

**2016 No. 28**

**ENERGY**

**ELECTRICITY**

**The Emissions Performance Standard Monitoring and  
Enforcement Regulations (Northern Ireland) 2016**

*Made* - - - -

*29th January 2016*

*Coming into operation* -

*15th March 2016*

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The Department of the Environment makes the following Regulations in exercise of powers conferred upon it by section 60(2) of, and Schedule 5 to, the Energy Act 2013(a).

## PART 1

### General

#### Citation and commencement

1. These Regulations may be cited as the Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016 and come into operation on 15th March 2016.

#### Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(b) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“the Act” means the Energy Act 2013;

“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;

“CCS” means carbon capture and storage within the meaning of Chapter 8 of Part 2 of the Act;

“CCS notification” means a notification under regulation 5;

“chief inspector” means the inspector constituted to be the chief inspector under regulation 8(3) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(c);

“civil penalty notice” means a notice issued under regulation 10;

“emissions limit notification” means a notification under regulation 4;

“enforcement notice” means a notice issued under regulation 9;

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

“EPS annual emissions notification” means a notification under regulation 6;

“EPS Regulations” means the Emissions Performance Standard Regulations 2015(d);

“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;

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(a) 2013 c. 32 which has been amended by S.I. 2014/1638, regulation 48(1) and (2), Schedule 13, Part 1, paragraph 8, and Schedule 14, Part 1

(b) 1954 c. 33 (N.I.)

(c) S.R. 2013/160

(d) S.I. 2015/933

“Greenhouse Gas Emissions Permit” means a permit granted under regulation 10 of the Greenhouse Gas Emissions Trading Scheme Regulations 2012(a);

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

“information notice” means a notice issued under regulation 8;

“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);

“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(b);

“MW” means megawatts;

“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 of the EPS Regulations;

“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(c) ; and

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

## PART 2

### Monitoring and enforcement

#### **Enforcing authority**

**3.**—(1) In relation to a relevant fossil fuel plant, the chief inspector is the enforcing authority by whom functions under these Regulations for or in connection with monitoring or enforcing the compliance of operators with the emissions limit duty are to be exercisable for the purposes of paragraph 1(1) of Schedule 5 to the Act.

#### **Emissions limit notification duty**

**4.**—(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 chief inspector 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 state—

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

(b) OJ No L 181, 12.7.2012, p 30

(c) OJ No L 181, 12.7.2012, p 1

- (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 regulation 4 of the EPS Regulations;
  - (b) the installed generating capacity 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 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 operation;
    - (ii) is granted to the operator after the date these Regulations come into operation; or
    - (iii) is varied in relation to the amount of installed generating capacity covered by that permit after the date these Regulations come into operation; or
  - (b) the emissions limit for the relevant fossil fuel plant is modified by regulation 4 of the EPS Regulations.
- (4) An emissions limit notification must be submitted in such form and manner as the chief inspector may reasonably require.

### **Carbon capture and storage (CCS) notification**

**5.**—(1) For the purposes of section 58 of the Act, the chief inspector must not consider a complete CCS system to be ready for use unless he 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 specified under sub-paragraph (a); and
  - (c) the date on which the operator wishes the complete CCS system is to be considered ready for use.
- (3) A CCS notification must be submitted in such form and manner as the chief inspector may reasonably require.

### **EPS annual emissions notification**

**6.**—(1) If the condition in paragraph (2) is satisfied in relation to a relevant fossil fuel plant, the operator of the plant must submit, annually, a notification (“an EPS annual emissions notification”) to the chief inspector in accordance with paragraph (4).

- (2) The condition is that the total of—
- (a) the total annual emissions of carbon dioxide for the relevant fossil fuel plant reported in a verified Greenhouse Gas Emissions Report (“ the Report”); and
  - (b) if applicable and where not otherwise included in the total under sub-paragraph (a), the total annual 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 the 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 the 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 regulation 4 of the EPS Regulations.
- (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 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 chief inspector 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 chief inspector may reasonably require.

**Charges**

7.—(1) The Department may make, and from time to time revise, a scheme for the charging by the chief inspector of fees or other charges for the carrying out of functions conferred on him 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 Department to be appropriate.
- (3) The chief inspector may charge for the carrying out of functions conferred on him 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 chief inspector as a civil debt.
- (5) An EPS charging scheme must be made publically available by the Department 28 days before it has effect.

