit duty to additional cases

3.—(1) The emissions limit duty applies to a generating unit which satisfies the conditions in paragraphs (2) and (3).

(2) [S.I. 2012/3038](#) which has been amended by [S.I. 2013/1037](#), [S.I. 2013/3135](#) and [S.I. 2014/3125](#).

(3) See the requirement in a Greenhouse Gas Emissions Permit inserted pursuant to Schedule 4, paragraph 2(3)(b) of the GGETS Regulations.

(4) OJ No L 181, 12.7.2012, p 30.

(5) OJ No L 181, 12.7.2012, p 1.

- (2) The condition in this paragraph is that the generating unit uses—
- (a) fossil fuel; or
 - (b) fuel produced by gasification plant.
- (3) The conditions in this paragraph are that—
- (a) the generating station in which the generating unit is located was the subject of a relevant consent granted before 18th February 2014; and
 - (b) on or after 18th February 2014—
 - (i) any main boiler in that generating unit is replaced; or
 - (ii) an additional main boiler is installed in the generating unit.
- (4) For the purposes of paragraph (3)(a), a generating station is to be treated as the subject of a relevant consent if, by virtue of a consent or approval granted before section 36 of the Electricity Act 1989(6) or Article 39 of the Electricity (Northern Ireland) Order 1992(7) came into force, no relevant consent was required in respect of it.
- (5) The emissions limit duty does not apply to any generating equipment of a generating station in which the generating unit is located if that equipment is installed for safety purposes or for use in an emergency.
- (6) In paragraph (5), “emergency” means an occurrence which involves a risk to the health and safety of persons or to the safe operation of the generating station.

Modification of emissions limit

- 4.—(1) Paragraph (3) applies to a relevant fossil fuel plant in respect of any year in which the plant meets any of the conditions in paragraph (2).
- (2) The conditions referred to in paragraph (1) are that during the year in question—
- (a) the relevant fossil fuel plant is used for the first time for the generation of electricity;
 - (b) the relevant fossil fuel plant permanently ceases to be used for the generation of electricity;
 - (c) the emissions limit duty does not apply in relation to a generating unit in the relevant fossil fuel plant by virtue of section 58 of the Act; or
 - (d) the installed generating capacity of the generating station is altered.
- (3) Where this paragraph applies, the emissions limit of the relevant fossil fuel plant for the purposes of section 57 of the Act and regulations 8 and 10 is $EL_{(\text{revised})}$ tonnes of carbon dioxide, calculated in accordance with paragraph (4).
- (4) In paragraph (3), $EL_{(\text{revised})}$ means—
- (a) if the condition in paragraph (2)(a) applies
- $$EL \div 365 \times N$$

where—

EL is to be calculated in accordance with section 57(1) of the Act as it applies without the modifications required to be made by paragraph (3); and

N is the number of days of the year in which the relevant fossil fuel plant generated electricity after the relevant fossil fuel plant commences generation, including the day on which the generation commenced;

(6) 1989 c. 29. Section 36 was amended by Energy Act 2004, section 93(1) and (3), Planning Act 2008, section 36, Schedule 2, paragraphs 31, 32(1), (2) and (3), Marine and Coastal Access Act 2009, section 12(7)(a) and (8), S.I. 2006/1054, article 2, Schedule 1, Part 1, paragraph 1(1), (2).

(7) S.I. 1992/231 (N.I. 1).

(b) if the condition in paragraph 2(b) applies—

$$EL \div 365 \times N$$

where—

EL is to be calculated in accordance with section 57(1) of the Act as it applies without the modifications required to be made by paragraph (3);

N is the number of days of the year in which the relevant fossil fuel plant generated electricity before the relevant fossil fuel plant ceased generation, including the day on which the generation ceased; and

(C) if the condition in paragraph (2)(c) applies—

$$(EL \div 365 \times N) + (C_{(revised)} \times R \times 7.446 \div 365 \times D)$$

where—

$C_{(revised)}$ is the installed generating capacity, in MW, of the relevant fossil fuel plant comprised of the generating units not covered by an exemption under section 58 of the Act;

D is the number of days in the year in which the relevant fossil fuel plant generated electricity where an exemption under section 58 of the Act applied;

EL is to be calculated in accordance with section 57(1) of the Act as it applies without the modifications required to be made by paragraph (3);

N is the number of days in the year in which the relevant fossil fuel plant operated where an exemption under section 58 of the Act did not apply; and

R is the statutory rate of emissions, in g/kWh.

(d) if the condition in paragraph (2)(d) applies—

$$(EL \div 365 \times N) + (C_{(revised)} \times R \times 7.446 \div 365 \times D)$$

where—

$C_{(revised)}$ is the installed generating capacity, in MW, of the relevant fossil fuel plant after the alteration;

D is the number of days in the year in which the relevant fossil fuel plant generated electricity after the alteration, including the day on which the fossil fuel plant first generated electricity with the altered installed generating capacity;

EL is to be calculated in accordance with section 57(1) of the Act as it applies without the modifications required to be made by paragraph (3);

N is the number of days in the year in which the relevant fossil fuel plant generated electricity before the alteration in the installed generating capacity of that plant; and

R is the statutory rate of emissions, in g/kWh.

Associated gasification plant

5. “Associated gasification plant” means any gasification plant where—

(a) that plant—

(i) uses fossil fuel; and

(ii) produces fuel from the fossil fuel; and

(b) the fuel so produced by that plant is used by a relevant fossil fuel plant to generate electricity.

Exemption for complete carbon capture and storage system

6. The exemption from the emissions limit duty in section 58(1) of the Act applies only to those generating units which use a complete CCS system⁽⁸⁾.

EPS annual emissions

7. Subject to regulation 8, in respect of a relevant fossil fuel plant, the emissions from it that are attributable to the use of fossil fuel in any year (“EPS annual emissions”) are—

- (a) the total emissions of carbon dioxide which are the direct result of operations and processes carried out in the generation of electricity during the year by that relevant fossil fuel plant; and
- (b) if not already included in the total under sub-paragraph (a), the total emissions of carbon dioxide directly attributable to the production of the fuel produced by any associated gasification plant and used by the fossil fuel plant in the generation of electricity in that year.

EPS annual emissions: reduction for CHPQA

8. Where a relevant fossil fuel plant is a combined heat and power generating station, EPS annual emissions are—

$$E_{\text{electricity}} - (CHP_{QHO} \times 0.205 \div 0.9)$$

where—

$E_{\text{electricity}}$ is the EPS annual emissions calculated in accordance with regulation 6 before the application of this regulation; and

CHP_{QHO} is the amount specified as CHP Qualifying Heat Output in a CHPQA certificate applying to the relevant fossil fuel plant for that year (in MWth of thermal output).

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—

⁽⁸⁾ “Complete CCS system” has the same meaning as in section 58 of the Act.

- (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.

Date *Name*
Minister of State
Department of Energy and Climate Change