

S.I. No. 138/2013 — European Union (Industrial Emissions) Regulations 2013.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 26th April, 2013.*

I, PHIL HOGAN, Minister for the Environment, Community and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and to give effect to Directive 2010/75/EU¹ of the European Parliament and of the Council of 24 November 2010 hereby make the following regulations:

Part 1

Preliminary and General

Citation.

1. These Regulations may be cited as the European Union (Industrial Emissions) Regulations 2013.

Commencement.

2. Regulations 5, 24 and 25(b) come into operation on 7 January 2014.

Interpretation.

3. In these Regulations—

“Act of 1992” means the Environmental Protection Agency Act 1992 (No. 7 of 1992);

“Act of 1996” means the Waste Management Act 1996 (No. 10 of 1996);

“Act of 2003” means the Protection of the Environment Act 2003 (No. 27 of 2003).

Part 2

Amendment of Environmental Protection Agency Act 1992

Amendment of section 3 of Act of 1992.

4. Section 3 (amended by section 5 of the Act of 2003) of the Act of 1992 is amended—

(a) by inserting the following definitions:

“‘BAT conclusions’ means a document containing the parts of a BAT reference document laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures;

‘BAT reference document’ in relation to an industrial emissions directive activity, means a document drawn up by the Commission of the European Union in accordance with Article 13 of the Industrial Emissions Directive, resulting from the exchange of information in accordance with that Article of that Directive and describing, in particular, applied techniques, present emissions and consumption levels, techniques considered for the determination of best available techniques as well as BAT conclusions and any emerging techniques, particular consideration having been given to the same matters as are specified in subparagraphs (i) to (xii) of section 5(3)(b);

‘emerging technique’ means a novel technique for an industrial emissions directive activity that, if commercially developed, could provide either a higher general level of protection of the environment or at least the same level of protection of the environment and higher cost savings than existing best available techniques;

‘emission levels associated with the best available techniques’ means the range of emission levels obtained under normal operating conditions using a best available technique or a combination of best available techniques, as described in BAT conclusions, expressed as an average over a given period of time, under specified reference conditions;

‘groundwater’ has the meaning assigned to it by Regulation 3 of the European Communities Environmental Objectives (Groundwater) Regulations 2010 (S.I. No. 9 of 2010);

‘hazardous substances’ means substances or mixtures as defined in Article 3 of Regulation (EC) No. 1272/20081 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures;

‘hazardous waste’ means waste that displays one or more of the properties which render it hazardous specified in the Second Schedule (amended by Regulation 24 of the European Communities (Waste Directive) Regulations 2011 (S.I. No. 126 of 2011)) to the Act of 1996;

‘industrial emissions directive activity’ means a process, development or operation specified in paragraph 1.1.1, 2.1, 3.1.1, 3.2.1, 3.3.1, 3.4.1, 3.6.1, 4.2.1, 4.3, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 6.1, 6.2, 7.2.1, 7.4.1, 7.7.1, 7.8, 8.1, 8.2, 8.3, 8.5.1, 8.6.1, 8.7, 9.3.1, 9.4.1, 9.4.2, 9.4.3, 10.2, 10.3, 10.4, 11.1 (in so far as the process, development or operation specified in paragraph 11.1 is carried on in an installation connected or associated with another activity that is an industrial emissions directive activity), 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 12.2.1, 12.3, 13.4.1, 13.5 or 13.6 of the First Schedule (amended by Regulation 23 of the European Union (Industrial Emissions) Regulations) and carried out in an installation and an activity shall not be taken to be an industrial emissions directive activity if it is carried out at an installation solely used for research, development or testing of new products and processes;

‘Industrial Emissions Directive’ means Directive 2010/75/EU2 of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast);

‘integrated pollution control activity’ means a process, development or operation specified in paragraph 1.1.2, 1.2, 1.3, 1.4, 3.1.2, 3.2.2, 3.3.2, 3.4.2, 3.5, 3.6.2, 3.7, 3.8, 3.9, 4.1, 4.2.2, 4.4, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 7.1, 7.2.2, 7.3.1, 7.3.2, 7.3.3, 7.4.2, 7.5, 7.6, 7.7.2, 8.4, 8.5.2, 8.6.2, 9.1, 9.2, 9.3.2, 9.4.4, 10.1, 11.1 (in so far as the process, development or operation specified in paragraph 11.1 is carried on in an installation connected or associated with another activity that is an integrated pollution control activity), 12.1, 12.2.2, 13.1, 13.2, 13.3 or 13.4.2 of the First Schedule (amended by Regulation 23 of the European Union (Industrial Emissions) Regulations) and carried out in an installation;

‘waste’ means any substance or object which the holder discards or intends or is required to discard;

1 O.J. No. L353, 31.12.2008, p. 1

2 O.J. No. L334, 17.12.2010, p. 17”,

(b) in the definition of “emission” by substituting “Part IV, IVA, IVB or IVC” for

“Part IV or IVA”, and

(c) by inserting the following subsection after subsection (2A) (inserted by Regulation 3 of the European Union (Environmental Impact Assessment) (Integrated Pollution Prevention and Control) Regulations 2012 (S.I. No. 282 of 2012)):

“(2B) Subject to this Act, a word or expression that is used in this Act in so far as it relates to an industrial emissions directive activity and that is also used in the Industrial Emissions Directive has, unless the context otherwise requires, the same meaning in this Act as it has in that Directive.”.

Amendment of section 3A of Act of 1992.

