SCOTTISH STATUTORY INSTRUMENTS

2000 No. 323

ENVIRONMENTAL PROTECTION

The Pollution Prevention and Control (Scotland) Regulations 2000

Made - - - - 14th September 2000

Coming into force in accordance with regulation 1(1)

The Scottish Ministers, in exercise of the powers conferred upon them by section 2 of and Schedule 1 to the Pollution Prevention and Control Act 1999(**1**) and of all other powers enabling them in that behalf, having carried out consultation, as required by section 2(4) of that Act, hereby make the following Regulations, being the first to be made thereunder which apply in relation to Scotland, a draft of which has, in accordance with section 2(8) and (9)(c) of that Act, been laid before, and approved by resolution of the Scottish Parliament:

PART I

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Pollution Prevention and Control (Scotland) Regulations 2000 and shall come into force on the fourteenth day after the date on which they are made.

(2) These Regulations extend to Scotland only.

Interpretation : general

2.—(1) In these Regulations–

"change in operation" means, in relation to an installation or mobile plant, a change in the nature or functioning or an extension of the installation or mobile plant which may have consequences for the environment; and "substantial change in operation" means, in relation to an installation or mobile plant, a change in operation of the installation which, in the opinion of the SEPA, may have significant negative effects on human beings or the environment;

(**1**) 1999 c. 24. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46), as read with section 5(3) of the said Act of 1999.

"the Directive" means Council Directive 96/61/EC concerning integrated pollution prevention and control(**2**);

"emission" means–

(a) in relation to Part A installations, the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in an installation into the air, water or land;

(b) in relation to Part B installations, the direct release of substances or heat from individual or diffuse sources in an installation into the air;

(c) in relation to Part A mobile plant, the direct or indirect release of substances, vibrations, heat or noise from the mobile plant into the air, water or land;

(d) in relation to Part B mobile plant, the direct release of substances or heat from the mobile plant into the air,

and references to emissions in the definitions of "emission limit value", "pollution" and "pollutant" shall be construed accordingly for the purpose of the application of those definitions in relation to Part A and Part B installations and Part A and B mobile plant;

"emission limit value" means the mass, expressed in terms of specific parameters, concentration or level of an emission, which may not be exceeded during one or more periods of time;

"enforcement notice" has the meaning given by regulation 19(1);

"general binding rules" has the meaning given by regulation 10(1);

"installation" means–

(a) a stationary technical unit where one or more activities listed in Part 1 of Schedule 1 are carried out; and

(b) any other location on the same site where any other directly associated activities are carried out which have a technical connection with the activities carried out in the stationary technical unit and which could have an effect on pollution,

and, other than in Schedule 3, references to an installation include references to part of an installation;

"mobile plant" means plant which is designed to move or to be moved whether on roads or otherwise and which is used to carry out one or more activities listed in Part 1 of Schedule 1;

"off-site condition" has the meaning given by regulation 9(13);

"operator", subject to paragraph (2), means, in relation to an installation or mobile plant, the person who has control over its operation;

"Part A installation", "Part B installation", "Part A mobile plant" and "Part B mobile plant" shall be interpreted in accordance with Part 3 of Schedule 1;

"permit" means a permit granted under regulation 7;

"pollution" means emissions as a result of human activity which may be harmful to human health or the quality of the environment, cause offence to any human senses, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment; and "pollutant" means any substance, vibration, heat or noise released as a result of such an emission which may have such an effect;

"revocation notice" has the meaning given by regulation 17;

"SEPA" means the Scottish Environment Protection Agency;

"specified waste management activity" means any one of the following activities:–

(**2**) O.J. No. L 257, 10.10.96, p.26.

(a) the disposal of waste in a landfill, whether or not the disposal falls within Section 5.2 of Part 1 of Schedule 1;

(b) the disposal of waste falling within Section 5.3 of that Part of that Schedule;

(c) the recovery of waste falling within paragraphs (c)(i), (v), (vi) or (vii) of Part A of Section 5.4 of that Part of that Schedule;

"substance" includes any chemical element and its compounds and any biological entity or micro-organism, with the exception of radioactive substances within the meaning of Council Directive 80/836/Euratom(**3**), genetically modified micro-organisms within the meaning of Council Directive 90/219/EEC(**4**) and genetically modified organisms within the meaning of Council Directive 90/220/EEC(**5**);

"suspension notice" has the meaning given by regulation 20;

"variation notice" has the meaning given by regulation 13.

(2) For the purposes of these Regulations–

(a) where an installation or mobile plant has not been put into operation, the person who will have control over the operation of the installation or mobile plant when it is put into operation shall be treated as the operator of the installation or mobile plant;

(b) where an installation or mobile plant has ceased to be in operation, the person who holds the permit which applies to the installation or mobile plant shall be treated as the operator of the installation or mobile plant.

(3) In these Regulations, a reference to a release into water includes a release into a sewer and a reference to a Council Directive is a reference to that Directive as amended on the date on which these Regulations are made.

(4) Schedule 1 shall have effect and Part 1 of that Schedule shall be interpreted in accordance with the provisions as to interpretation in Part 2 and 3 of that Schedule.

(5) Parts 1 and 2 of Schedule 3 shall have effect and shall be interpreted in accordance with the definition sections in Part 3 of that Schedule.

(6) Any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations and any reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation or the Schedule (or Section or part of the Schedule) of which that paragraph forms part.

