STATUTORY RULES OF NORTHERN IRELAND

2015 No. 388

ENVIRONMENTAL PROTECTION

The Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015

Made - - - -	*1st December 2015*
Coming into operation	*4th January 2016*

The Department of Enterprise, Trade and Investment is a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the environment.

The Department of Enterprise, Trade and Investment makes these Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation and commencement

1. These Regulations may be cited as the Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015, and come into operation on 4th January 2016.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

"access application" has the meaning given to it in regulation 11(1);

"access notice" has the meaning given to it in 11(10);

"associate" has the meaning given to it in regulation 4;

"authorised capacity", in relation to a storage site, means the total quantity of carbon dioxide authorised to be stored in the storage site in accordance with the storage permit;

"carbon dioxide pipe-line" means—

(a) a pipe-line used to convey carbon dioxide to a storage site; or

(b) a pipe-line which is not being used for any purpose, but which is intended to be used to convey carbon dioxide to a storage site;

(**1**) S.I. 2008/301.
(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).
(**3**) 1954 c. 33 (N.I.).

"Crown lease" means a lease of any part of the bed of the sea forming part of the Crown Estate, or an authorisation to exercise rights in respect of any such part of that Estate;

"the Department" means the Department of Enterprise, Trade and Investment;

"the Directive" means Directive 2009/31/EC(**4**) of the European Parliament and of the Council on the geological storage of carbon dioxide, as amended by Directive 2011/92/EU(**5**) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment;

"diversion" means a lateral diversion of any length of a relevant pipe-line (whether or not that pipe-line has been constructed) that is not an offshore pipe-line or of such part of a relevant pipe-line as is not an offshore relevant pipe-line where the diversion is beyond the lateral limits of deviation permitted by planning permission granted in relation to that pipe-line under Part 3 of the Planning Act (Northern Ireland) 2011(**6**), and "diverted" is to be construed accordingly;

"holder", in regulations 8 and 9, has the meaning given to it in regulation 8(1)(a);

"injection" means injection of carbon dioxide into a storage site;

"licence" means a licence granted under section 18(1) of the Energy Act 2008(**7**), and "licence holder" is to be construed accordingly;

"modification notice" has the meaning given to it in regulation 12(2);

"notice" means notice in writing;

"offshore relevant pipe-line" means so much of any relevant pipe-line as is situated in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

"offshore relevant storage site" means so much of any relevant storage site (including any associated installations, apparatus and works) as is situated in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

"operator", in relation to a storage permit, means the person who carries on or (where different) controls activities at the storage site;

"owner" has the meaning given to it in regulation 3;

"pipe-line" has the meaning given to it in regulation 5;

"pipe-line variation notice" has the meaning given to it in regulation 7(3);

"planning authority" means the Department of the Environment or, as the case may be, the district council that has the function of determining the application for planning permission in respect of the relevant infrastructure;

"planning permission" means permission under Part 3 of the Planning Act (Northern Ireland) 2011;

"relevant infrastructure" means a relevant pipe-line or a relevant storage site;

"relevant pipe-line" means a carbon dioxide pipe-line situated in, under or over Northern Ireland, including so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

"relevant storage site" means a storage site situated—

(a) in Northern Ireland; or

(b) in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland,

(**4**) OJ No L 140, 5.6.2009, p.114.
(**5**) OJ No L 26, 28.1.2012, p 1.
(**6**) 2011 c. 25 (N.I.).
(**7**) 2008 c. 32.

and any associated installations, apparatus and works;

"storage permit" means a storage permit within the meaning of the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015(**8**);

"third party", in regulations 8 and 9, has the meaning given to it in regulation 8(1)(b);

"variation condition" has the meaning given to it in regulation 6(2).

(3) The following expressions have the meanings given by Article 3 of the Directive—

"CO_2 stream";

"storage site".

Meaning of "owner"

3.—(1) Except as provided in paragraph (2), in these Regulations "owner", in relation to relevant infrastructure, means any of the following—

(a) in respect of a relevant storage site—

(i) the operator of the storage site;

(ii) the holder of the storage licence;

(b) in respect of a relevant pipe-line—

(i) a person in whom the pipe-line is vested;

(ii) a lessee and any person occupying or controlling the pipe-line;

(c) a person who has the right to have things conveyed by or stored in a relevant pipe-line or relevant storage site, where such right has been acquired by that person on terms that—

(i) the person is entitled to exercise the right for a period of one year or more; and

(ii) the right is capable of being assigned or otherwise disposed of to another person.

(2) In regulations 12 and 16 and in regulation 9(3) in so far as it relates to regulation 12, "owner", in relation to relevant infrastructure, means any of the following—

(a) in respect of a relevant storage site—

(i) the operator of the storage site;

(ii) the holder of the storage licence;

(b) in respect of a relevant pipe-line—

(i) a person in whom the pipe-line is vested;

(ii) a lessee and any person occupying or controlling the pipe-line.