5. Section 3A (inserted by section 5 of the Act of 2003) of the Act of 1992 is amended by deleting subsections (2) and (3).

Insertion of section 3C of Act of 1992.

6. The Act of 1992 is amended by inserting the following after section 3B (inserted by section 5 of the Act of 2003):

“Industrial Emissions Directive.

3C.(1) The amendments of this Act effected by the European Union (Industrial Emissions) Regulations 2013 are made for the purpose of giving effect to the Industrial Emissions Directive.

(2) The Agency shall be the competent authority for the purposes of the Industrial Emissions Directive.

(3) As competent authority for the purposes of the Industrial Emissions Directive, the Agency shall, amongst other things—

(a) keep itself informed of developments in best available techniques and of the publication of any new or updated BAT conclusions and shall make that information publicly available,

(b) maintain such data and information, provide for the supply of data to the Commission of the European Union and undertake such reporting as may be necessary for the proper implementation of relevant Union acts (including compliance with the requirements of Article 72(1) of the Industrial Emissions Directive), and

(c) when requested to do so by the Minister, participate in the Committee to assist the Commission of the European Union on the basis provided for in Article 75 of the Industrial Emissions Directive.”.

Amendment of section 5 of Act of 1992.

7. Section 5 (inserted by section 7 of the Act of 2003) of the Act of 1992 is amended—

(a) in subsection (1) by substituting “the basis for emission limit values, and in the case of an industrial emissions directive activity other additional licence conditions, designed to prevent” for “the basis for emission limit values designed to prevent”, and

(b) in subsection (3)(a) by substituting “the basis for emission limit values, and in the case of an industrial emissions directive activity other additional licence conditions, for an activity”, for “the basis for emission limit values for an activity”.

Insertion of section 82A of Act of 1992.

8. The Act of 1992 is amended by inserting the following after section 82 (inserted by section 15 of the Act of 2003):

“Transitional matters for activities licensed under this Act consequent upon Industrial Emissions Directive.

82A. (1) In this section “earlier Part IV” means this Part as it had effect before the amendment of it by the European Union (Industrial Emissions) Regulations 2013.

(2) On or after 7 January 2014 a person shall not carry on an activity to which subsection (3) applies unless—

(a) on the coming into operation of this section a licence or revised licence under the earlier Part IV is in force in relation to the activity, or

(b) in respect of the activity—

(i) on the coming into operation of this section an application has been made to the Agency under the earlier Part IV for a licence or revised licence and the requirements of regulations under section 89 in relation to the application for the licence or revised licence have been complied with by the applicant, and

(ii) on or before 7 January 2014—

(I) a licence or revised licence on foot of the application referred to in subparagraph (i), subject to subsection (6), is granted if required, under the earlier Part IV or this Part, as the case may be, and

(II) the licensee concerned commences carrying on the activity.

(3) Subsection (2) applies to any of the following activities:

(a) an activity specified in paragraph 2.1 of the First Schedule which has a total rated thermal input exceeding 50 MW;

(b) an activity specified in paragraph 9.3.1, 9.4.1, 9.4.2(a), 3.1.1, 3.2.1, 3.3.1, 3.4.1, 3.6.1, 12.3, 1.1.1, 10.2, 10.3, 10.4, 4.3, 4.2.1 or 13.4.1 of the First Schedule;

(c) an activity specified in paragraph 5.12, 5.13, 5.14, 5.15, 5.16 or 5.17 of the First Schedule provided that the activity concerns production by chemical processing;

(d) an activity specified in paragraph 8.1, 8.2, 8.5.1, 8.6.1, or 7.4.1 of the First Schedule;

(e) an activity specified in paragraph 7.8 of the First Schedule provided that Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (in this section referred to as “Directive 2008/1/EC”) applies to the activity;

(f) an activity specified in paragraph 7.2.1, 7.7.1, 6.1, 6.2, 12.2.1, 9.4.3 or 13.5 of the First Schedule.

(4) On or after 7 July 2015 a person shall not continue to carry on an activity to which subsection (5) applies unless—

(a) on the coming into operation of this section a licence or revised licence granted under the earlier Part IV is in force in relation to that activity, or

(b) in respect of the activity—

(i) on the coming into operation of this section an application has been made to

the Agency under the earlier Part IV for a licence or revised licence and the requirements of regulations under section 89 in relation to the application for the licence or revised licence have been complied with by the applicant, and

(ii) on or before 7 July 2015—

(I) a licence or revised licence on foot of the application referred to in subparagraph (i), subject to subsection (7), is granted if required, under the earlier Part IV or this Part, as the case may be, and

(II) the licensee concerned commences carrying on the activity.

(5) Subsection (4) applies to any of the following activities:

(a) an activity specified in paragraph 2.1 of the First Schedule which has a total rated thermal input of 50 MW;

(b) an activity specified in paragraph 9.4.2(b) of the First Schedule;

(c) an activity specified in paragraph 5.12, 5.13, 5.14, 5.15, 5.16 or 5.17 of the First Schedule provided that the activity concerns production by biological processing;

(d) an activity specified in paragraph 7.8 of the First Schedule provided that Directive 2008/1/EC does not apply to the activity;

(e) an activity specified in paragraph 8.3 or 8.7 of the First Schedule.

(6)(a) Where an application to which subsection (2)(b) refers is determined or completed by the Agency before 30 September 2013 it shall be dealt with by the Agency, and be determined or completed by it under the earlier Part IV.