Interpretation : best available techniques

3.—(1) For the purpose of these Regulations, "best available techniques" means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole; and for the purpose of this definition–

(a) "available techniques" means those techniques which have been developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the cost and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible to the operator;

(b) "best" means, in relation to techniques, the most effective in achieving a high general level of protection of the environment as a whole;

(**3**) O.J. No. L 246, 17.9.80, p.1, as amended by Council Directive 84/467/Euratom (O.J. L265, 5.10.84, p.4).
(**4**) O.J. No. L 117, 8.5.90, p.1.
(**5**) O.J. No. L 117, 8.5.90, p.15.

(c) "techniques" includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned.

(2) Schedule 2 shall have effect in relation to the determination of best available techniques.

Fit and proper person

4.—(1) This regulation applies for the purpose of the discharge of any function under these Regulations which requires SEPA to determine whether a person is or is not a fit and proper person to carry out a specified waste management activity.

(2) Whether a person is or is not a fit and proper person to carry out a specified waste management activity shall be determined by reference to the fulfilment of the conditions of the permit which apply or will apply to the carrying out of that activity.

(3) Subject to paragraph (4), a person shall be treated as not being a fit and proper person if it appears to SEPA that–

(a) that person or another relevant person has been convicted of a relevant offence;

(b) the management of the specified waste management activity which is or is to be carried on is not or will not be in the hands of a technically competent person; or

(c) the person who holds or is to hold the permit has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the permit in relation to the specified waste management activity.

(4) SEPA may, if it considers it proper to do so in any particular case, treat a person as a fit and proper person, notwithstanding that paragraph (3)(a) applies in his case.

(5) For the purposes of paragraphs (3) and (6)–

(a) "relevant offence" means an offence prescribed under section 74(6) of the Environmental Protection Act 1990(**6**) for the purposes of section 74(3)(a) of that Act; and

(b) the qualifications and experience required of a person for the purposes of section 74(3)(b) of that Act which are prescribed under section 74(6) of that Act shall be treated as the qualifications and experience required of a person for the purposes of paragraph (3)(b).

(6) In paragraph (3)(a), "another relevant person" means, in relation to the holder or proposed holder of a permit–

(a) any person who has been convicted of a relevant offence committed in the course of that person's employment by the holder or proposed holder of the permit or, in the course of the carrying on of any business by a partnership, one of the members of which was the holder or proposed holder of the permit;

(b) a body corporate which has been convicted of a relevant offence committed when the holder or proposed holder of the permit was a director, manager, secretary or other similar officer of that body corporate (including, where the affairs of the body corporate are managed by its members, one of those members); or

(c) where the holder or proposed holder of the permit is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate (including, where the affairs of the body corporate are managed by its members, one of those members) and who–

(i) has been convicted of a relevant offence; or

(ii) was a person holding such an office at a time when a relevant offence for which that body corporate has been convicted was committed.

(**6**) 1990 c. 43; see regulation 3 of S.I.1994/1056 (amended by S.I. 1994/1137).

Applications and duties of SEPA in relation to best available techniques

5.—(1) SEPA may require any application or type of application made to it under any provision of these Regulations to be made on an application form made available by it, in writing or in an electronic form acceptable to SEPA.

(2) An application form made available by SEPA under paragraph (1) shall specify the information required by it to determine the application, which shall include any information required to be contained in the application by the provision of these Regulations under which the application is made.

(3) Where SEPA makes available an application form under paragraph (1) in relation to the making of applications to it under a provision of these Regulations, any application made to it under that provision shall be made on that form.

(4) Where an application which is required to be accompanied by a fee, map or plan is sent electronically, the fee, map or plan may be sent to SEPA separately from the application but the application shall not be treated as having being received by SEPA until the fee, map or plan has also been received.

(5) An application made under these Regulations may be withdrawn at any time before it is determined.

(6) It shall be the duty of SEPA to follow developments in best available techniques.

PART II

PERMITS

Requirement for permit to operate installation and mobile plant

6.—(1) No person shall operate an installation or mobile plant after the prescribed date for that installation or mobile plant, except under and to the extent authorised by a permit granted by SEPA.

(2) In paragraph (1), the "prescribed date" means the appropriate date set out in or determined in accordance with Schedule 3.

Permits : general provisions

7.—(1) An application for a permit to operate an installation shall be made to SEPA in accordance with paragraphs 1 to 3 of Part I of Schedule 4 and shall be accompanied by any fee prescribed in respect of the application under section 41 of the Environment Act 1995(**7**) and paragraphs 4 to 8 of Part 1 of Schedule 4 shall apply with respect to such applications.

(2) Subject to paragraphs (3) and (4), where an application is duly made to SEPA, it shall either grant the permit subject to the conditions required or authorised to be imposed by regulation 9 or refuse the permit.

(3) A permit shall not be granted if SEPA considers that the applicant will not be the person who will have control over the operation of the installation or mobile plant concerned after the grant of the permit or will not ensure that the installation or mobile plant is operated so as to comply with the conditions which would be included in the permit.

(4) In the case of an application for a permit that will authorise the carrying out of a specified waste management activity at an installation, or by means of mobile plant, the permit shall not be granted unless–

(**7**) 1995 c. 25; the definition of "environmental licences" in section 56(1) of the 1995 Act, which defines that expression for the purposes of section 41 of that Act, is amended by paragraph 5(2) of Schedule 10 to these Regulations.