**Information notices**

8.—(1) For any of the purposes mentioned in paragraph (2), the chief inspector may, by notice (“an information notice”) served on an operator or the operator of an associated gasification plant, require that person to furnish to the chief inspector 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 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 4 and 6;
  - (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 a relevant fossil fuel plant.

### **Enforcement notices**

**9.**—(1) Where the chief inspector is of the view that an operator has breached the emissions limit duty, the chief inspector 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 chief inspector’s view concerning the breach;
- (b) the remedial action which the operator must take in respect of the breach; and
- (c) the time by which the remedial action 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 12, where an enforcement notice has been served on an operator, the operator must comply with the requirements of the enforcement notice.

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

### **Civil penalty notices**

**10.**—(1) Subject to paragraph (7), where the chief inspector is of the view that an operator has breached the emissions limit duty, the chief inspector may serve a notice (“a civil penalty notice”) on that operator which states the financial penalty which is payable to the chief inspector in respect of that breach.

(2) A civil penalty notice must state—

- (a) how the amount of the financial penalty imposed was calculated; and
- (b) the date by which the amount payable under the civil penalty notice is to be paid in full.

(3) The financial penalty is to be set at a level that the chief inspector 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) The financial penalty may include an amount in respect of the costs reasonably incurred by the chief inspector in investigating and assessing the breach of the emissions limit duty.

(5) 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 chief inspector as a civil debt.

(6) The chief inspector may vary or withdraw a civil penalty notice before it has been paid by further notice served on the operator.

(7) The chief inspector 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.

(8) The Department may issue guidance (“EPS penalty guidance”) on the calculation of financial penalties.

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

- (10) Before issuing guidance, the Department must consult—
- (a) the national authorities in England, Scotland and Wales; and
  - (b) such other persons or bodies as the Department considers appropriate.
- (11) Where EPS penalty guidance is issued, it must be made publically available by the Department 28 days before it has effect.
- (12) The chief inspector may state the manner and form in which any amount required to be paid by a civil penalty notice must be paid.
- (13) Any sum received by the chief inspector must be paid into the consolidated fund.

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

- 11.** Where the Department of Enterprise, Trade and Investment makes a direction under section 59(2) of the Act, the chief inspector 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 in relation to his functions under these Regulations.

#### **Appeals**

- 12.—**(1) An operator may appeal to the Planning Appeals Commission (“the appeals commission”) against—
- (a) an enforcement notice;
  - (b) a civil penalty notice.
- (2) The grounds on which an enforcement or civil penalty notice may be appealed are that it was—
- (a) based on an error of fact;
  - (b) wrong in law;
  - (c) unreasonable.
- (3) Where an operator appeals, any enforcement notice or civil penalty notice subject to that appeal is suspended until the appeal is determined by the appeals commission.
- (4) The appeals commission may affirm, quash or vary the terms of the enforcement notice or civil penalty notice.
- (5) The Schedule has effect in relation to the making and determination of an appeal to the appeals commission.

#### **Publication of information**

- 13.—**(1) Subject to paragraph (3), the chief inspector may publish any information specified 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) Subject to paragraph (3), the information that may be published 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 12, the result of that appeal.

(3) The chief inspector must not publish the information stated 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**

**14.**—(1) If an operator fails to comply with a relevant obligation, the High Court may, on an application by the chief inspector, make an order requiring the operator to comply with the relevant obligation.

(2) The chief inspector may not apply to the High Court under paragraph (1) if—

- (a) the time for an appeal relating to the relevant obligation has not elapsed; or
- (b) any appeal relating to a relevant obligation has not been determined.

(3) A “relevant obligation” means any obligation included in—

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

### **Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2012**

**15.** After regulation 46(1)(a)(iv) of the Greenhouse Gas Emissions Trading Scheme Regulations 2012 insert—

“(v) necessary for the performance of the chief inspector’s functions in Northern Ireland under the Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016; or”.

Sealed with the Official Seal of the Department of the Environment on 29th January 2016



*Tim Irwin*

A senior officer of the Department of the Environment

## **SCHEDULE 1**

Regulation 12

### **Appeals**

**1.**—(1) An operator who wishes to appeal to the appeals commission under regulation 12(1) against a decision of the chief inspector must give to the appeals commission written notice of the appeal together with a statement of the grounds of appeal.

(2) The appeals commission must as soon as is reasonably practicable send to the chief inspector a copy of that notice and that statement.