(b) Where an application to which subsection (2)(b) refers is determined or completed by the Agency on or after 30 September 2013, it shall, subject to this section, be dealt with by the Agency, and be determined or completed by it, under this Part.

(7)(a) Where an application to which subsection (4)(b) refers is determined or completed by the Agency before 28 February 2014 it shall be dealt with by the Agency, and be determined or completed by it under the earlier Part IV.

(b) Where an application to which subsection (4)(b) refers is determined or completed by the Agency on or after 28 February 2014, it shall, subject to this section, be dealt with by the Agency, and be determined or completed by it, under this Part.

(8) A licence or revised licence referred to in subsection (2)(a) in force on the coming into operation of this section or (2)(b) and granted, in accordance with subsection (6)(a) under the earlier Part IV, shall continue in force as if this section had not come into operation until the Agency, not later than 7 January 2014, shall have—

(a) examined the terms of every licence and revised licence referred to in subsection (2)(a) or (2)(b) which was granted, in accordance with subsection (6)(a) under the earlier Part IV, and for the time being in force and determined whether, having regard to the provisions of the Industrial Emissions Directive, the licence or revised licence is to be amended to bring it into conformity with that Directive, and

(b) if—

(i) it has determined that the licence or revised licence requires to be so amended, completed the amendment in accordance with subsection (11), or

(ii) it has determined that the licence or revised licence does not require to be so amended and accordingly, that no further action is required, declared in writing that it

is of that opinion.

(9) A licence or revised licence referred to in subsection (4)(a) in force on the coming into operation of this section or (4)(b) and granted, in accordance with subsection (7)(a) under the earlier Part IV, shall continue in force as if this section had not come into operation until the Agency, not later than 7 July 2015, shall have—

(a) examined the terms of every licence and revised licence referred to in subsection (4)(a) or (4)(b) which was granted under the earlier Part IV and for the time being in force and determined whether, having regard to the provisions of the Industrial Emissions Directive, the licence or revised licence is to be amended to bring it into conformity with that Directive, and

(b) if—

(i) it has determined that the licence or revised licence requires to be so amended, completed the amendment in accordance with subsection (11), or

(ii) it has determined that the licence or revised licence does not require to be so amended and accordingly, that no further action is required, declared in writing that it is of that opinion.

(10)(a) None of the requirements of section 90 shall apply to the performance of functions conferred on the Agency under subsection (8) or (9) but the Agency shall, where appropriate, consult with the licensee before performing that function.

(b) Where the Agency considers that it is necessary for the purpose of the performance of the functions conferred on the Agency under subsection (8) or (9), it may give notice to the licensee to furnish to the Agency, within the period specified in the notice, information, documents or other particulars specified in the notice.

(c) The Agency shall, as soon as may be after the performance of functions conferred on it under subsection (8) or (9), notify particulars of the amendment effected by that performance to each person who made an objection to the Agency under section 87(5) in relation to any performance by the Agency of powers conferred on it under section 83 or 90 as respects the licence or revised licence concerned.

(11) If the bringing into conformity with the Industrial Emissions Directive of a licence or revised licence under subsection (8) or (9) can, in the opinion of the Agency, be achieved by amending one or more of the conditions of or schedules to the licence or revised licence (and the making of the amendment will not significantly alter the character of the licence or revised licence) then, the Agency shall make those amendments of the conditions of or schedules to the licence or revised licence (which, by virtue of this subsection, it has power to do).

1 O.J. No. L24, 29.1.2008, p, 8”.

Amendment of section 83 of Act of 1992.

9. Section 83 (inserted by section 15 of the Act of 2003) of the Act of 1992 is amended—

(a) in subsection (3)—

(i) in paragraph (e)(iii) by substituting “section 89,” for “section 89, and”,

(ii) in paragraph (e)(iv) by substituting “activity, and” for “activity,”, and

(iii) by inserting the following after paragraph (e)(iv):

“(v) where appropriate, in the case of an industrial emissions directive activity, in accordance with Article 26 of the Industrial Emissions Directive, any submissions or observations made to the Agency resulting from bilateral consultations with another Member State of the European Union,”,

(iv) in paragraph (e) by substituting “activity,” for “activity, and”,

(v) in paragraph (f) by substituting the following for “necessary.”:

“necessary,
and”,

and

(vi) by inserting the following after paragraph (f):

“(g) in a case where the application relates to an industrial emissions directive activity, any emerging techniques in so far as those techniques are relevant to the activity and in particular those emerging techniques identified in the BAT reference documents relevant to the activity concerned.”,

(b) in subsection (4)(a) by inserting “and in the case of an industrial emissions directive activity, subject to section 86A(3)(b) or (4)” after “subject to section 86(3)”,
and

(c) in subsection (5)(a)—

(i) by inserting the following after subparagraph (vii):

“(viiia) without prejudice to subparagraph (vii), waste generated in the carrying on of an industrial emissions directive activity, in order of priority in accordance with section 21A (inserted by Regulation 7 of the European Communities (Waste Directive) Regulations 2011) of the Act of 1996, will be prepared for re-use, recycled, recovered or, where that is not technically or economically possible, disposed of in a manner which will prevent or minimise any impact on the environment,”,

and

(ii) by inserting the following after subparagraph (x):

“(xa) in the case of an industrial emissions directive activity, necessary measures referred to in subparagraph (x) including measures of appropriate duration shall be taken in accordance with section 86B.”.

Amendment of section 85 of Act of 1992.

