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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2012 No.**

**The Pollution Prevention and  
Control (Scotland) Regulations 2012**

**PART V**

**REVIEW, VARIATION AND CESSATION OF PERMITS**

**Permits: review of conditions**

**44.**—(1) SEPA must review the conditions of a permit—

- (a) if pollution caused by an installation or mobile plant is of such significance that the emission limit values in the permit need to be revised, or new emission limit values need to be included,
- (b) if the operational safety of the activities carried out in the installation or mobile plant requires other techniques to be used,
- (c) where it is necessary to comply with a new or revised environmental quality standard in accordance with Article 18 of the Industrial Emissions Directive,
- (d) within 4 years after the date of publication of BAT conclusions relating to the main activity of an installation if the permit relates to an activity in respect of which those conclusions were published, and
- (e) where the permit relates to an activity not covered by any BAT conclusions and a development in best available techniques allows for the significant reduction of emissions at the installation or mobile plant.

(2) A review under paragraph (1)(d) or (e) must take into account all the new or updated BAT conclusions adopted under Article 13(5) of the Industrial Emissions Directive since the permit was granted, or last reviewed.

(3) SEPA must in addition periodically review the conditions of a permit.

(4) SEPA may review the conditions of a permit at any other time.

(5) SEPA must on carrying out a review—

- (a) have regard to the results of emissions monitoring and other data that enables a comparison with the best available techniques (including if applicable techniques described in BAT conclusions), and
- (b) ensure that the permit complies with the Industrial Emissions Directive, if necessary by variation or revocation of the permit.

**Permits: proposed change in operation**

**45.**—(1) An operator of an installation or mobile plant in respect of which a permit is granted must give notice to SEPA of a proposed change in operation (a “change notice”) at least 14 days before making the change.

- (2) A change notice must—
  - (a) be in writing, and
  - (b) contain a description of the proposed change in operation.
- (3) SEPA must acknowledge receipt of a change notice.
- (4) A change notice is not necessary if—
  - (a) the operator applies for a variation of the permit before a change in operation is made, and
  - (b) that application describes the proposed change.
- (5) An operator must not make a change during any period beginning with the date of service on the operator of a notice under regulation 63(2) and ending on the date on which the operator provides the required information.

#### **Permits: variation**

- 46.**—(1) SEPA must vary a permit if it considers it necessary to do so in order to ensure that the permit complies with Part II of these Regulations or regulation 10 of the Landfill Regulations.
- (2) SEPA may vary the conditions of a permit at any other time.
  - (3) The operator of an installation or mobile plant in respect of which a permit is granted may in addition apply to SEPA for a variation of the permit.
  - (4) An application for variation must be accompanied by any prescribed fee.
  - (5) An application for variation may be withdrawn at any time.
  - (6) Regulation 18 applies to a variation that will authorise a specified waste management activity for the first time as if the variation were an application for a permit.
  - (7) Schedule 7 has effect.
  - (8) SEPA must on varying a permit give notice to the operator (a “variation notice”) specifying the—
    - (a) variation of the conditions of the permit, and
    - (b) date on which the variation is to take effect,and unless the variation notice is withdrawn it has effect on the date so specified.
  - (9) A variation notice must, unless the notice relates to an application for variation, require the operator to pay the fee within the period specified in the notice.
  - (10) SEPA must give notice to the operator if an application for variation is refused.
  - (11) This regulation and Schedule 7 apply to a variation of a provision of a permit in the same manner as they apply to the variation of a condition.

#### **Permits: transfer**

- 47.**—(1) SEPA may transfer all or part of a permit to another person where paragraphs (2) or (3) apply.
- (2) This paragraph applies where the existing and proposed permit holders make a joint application to SEPA to approve the transfer of all or part of a permit.
  - (3) This paragraph applies where SEPA considers that all or part of a permit should be transferred to a new holder, and the proposed holder consents to the transfer.
  - (4) An application for a transfer must be accompanied by the permit and by any prescribed fee.
  - (5) An application for a transfer must include the address, telephone number and email address for each of the existing and proposed permit holders and (if different) a correspondence address.