(3) An appellant may withdraw an appeal by notifying the appeals commission and the appeals commission must as soon as is reasonably practicable notify the chief inspector of that withdrawal.

**2.** Notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 47 calendar days beginning with the date of service of the enforcement notice or, as the case may be, service of the civil service penalty notice.

**3.—**(1) The appeals commission must determine the appeal and section 204(1) and (3) to (5) of the Planning Act (Northern Ireland) 2011<sup>(a)</sup> applies in relation to the determination of the appeal as it applies in relation to the determination of an appeal under that Act.

(2) The appeals commission must determine the process for determining appeals taking into account any requests of either party to the appeal.

**4.** An appeal under this Schedule must be accompanied by a fee and section 223(7)(b) of the Planning Act (Northern Ireland) 2011 has effect as if the reference to an appeal under that Act included a reference to an appeal under these Regulations.

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(a) 2011c. 25 (NI)

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Chapter 8 of Part 2 of the Energy Act 2013 (c 32) (“the Act”) legislated for the Emissions Performance Standard imposing “the emissions limit duty” on operators of fossil fuel plant granted planning consent on or after 18<sup>th</sup> February 2014, to ensure that its annual emissions of carbon dioxide attributable to fossil fuels do not exceed an amount (“the emissions limit”) determined according to a formula set out in section 57(2) of the Act.

The Act provided for the Secretary of State to make Regulations relating to the interpretation of the emissions limit duty imposed on operators of fossil fuel generation plants under the Emissions Performance Standard. On 25 March 2015 the Emissions Performance Standard Regulations 2015 came into force, applying throughout the UK.

The Act requires that arrangements for monitoring and enforcement of the emissions limit duty are put in place by way of Regulation by the appropriate national authorities. The Department through these Regulations puts in place the monitoring and enforcement arrangements for Northern Ireland.

### Part 1

Contains the definitions used in these Regulations.

### Part 2

Creates a monitoring and enforcement regime for Northern Ireland.

Regulation 3 makes provision for the chief inspector to be the enforcing authority for the emissions limit duty.

Regulation 4 sets out the circumstances in which a fossil fuel plant operator must supply a notification to the chief inspector. The notification must state the emissions limit for the fossil fuel plant, its installed generating capacity and the date on which it commenced or is expected to commence operation.

Regulation 5 makes provision for notifications to be given to the chief inspector stating when an exemption for a complete Carbon Capture and Storage system, including to which generating units any exemption should apply.

Regulation 6 makes provision for the supply of a detailed emissions notification, an “EPS annual emissions notification”, containing the EPS annual emissions of a fossil fuel plant calculated in accordance with Part 2 of the Emissions Performance Standard Regulations 2015 and the methods of assessment and calculation used for the EU Emissions Trading Scheme. An EPS annual emissions notification will only have to be submitted if the Green House Gas Emissions Report for the fossil fuel plant discloses greater carbon dioxide emissions than the emissions limit for that plant.

Regulation 7 provides for the Department to establish a charging scheme for operation by the chief inspector when carrying out functions under these Regulations.

Regulation 8 allows the chief inspector to request further information from the operator of a fossil fuel plant, or the operator of an associated fossil fuel plant.

Regulation 9 allows for enforcement notices to be issued by the chief inspector where an operator of a fossil fuel plant has breached the emissions limit duty.

Regulation 10 makes provision for the chief inspector to issue civil penalties, where an operator of a fossil fuel plant has breached the emissions limit duty. The Department may publish guidance on financial penalties, which the chief inspector must have regard to.

Regulation 11 provides for the effect of directions made by the Department of Enterprise, Trade and Investment under section 59(2) of the Energy Act 2013 suspending the operation of the emissions limit duty.

Regulation 12 makes provision for appeals against enforcement notices and civil penalty notices to the Planning Appeals Commission.

Regulation 13 allows the chief inspector to publish information in relation to issuing enforcement notices and civil penalty notices, providing that any appeal has been determined or withdrawn, or that the time limit for bringing an appeal has elapsed.

Regulation 14 makes provision for the chief inspector to enforce information notices, enforcement notices and civil penalty notices by obtaining an order of the High Court.

Regulation 15 makes amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012, to allow for information disclosure and publication as necessary for the performance of the chief inspector's functions under these Regulations.

The Schedule to regulation 12 provides for appeals to the Planning Appeals Commission. OFMDFM have by Regulations made provision for the payment of a prescribed amount for an appeal to the Planning Appeals Commission.

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