10. Section 85 (inserted by section 15 of the Act of 2003) of the Act of 1992 is amended—

(a) in subsection (4)(b) by substituting “Industrial Emissions Directive” for “Directive”,

(b) in subsection (5)—

(i) in paragraph (a)(iii) by substituting “Industrial Emissions Directive” for “Directive”,

(ii) in paragraph (b)(i) by substituting “Industrial Emissions Directive” for “Directive”.

Amendment of section 86 of Act of 1992.

11. Section 86 (inserted by section 15 of the Act of 2003) of the Act of 1992 is amended—

(a) in subsection (1)(a)—

(i) in subparagraph (i) by inserting “and in the case of an industrial emissions directive activity, subject to section 86A(3)(b) or (4)” after “subject to subsection (3)”,

(ii) in subparagraph (iii) by substituting “if necessary, and in all cases where the licence or revised licence relates to an industrial emissions directive activity, specify” for “if necessary, specify”,

(iii) by inserting the following after subparagraph (iii):

“(iii*a*) in the case of an industrial emissions directive activity, specify monitoring periods for soil (within the meaning of section 86A(11) (inserted by Regulation 12 of the European Union (Industrial Emissions) Regulations 2013)) and groundwater, other than where the Agency bases monitoring on a systematic appraisal of the risk of contamination, which shall be periods of not more than 5 years for groundwater and not more than 10 years for soil,”,

(iv) by inserting the following after subparagraph (iv):

“(iv*a*) specify, in the case of an industrial emissions directive activity, that the results of monitoring of emissions levels (requirements for the purpose of which, where applicable, shall be based on any conclusions on monitoring as described in the BAT conclusions), shall be provided to the Agency regularly and at least once a year, in a form that enables the Agency to verify compliance with the conditions attached to the licence,”,

(v) in subparagraph (vi) by substituting “environment,” for “environment, and”,

(vi) in subparagraph (vii) by substituting “the activity), and” for “the activity);”,

(vii) by inserting the following after subparagraph (vii):

“(viii) without prejudice to the European Communities (Water Policy) Regulations 2003 (S.I. No. 722 of 2003), the European Communities (Environmental Liability) Regulations 2008 (S.I. No. 547 of 2008) and the European Communities Environmental Objectives (Groundwater) Regulations 2010, specify for the purposes of section 86B, in the case of an industrial emissions directive activity to which that section applies, requirements for the purpose of removal, control, containment or reduction of hazardous substances upon the permanent cessation of the activity,

(ix) without prejudice to the European Communities (Environmental Liability) Regulations 2008 specify, in the case of an industrial emissions directive activity, that where an incident or accident significantly affecting the environment occurs, the licensee shall without delay—

(I) inform the Agency, and

(II) take measures to limit the environmental consequences of the incident or accident and to prevent a further incident or accident, and

(x) specify, in the case of an industrial emissions directive activity, that where a breach of one or more of the conditions attached to the licence occurs, the licensee shall without delay—

(I) inform the Agency, and

(II) take measures to restore compliance with conditions attached to the licence

in the shortest possible time.”,

(b) in subsection (1)(b)(xv) by substituting “the Industrial Emissions Directive” for “the Directive”, and

(c) in subsection (4)—

(i) in paragraph (a) by substituting “granted by it in respect of a specified class or classes of industrial emissions directive activity” for “granted by it in respect of a specified class or classes of activity”, and

(ii) in paragraph (b) by substituting “shall comply with Article 17 of the Industrial Emissions Directive” for “shall comply with Article 9(8) of the Directive”.

Insertion of section 86A of Act of 1992.

12. The Act of 1992 is amended by inserting the following after section 86 (inserted by section 15 of the Act of 2003):

“Best available techniques, emission limit values, equivalent parameters and conditions attached to a licence.

86A. (1) This section applies to a licence or revised licence under this Part in relation to an industrial emissions directive activity.

(2) Without prejudice to the generality of section 83(1), the Agency shall not grant a licence or revised licence, unless it is satisfied that the best available techniques will be utilised to prevent or eliminate or, where that is not practicable, to minimise emissions and the impact on the environment as a whole.

(3)(a) Without prejudice to the generality of section 86(1), the Agency shall, in accordance with this section, apply BAT conclusions as a reference for attaching one or more conditions to a licence or a revised licence granted under this Part.

(b) The Agency may supplement or replace emissions limit values referred to in section 83(4)(a) or 86(1)(a)(i), by attaching one or more conditions to a licence or revised licence which specify equivalent parameters or technical measures, where the Agency is satisfied that to do so would secure an equivalent level of environmental protection.

(c)(i) Where the Agency attaches one or more conditions to a licence or revised licence which specify requirements necessary to give effect to a best available technique not described in any of the relevant BAT conclusions, the Agency shall determine that technique under section 5(3)(b), 83(5)(a)(v) and 86(3) and subsection (4).

(ii) Where any of the relevant BAT conclusions referred to in subparagraph (i) describe a best available technique, but do not contain emission levels associated with the technique, the Agency, under subparagraph (i), shall determine a best available technique which provides a level of environmental protection equivalent to the best available techniques described in the BAT conclusions and shall attach one or more conditions to a licence or revised licence which specify requirements necessary to give effect to that best available technique.

