STATUTORY RULES OF NORTHERN IRELAND

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*

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 [F1].

F1 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

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 [F2] 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 [F3];

"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 [F4];

"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;

"Greenhouse Gas Emissions Permit" means a permit granted under regulation 10 of the Greenhouse Gas Emissions Trading Scheme Regulations 2012 [F5];

"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);

[[F6]"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 as last amended by Commission Regulation (EU) 743/2014;**]**

"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 [F7] ; and

"verified" means verified in accordance with the Verification Regulation.

F2 1954 c. 33 (vN.I.)
F3)S.R. 2013/160
F4 S.I. 2015/933
F5 S.I. 2012/3038.which.has.been.amended.by S.I. 2013/1037, **S.I**. 2013/3135 and S.I. 2014/3125
F6 Words in reg. 2(2) substituted (24.12.2018) by The Environment (Miscellaneous Amendments) Regulations (Northern Ireland) 2018 (S.R. 2018/200), reg. 1(1), **Sch. 3 para. 15**
F7 OJ No L 181, 12.7.2012, p 1

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—

(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.