(3) In this regulation "storage licence" means the licence under which the use of a place as the storage site is authorised.

Meaning of "associate"

4.—(1) For the purposes of regulations 11(7), 11(9) and 16(3) a person is an associate of another if—

(a) either or both of them is a body corporate, and

(b) one of them controls the other, or both are controlled by the same person or persons,

and paragraphs (2) to (6) set out the circumstances in which one person ("A") controls another ("B").

(2) Where B is a company, A controls B if A possesses or is entitled to acquire—

(**8**) S.R. 2015 No. 387.

(a) one half or more of the issued share capital of B;

(b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B;

(c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among shareholders; or

(d) such rights as would, in the event of a winding up of B or in any other circumstances, entitle A to receive one half or more of the assets of B which would then be available for distribution among the shareholders.

(3) Where B is a limited liability partnership, A controls B if A—

(a) holds the majority of the voting rights in B;

(b) is a member of B and has the right to appoint or remove a majority of other members; or

(c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.

(4) In paragraph (3)(a) and (c) the references to "voting rights" are to rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.

(5) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.

(6) In determining whether, by virtue of paragraphs (2) to (5), A controls B, A is taken to possess —

(a) any rights and powers possessed by a person as nominee for it; and

(b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).

Meaning of "pipe-line"

5.—(1) Subject to paragraph (2), in these Regulations "pipe-line" means a pipe or system of pipes for the conveyance of any thing, together with any apparatus and works associated with such a pipe or system.

(2) A "pipe-line" does not include—

(a) a drain or sewer;

(b) a pipe or system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes;

(c) a pipe or system of pipes on the site of any operations or works to which certain provisions of the Factories Act (Northern Ireland) 1965(**9**) apply by virtue of section 125(1) of that Act (building operations and works of engineering construction);

(d) a pipe or system of pipes wholly situated within the boundaries of any land occupied as a unit for purposes of agriculture (within the meaning of the Agriculture Act (Northern Ireland) 1949(**10**)), where the pipe or system of pipes is designed for use for purposes of agriculture;

(e) a pipe or system of pipes wholly situated in premises used for the purposes of education or research.

(**9**) 1965 c. 20 (N.I.).
(**10**) 1949 c. 2 (N.I.).

(3) For the purposes of these Regulations the following apparatus and works, and no other, shall be treated as being associated with a pipe, or system of pipes, namely—

(a) apparatus for inducing or facilitating the flow of anything through, or through a part of, the pipe or system;

(b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the course of, the pipe or system;

(c) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in sub-paragraph (a) or (b);

(d) apparatus for the transmission of information for the operation of the pipe or system;

(e) apparatus for affording cathodic protection to the pipe or system;

(f) a structure for the exclusive support of a part of the pipe or system;

(g) in relation only to a pipe, or system of pipes, which is used to convey carbon dioxide to a storage site, apparatus for treating and cooling carbon dioxide which is to flow through, or through part of, the pipe or system.

(4) In paragraph (3)(g), the reference to a pipe, or system of pipes, which is used to convey carbon dioxide includes a pipe or system which is not being used for any purpose but which is intended to be used to convey carbon dioxide.

Relevant storage site: variation conditions

6.—(1) Subject to paragraph (5), this regulation applies where an application for a storage permit in respect of a relevant storage site is considered by the Department.

(2) Subject to paragraph (4), where the Department grants the storage permit, it may grant it subject to a condition (a "variation condition") in accordance with paragraph (3) if the Department is satisfied that—

(a) there is evidence of demand existing or likely to arise for the grant of storage permits for the construction of further relevant storage sites to be designed for the storage of carbon dioxide;

(b) compliance with the variation condition will not prejudice the safety or environmental integrity of the relevant storage site concerned; and

(c) compliance with the variation condition will not prejudice the efficient operation of the relevant storage site concerned.

(3) A variation condition may require—

(a) the capacity of the relevant storage site to which it relates or of any part of that relevant storage site to be greater than that proposed in the application for the storage permit; or

(b) the design of the relevant storage site to which it relates to be modified, including by the addition of a junction through which a carbon dioxide pipe-line may be connected to the relevant storage site.

(4) Before exercising the powers conferred by paragraph (2) and regulation 8(1), the Department shall give an opportunity to be heard to—

(a) the applicant for the storage permit;

(b) any other person who made representations to the Department as to the matters set out in paragraph (2) or (3);

(c) any person with a right to have carbon dioxide stored in the proposed relevant storage site;

(d) the Health and Safety Executive for Northern Ireland;