(iii) Where any of the BAT conclusions do not apply to an industrial emissions directive activity or type of production process carried out within an installation or address all of the potential environmental effects of the industrial emissions directive activity or process, the Agency shall, after prior consultation with the applicant or

licensee concerned, determine under section 5(3)(b) a best available technique for the industrial emissions directive activity or process concerned, and shall attach one or more conditions to a licence or revised licence in relation to the activity or process which specify requirements necessary to give effect to that best available technique.

(4)(a) For the purposes of this section, the Agency shall attach one or more conditions under section 83(4)(a) or 86(1)(a)(i) to a licence or revised licence which specify emission limit values, so that under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the decisions on BAT conclusions referred to in Article 13(5) of the Industrial Emissions Directive.

(b) Emission limit values specified by the Agency under paragraph (a)—

(i) subject to subsection (5)(a), shall not exceed the emission levels associated with best available techniques, or

(ii) subject to subsection (5)(b), shall differ from those referred to in subparagraph (i) in terms of values, periods of time and reference conditions.

(5)(a) Where emission limit values are specified under subsection (4)(b)(i) such emission limit values shall be expressed for the same or shorter periods of time and under the same reference conditions as those emission levels associated with the best available techniques.

(b) Where emission limit values are specified under subsection (4)(b)(ii), the Agency shall—

(i) in addition to any condition under section 86(1)(a)(iva), attach a condition to the licence or revised licence specifying that—

(I) results of monitoring emissions are available for the same periods of time and reference conditions as for the emissions levels associated with the best available techniques, and

(II) a summary of results of monitoring emissions shall be furnished to the Agency at least annually, in a form which enables the Agency to compare emission levels with emission level values associated with best available techniques,

and

(ii) assess, not less than annually, the results of monitoring emissions to establish if emissions, under normal operating conditions, have not exceeded the emission levels associated with best available techniques.

(6)(a) The Agency, where it is satisfied on an examination by it of an application for a licence or the review of a licence or revised licence that attaching one or more conditions to the licence or revised licence under subsection (4) for the purposes of the achievement of emission levels associated with the best available techniques as described in BAT conclusions, would lead to disproportionately higher costs compared to the environmental benefits due to—

(i) the geographical location or the local environmental conditions of the installation concerned, or

(ii) the technical characteristics of the installation concerned,

may, in granting the licence or revised licence, attach one or more conditions which specify less strict emission limit values than would otherwise be required under subsection (4).

(b) The Agency shall document in a schedule to the licence or revised licence, the reasons for the attachment of one or more conditions specifying less strict emission limit

values under paragraph (a), including the result of the examination by the Agency and the justification for the conditions imposed.

(c) The Agency shall re-examine the attachment of conditions to a licence or revised licence which specify less strict emission limit values under paragraph (a), on any subsequent review of the licence or revised licence concerned.

(7) The Agency, in considering an application for a licence or a revised licence, may attach one or more conditions which specify less strict emission limit values than would otherwise be required under subsection (4) and section 86(3)(c) for the testing and use of emerging techniques for a total period, specified in the conditions, not exceeding 9 months provided that the Agency is satisfied that after the period so specified, either the technique will have ceased or the activity will have achieved not less than the emission levels associated with the best available techniques.

(8) The Agency, in considering an application for a licence or a revised licence, may, where appropriate, take into account the effect of a waste water treatment plant when determining the emission limit values to apply in relation to indirect releases of polluting substances into water from an installation, but the Agency shall not grant a licence or revised licence on that basis unless it is satisfied that—

(a) the licence or revised licence, or any conditions attached thereto, shall secure that an equivalent level of protection of the environment as a whole is guaranteed, and

(b) so granting will not lead to higher levels of pollution in the environment.

(9) Information to be provided by the applicant or licensee for the purpose of a review of a licence or a revised licence under section 90 and prescribed in regulations under section 89 or, as the case may be, requested and considered necessary by the Agency under section 90(7) shall, for the purposes of this section, include in particular—

(a) results of emissions monitoring, and

(b) other data that enables the Agency to make a comparison of the operation of the installation concerned with the best available techniques described in the applicable BAT conclusions and with the emission levels associated with the best available techniques.

(10) Other than where subsection (4) or (6) applies, the Agency shall apply conclusions on best available techniques from BAT reference documents adopted by the Commission prior to 6 January 2011 as BAT conclusions pending the adoption of decisions on BAT conclusions under Article 13(5) of the Industrial Emissions Directive.

(11) In this section ‘soil’ means the top layer of the Earth’s crust situated between the bedrock and the surface and the soil is composed of mineral particles, organic matter, water, air and living organisms.”.

Insertion of section 86B of Act of 1992.

13. The Act of 1992 is amended by inserting the following after section 86A (inserted by Regulation 12):

“Baseline report and permanent cessation of activity.

86B.(1) Where an industrial emissions directive activity involves the use, production or release of relevant hazardous substances, and having regard to the possibility of soil and groundwater contamination at the site of an installation concerned, the Agency shall

require an applicant under this Part for a licence or review of a licence or revised licence relating to the activity, including such a review by the Agency of its own volition, to furnish to the Agency a baseline report in accordance with regulations under section 89.

(2) In relation to an installation, a baseline report shall contain the information necessary to determine the state of contamination of soil and groundwater at the time that the report is drawn up in order that a quantified comparison may be made to the state of the site upon the permanent cessation (including cessation by abandonment) of the industrial emissions directive activity concerned and the applicant in preparing the baseline report shall include any information prescribed in regulations under section 89.