- (6) An application for a partial transfer must—
- (a) identify the installation or mobile plant to which the transfer applies, and
  - (b) in the case of an installation, include a map or plan identifying the part of the site to which the application relates.
- (7) An application for the transfer of a permit in respect of a specified waste management activity must include any information that it is intended SEPA should consider when determining whether the transferee is a fit and proper person, and for that purpose regulation 18 applies to a transfer in the same manner as it applies to the grant of a permit.
- (8) SEPA must approve an application for transfer unless it considers that the—
- (a) proposed holder will not be the person with control of the operation of the installation or mobile plant after any transfer,
  - (b) in the case of a permit authorising the carrying out of a specified waste management activity, the proposed holder is not a fit and proper person for the purposes of regulation 18, or
  - (c) the proposed holder will not ensure compliance with the permit conditions.
- (9) SEPA must effect a transfer—
- (a) in the case of a partial transfer—
    - (i) by issuing a new permit to the proposed holder for that part of the installation or mobile plant to which the transfer relates, and
    - (ii) returning the original permit to the existing holder endorsed in respect of the transfer and any variation of the permit conditions,
  - (b) in any other case, by endorsing the permit in respect of the new holder and any variation of the permit conditions.
- (10) A transfer of all or part of a permit has effect on the date specified in the permit or the endorsement, provided that where paragraph (2) applies the date must be as agreed by the existing and proposed permit holders.
- (11) SEPA may vary the conditions of a permit only if it considers it necessary to do so to take account of the transfer.
- (12) SEPA must where paragraph (2) applies give notice to the existing and proposed permit holders if it decides not to approve the transfer.
- (13) The existing permit holder may by notice to SEPA hold the application as being refused if SEPA have failed to make a determination within the specified period.
- (14) In paragraph (13), the specified period is the period of two months beginning with the date of receipt of an application under paragraph (2), or such longer period as SEPA may agree in writing with the existing and proposed permit holders.

#### **Permits: surrender of a Part A permit**

- 48.**—(1) The operator of a Part A installation may apply to SEPA to surrender all or part of a permit for the installation.
- (2) An application must be accompanied by the permit and any prescribed fee.
  - (3) An application must provide—
    - (a) the telephone number, address and email address of the operator and (if different) a correspondence address,
    - (b) in the case of a partial surrender, a description of the part to be surrendered including a map or plan of the site,

- (c) a report describing the condition of the site affected by the surrender (the “closure report”), identifying in particular any changes from the condition of the site as described in the—
  - (i) site report, and
  - (ii) where applicable, the baseline report,
- (d) a description of the steps that have been taken to avoid pollution risks from the site, including any steps that have been taken to—
  - (i) return the site to a satisfactory state, and
  - (ii) remove, control, contain or reduce any relevant hazardous substance in soil and groundwater.
- (4) SEPA may by notice—
  - (a) require the operator to provide further information in relation to the site as specified in the notice within the period so specified,
  - (b) treat the application as having been withdrawn if the information is not provided within that period.
- (5) SEPA must determine an application within—
  - (a) the 3 month period beginning on the date of receipt of the application, or
  - (b) such longer period as SEPA and the operator may agree in writing.
- (6) The 3 month period does not include any period beginning with the date on which notice under paragraph (4)(a) is served and ending on the date on which the information is provided.
- (7) The operator may by notice to SEPA hold the application as being refused at the end the period provided for under paragraph (5) if SEPA have failed to make a determination within that period.
- (8) SEPA must approve an application if it is satisfied that all appropriate measures have been taken to—
  - (a) avoid pollution risk resulting from the operation of the installation,
  - (b) return the site to a satisfactory state, taking into account the technical feasibility of the measures,
  - (c) remove, control, contain or reduce any relevant hazardous substance in soil or groundwater so that the site, taking into account its the current or approved future use, ceases to pose a significant risk to human health or the environment.
- (9) SEPA must give notice of approval or rejection of the application to the operator (the “determination notice”).
- (10) If the application is approved the permit (or part of the permit) ceases to have effect on the date specified in the determination notice.
- (11) SEPA may vary a condition of the permit if it considers it necessary to do so as a result of approval of a partial surrender, and the condition as varied has effect on the date specified in the determination notice.
- (12) In this regulation a reference to any relevant hazardous substance only includes such a substance that is in soil or groundwater as a result of the permitted activities.
- (13) In this regulation—
  - “Part A installation” does not include that part of an installation where a relevant waste activity is carried out,
  - “pollution risk” includes—
    - (a) subject to sub-paragraph (b), only those risks arising from the carrying out of an activity under the permit after the date of the permit,

- (b) in respect of a specified waste management activity, only those risks arising after the relevant date,

“relevant date” means—

- (a) where an activity was carried out under a waste management licence that ceased to have effect under section 35(11A) of the 1990 Act<sup>(1)</sup> on the date of the permit, the date of the licence, or
- (b) the date of the permit,

“relevant waste activity” means the incineration of non-hazardous waste—

- (a) in an incineration plant with a capacity of less than 1 tonne per hour, or
- (b) in a co-incineration plant, unless the incineration is carried out as part of any other Part A activity,

“waste management licence” has the same meaning as in section 35(12) of the 1990 Act, and includes a disposal licence which is treated as a site licence by virtue of section 77(2) of that Act.