(3) Notwithstanding the generality of subsection (2), a baseline report shall include at least the following information—

(a) the current use and, where available, the past use of the site,

(b) any available information—

(i) on soil or groundwater measurements that reflect the state of the site at the time that the baseline report is drawn up, or

(ii) on new soil and groundwater measurements, having regard to the possibility of soil and groundwater contamination by the hazardous substances proposed to be used, produced or released by the installation concerned.

(4) Any information furnished to the Agency or to any other body under any enactment or rule of law or a law of the European Union, which complies with the requirements of subsection (2) or (3), may be furnished to the Agency in or with the baseline report.

(5) For the purposes of determining the information to be contained in a baseline report under this section the Agency shall have regard to, and shall for the purposes of subsection (2), make publicly available any guidance documents published by the Commission of the European Union in accordance with Article 22(2) of the Industrial Emissions Directive.

(6) Upon the permanent cessation (including cessation by abandonment) of an industrial emissions directive activity the licensee concerned shall assess the level of contamination of soil and groundwater by the relevant hazardous substances used, produced or released by the installation concerned, and where the installation has caused significant pollution of soil or groundwater by relevant hazardous substances compared to any levels of contamination of soil and groundwater established in the baseline report that licensee shall take the necessary measures, taking into account the technical feasibility of such measures, to address that pollution so as to return the site to the state established in the baseline report.

(7) Without prejudice to subsection (6) where, upon permanent cessation (including cessation by abandonment) of an industrial emissions directive activity the level of contamination of soil or groundwater at the site of the installation concerned—

(a) poses a significant risk to human health or the environment, and

(b) occurred as a result of any industrial emissions directive activity, to which Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008

applied and in respect of which a licence is or was in being under this Part or Part V of the Act of 1996, prior to review of the licence or revised licence under section 90, for the first time after the coming into operation of the European Union (Industrial Emissions) Regulations 2013,

and taking account of the condition of the site of the installation established in information already furnished to the Agency, the licensee shall take all necessary actions aimed at removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current use or future use in relation to which necessary approval or consent has been granted, ceases to pose a significant risk.

(8) On permanent cessation (including cessation by abandonment) of an industrial emissions directive activity in relation to which, under this section, no baseline report is required, the licensee shall take all necessary actions aimed at removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current use or future use in relation to which a necessary licence, approval or consent under any enactment has been granted, ceases to pose any significant risk to human health or the environment due to contamination of soil and groundwater as a result of the licensed activities concerned and taking account of the condition of the site established in information, including information furnished with an application for a licence or revised licence, already furnished to the Agency.

(9) In subsections (7) and (8) information already furnished to the Agency is information furnished in relation to—

(a) a licence under this Part, in accordance with Regulations under section 89, or

(b) a licence under Part V of the Act of 1996 in accordance with Regulations under section 45 of that Act.

(10) The Agency shall make relevant information publicly available on the measures taken under subsection (6) or the necessary actions taken under subsection (7) or (8) upon the permanent cessation of an industrial emissions directive activity.

(11) In this section—

‘baseline report’ means information on the state of soil and groundwater contamination by relevant hazardous substances;

‘soil’ has the meaning given by section 86A(11).”.

Amendment of section 89 of Act of 1992.

14. Section 89(2) (inserted by section 15 of the Act of 2003) is amended by inserting the following after paragraph (d):

“(dd) specifying information to be contained in a baseline report for the purposes of section 86B.”.

Amendment of section 90 of Act of 1992.

15. Section 90 (inserted by section 15 of the Act of 2003) is amended—

(a) in subsection (1)—

(i) in paragraph (a) by substituting “licence,” for “licence, and”, and

(ii) by inserting the following after paragraph (a):

“(aa) in addition to its functions under paragraph (a), in the case of an industrial emissions directive activity, and subject to subsections (4) and (5) and section 99I(7), shall review a licence or revised licence relating to the main activity of an installation, within 4 years of the publication of a decision on BAT conclusions by the Commission of the European Union in accordance with Article 13(5) of the Industrial Emissions Directive as respects that main activity and in doing so the Agency shall—

(i) re-examine, and if necessary review the licence for the installation concerned for the purpose of assessing its compliance with the Industrial Emissions Directive and where applicable, section 86A(4) or (6), and

(ii) in conducting such examination or review, take account of the new or updated BAT conclusions applicable to the installation and adopted by the Commission of the European Union in accordance with Article 13(5) of the Industrial Emissions Directive since the licence concerned was granted or, as the case may be, last reviewed under this Part.”,

(b) in subsection (4)(a) by inserting the following after subparagraph (ii):

“(iia) in the case of an industrial emissions directive activity to which no BAT conclusions apply, that developments in best available techniques make it possible to significantly reduce emissions from the activity,

(iib) in the case of an industrial emissions directive activity, that a new or revised environmental quality standard requires new or revised conditions to be attached to the licence or revised licence under section 83(5)(b),”

(c) in subsection (6)—

(i) in paragraph (a) by substituting “situate,” for “situate, and”, and

(ii) by inserting the following after paragraph (a):

“(aa) in the case of an industrial emissions directive activity, any emerging techniques in so far as such techniques are applicable to such activity and in particular those emerging techniques identified in the BAT reference documents relevant to the activity concerned, and”,

and

(d) by inserting the following after subsection (7):

“(8) For the purposes of a review of a licence or revised licence relating to an industrial emissions directive activity under this section, documents, particulars or other information requested and considered necessary by the Agency under subsection (7) provided by the licensee shall include, in particular—

(i) results of emissions monitoring, and

(ii) other data that enables a comparison of the operation of the installation with the best available techniques described in the applicable BAT conclusions and with the emission levels associated with the best available techniques.

(9) For the purposes of a review under this section of an industrial emissions directive activity, the Agency shall use any information resulting from monitoring under this Part or inspections carried out under Part IVB.”.

Insertion of section 97A of Act of 1992.

16. The Act of 1992 is amended by inserting the following after section 97 (inserted by section 15 of the Act of 2003):

“Notice of incident or accident significantly affecting the environment.

97A. (1) Without prejudice to the European Communities (Environmental Liability) Regulations 2008, where, in relation to an industrial emissions directive activity, the Agency has been informed by the licensee under section 86(1)(a)(ix) or considers that an incident or accident significantly affecting the environment has occurred, the Agency shall give a notice to the licensee concerned.

(2) A notice under subsection (1) shall specify measures, that are complementary to those measures referred to in section 86(1)(a)(ix)(II), that the Agency considers are required to be carried out by or on behalf of the licensee to—

- (a) limit the environmental consequences of the incident or accident, and
- (b) prevent a further possible incident or accident.”.

Insertion of section 97B of Act of 1992.

17. The Act of 1992 is amended by inserting the following after section 97A (inserted by Regulation 16):

“Notice of non-compliance with licence or revised licence relating to industrial emissions directive activity.

97B.(1) In relation to an industrial emissions directive activity, where the Agency has been informed by the licensee under section 86(1)(a)(x) that, or the Agency considers that, a failure to comply with any condition attached to a licence or revised licence has occurred that poses an immediate threat to human health or threatens to cause an immediate adverse effect on the environment, the Agency shall give a notice to the licensee concerned.

(2) A notice under subsection (1) shall inform the licensee of the failure to comply with a specified condition of the licence, and of the nature of the failure and shall direct the licensee-

- (a) to suspend the operation of the installation or relevant part thereof from a date specified in the notice,
- (b) to without delay take the necessary measures to ensure that compliance is restored in the shortest possible time, and
- (c) to carry out any measures, in addition to those undertaken under paragraph (b), that the Agency has determined are necessary to restore compliance.

(3) The licensee shall furnish confirmation in writing to the Agency that compliance with the licence has been restored, and the Agency shall give notice in writing to the licensee concerned where it is satisfied to accept that confirmation.

(4) From the date that the Agency gives notice under subsection (1) until the date that the Agency gives a notice under subsection (3), the licence concerned shall be deemed to be suspended and section 97 shall apply as appropriate in relation to that suspension.”.

Amendment of section 98 of Act of 1992.

18. Section 98(1) (inserted by section 15 of the Act of 2003) of the Act of 1992 is amended

in paragraph (a) by substituting “an integrated pollution control activity” for “an activity”.

Insertion of section 98A of Act of 1992.

19. The Act of 1992 is amended by inserting the following after section 98 (inserted by section 15 of the Act of 2003):

“Alterations of industrial emissions directive activity.

98A. (1) The person in charge of an industrial emissions directive activity shall give notice in writing to the Agency of any proposal to effect any alteration in the nature or functioning, or a reconstruction or extension of the installation if such alteration, reconstruction or extension would, or is likely to, change or increase emissions from the activity or cause new emissions therefrom in a manner which would have consequences for the environment.

(2) Whenever the Agency receives a notice under this section or otherwise becomes aware of an alteration, reconstruction or extension referred to in subsection (1) which would not, in the opinion of the Agency, increase or change emissions from the industrial emissions directive activity, cause significant new emissions therefrom, or otherwise constitute a substantial change, the Agency, notwithstanding any other provision of this Act, may—

(a) if there is a licence or revised licence in force in respect of the industrial emissions directive activity concerned, review that licence under section 90 and exercise the powers under paragraph (a) or (b) of subsection (2) of that section in relation to it,

(b) if there is no such licence in force, direct, by notice served on the person, the person in charge to apply for a licence, or

(c) determine that no further action is necessary in relation to the matter,

and, save in a case falling within paragraph (c), the person in charge shall not effect the alteration, reconstruction or extension unless and until the powers under paragraph (a) or (b) of that subsection (2) have been exercised in a way that allows or, as the case may be, a new licence or licence has been granted that allows the alteration, reconstruction or extension to be effected.

(3) Whenever the Agency receives a notice under this section or otherwise becomes aware of an alteration, reconstruction or extension referred to in subsection (1) which would, in the opinion of the Agency, increase or change emissions from the industrial emissions directive activity or cause significant new emissions therefrom or otherwise constitute a substantial change, the Agency, notwithstanding any other provision of this Act, shall—

(a) if there is a licence or revised licence in force in respect of the industrial emissions directive activity concerned, either review that licence under section 90 and exercise the powers under paragraph (a) or (b) of subsection (2) of that section in relation to it or direct the person in charge to apply for a new licence in substitution for that licence, or

(b) if there is no such licence in force, direct, by notice served on the person, the person in charge to apply for a licence,

and the person in charge shall not effect the alteration, reconstruction or extension unless and until the powers under paragraph (a) or (b) of that subsection (2) have been exercised in a way that allows or, as the case may be, a new licence or licence has been granted that allows, the alteration, reconstruction or extension to be effected.