#### **Permits: notification of surrender of an installation or mobile plant permit**

**49.**—(1) This regulation applies where an operator of an installation, other than a Part A installation for the purposes of regulation 48 or any mobile plant ceases or intends to cease operation of all or part of the installation or mobile plant.

(2) An operator may give notice to SEPA of the surrender of all or any part of a permit.

(3) A notice under paragraph (2) (a “surrender notice”) must include—

- (a) the operator’s telephone number, address and email address and (if different) a correspondence address,
- (b) in the case of a partial surrender of a permit applying to a Part B installation, a description of the surrender unit and a map or plan identifying the part of the site used for the operation of the surrender unit,
- (c) in the case of a partial surrender of a permit applying to mobile plant, a list of the mobile plant to which it applies, and
- (d) the date on which the surrender is to take effect.

(4) The date on which the surrender is to take effect must be at least 28 days after the date on which the surrender notice is served on SEPA.

(5) A permit ceases to have effect—

- (a) on the date specified in the surrender notice, or
- (b) to the extent of the surrender in the case of partial surrender—
  - (i) on that date, or
  - (ii) where paragraph (6) applies, on the later of that date or the date of variation of the remaining part of the permit.

(6) SEPA must if it considers it necessary to vary the conditions of the permit to take account of a partial surrender—

- (a) give notice to the operator that it intends to vary the permit, and
- (b) serve a variation notice on the operator under regulation 46.

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(1) 1990 c.43. Section 35(11A) of the 1990 Act was inserted by S.S.I. 2000/323.

### Permits: revocation of permits

**50.**—(1) SEPA may at any time revoke all or part of permit by serving a notice (“a revocation notice”) on the operator.

- (2) SEPA may in particular serve a revocation notice where—
- (a) a permit authorises the carrying out of a specified waste management activity and it appears to SEPA that the operator has ceased to be a fit and proper person by reason of—
    - (i) the operator or a relevant person having been convicted of a relevant offence within the meaning of regulation 18, or
    - (ii) the management of the activity has ceased to be in the hands of a technically competent person,
  - (b) the holder of the permit has ceased to be the operator of the installation or plant covered by the permit.
- (3) A revocation notice may—
- (a) revoke a permit entirely,
  - (b) revoke a permit only to the extent that it authorises the operation of some of the installations or mobile plant to which it applies,
  - (c) revoke a permit only to the extent that it authorises the carrying out of some of the activities which may be carried out in an installation or by means of mobile plant to which it applies.
- (4) A revocation notice must specify—
- (a) the date on which the revocation takes effect (which must be at least 28 days after the date on which the notice is served), and
  - (b) in the case of a partial revocation, the extent to which the permit is being revoked.
- (5) Where a permit for a Part A installation is revoked under paragraph (3)(a) or (b), and SEPA considers that the operator must take steps in respect of the installation once no longer operating to—
- (a) avoid any pollution risk resulting from the operation of the installation on the site,
  - (b) return the site to a satisfactory state, taking into account the technical feasibility of the steps, or
  - (c) remove, control, contain or reduce any relevant hazardous substance in soil or groundwater so that the site, taking into account its the current or approved future use, ceases to pose a significant risk to human health or the environment,

the revocation notice must specify any steps that must be taken in respect of the site (or part of the site where applicable) that are further to those required by the permit.

(6) Subject to regulation 58(10) and paragraph (7), a permit ceases to have effect in whole or part from the date specified in the notice.

- (7) Where paragraph (5) applies, the permit—
- (a) continues to have effect in so far as it requires steps to be taken until SEPA issues a certificate of completion stating that it is satisfied that the steps have been taken, and,
  - (b) any steps specified under paragraph (5) are to be treated as conditions of the permit, and regulations 46, 55, and 67 apply in relation to such steps, and to any other conditions in the permit which require steps to be taken until SEPA issues a certificate of completion.
- (8) SEPA may withdraw a revocation notice before the date on which the revocation has effect.
- (9) Regulation 48(12) applies for the purpose of deciding in this regulation whether a pollution risk results from the operation of a Part A installation as it applies for the purposes of regulation 48.