(4) Where the Agency decides pursuant to subsection (2) or (3) to review a licence or revised licence, or to direct a person to apply for a new licence or, as the case may be, a licence, the Agency shall—

(a) within 1 month of the receipt by it of the notice under this section, or the date on which the Agency otherwise becomes aware of the matters referred to at subsection (1), inform the person accordingly, and

(b) proceed to complete the review of the licence or revised licence and exercise the appropriate powers under subsection (2) of section 90 in relation to it, or determine the application for a new licence or licence, as the case may be.

(5)(a) In this section “substantial change” means a change in the nature or functioning, or an extension, of an installation or combustion plant, waste incineration plant or waste co-incineration plant which may have significant adverse effects on human health or the environment.

(b) In determining what is a substantial change for the purposes of subsection (3) the Agency shall deem any change in the nature or functioning or an extension of an installation concerned to be substantial if the change or extension in itself reaches the capacity thresholds specified in the First Schedule that relate to the industrial emissions directive activity carried out in that installation.”.

Amendment of section 99G of Act of 1992.

20. Section 99G (inserted by section 15 of the Act of 2003) of the Act of 1992 is amended in subsection (1) by substituting “the Industrial Emissions Directive” for “the Directive”.

Insertion of Part IVB of Act of 1992.

21. The Act of 1992 is amended by inserting the following after Part IVA (inserted by section 16 of the Act of 2003):

“Part IVB

ENVIRONMENTAL INSPECTION PLAN

Environmental inspection plan.

99J. (1) This section applies to an installation where an industrial emissions directive activity is or will be carried on.

(2) The Agency, as soon as may be after the commencement of this Part, shall make a national plan (in this Part called “the environmental inspection plan”) with regard to the inspection of installations.

(3) Every installation shall be referred to in the environmental inspection plan and the Agency, from time to time as it thinks appropriate, shall review the environmental inspection plan and make such revisions thereto as it thinks fit and references in this Part to the environmental inspection plan shall, unless the context otherwise requires, be construed as including references to the plan as so revised.

(4) The purpose of the environmental inspection plan shall be the examination by the Agency of relevant environmental effects from an installation referred to in the plan and the plan shall include the following:

(a) a general assessment by the Agency of relevant significant environmental issues;

- (b) the geographical area to which the plan applies;
- (c) a register of installations to which the plan applies;
- (d) procedures for drawing up programmes for routine environmental inspections under subsection (5);
- (e) procedures for non-routine environmental inspections under subsection (7).

(5) The Agency, based on the environmental inspection plan, shall regularly draw up a programme for routine environmental inspections, including the frequency of site visits for different types of installations, provided that:

(a) the period between two site visits at an installation shall be based on a systematic appraisal by the Agency, under subsection (6), of the environmental risks of the installation concerned and shall not exceed 1 year for an installation posing the highest risks and 3 years for an installation posing the lowest risks, and

(b) if an inspection of an installation has identified a lack of compliance of a significant nature with a licence or a condition attached to a licence under this Part, the Agency shall carry out an additional site visit at that installation within 6 months of that inspection.

(6) In relation to an installation, the Agency shall base the systematic appraisal of the environmental risks referred to in subsection (5)(a) on the following criteria:

(a) the potential and actual impacts of the installation concerned on human health and the environment taking into account the levels and types of emissions, the sensitivity of the local environment and the risk of accidents,

(b) the record of compliance with licence conditions at the installation concerned, and

(c) the participation of the licensee concerned in the Union Eco-Management and Audit Scheme under Regulation (EC) No. 1221/20091, known as “EMAS”.

(7) The Agency shall, as soon as possible, undertake a non-routine environmental inspection to investigate serious environmental complaints, serious environmental accidents or incidents and contraventions of provisions of this Part, or of licences or revised licences or conditions attached to licences or revised licences and, where appropriate, may undertake such an inspection before the Agency makes a decision under section 83 on an application for a licence, or under section 90 on the review of a licence or revised licence (including such a review conducted by it of its own volition).

(8) After each site visit undertaken by it, the Agency shall—

(a) prepare a report describing its findings regarding—

(i) if the installation concerned complies with the licence or any conditions attached to the licence, and

(ii) further action (if any) necessary to achieve that compliance,

(b) furnish a copy of the report referred to in paragraph (a) to the person in charge of the installation within two months of the site visit taking place, and

(c) within four months of the site visit taking place, make the report of the visit accessible to the public in accordance with the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007).

(9) Without prejudice to section 97B, where the Agency has concluded that action is

required to restore compliance with the licence or a condition attached to the licence, the Agency shall in addition to furnishing the person in charge with a copy of the report of the site visit under subsection (8)(b), notify the person in charge of—

(a) the occurrences of non-compliance and the measures that the person in charge is required to take to restore compliance within a period specified by the Agency in the notification,

(b) where relevant, the order in which such measures are to be taken, and

(c) where relevant, the monitoring and inspection that the Agency proposes to undertake in relation to the remedial measures until the Agency is satisfied that compliance has been restored.

(10) In this section “environmental inspection” means, in relation to an installation, all actions, including site visits, monitoring of emissions and checks of internal reports and follow-up documents, verification of self-monitoring, checking of the techniques used and adequacy of the environment management undertaken by or on behalf of the Agency to check and promote compliance of installations with their licences under this Part and any conditions attaching thereto, and where necessary, to monitor the environmental impact of the installations concerned.

1 O.J. No. L342, 22.12.2009, p. 1”.

Insertion of Part IVC of Act of 1992.

22. The Act of 1992 is amended by inserting the following after Part IVB (inserted by Regulation 21):

“PART IVC

TITANIUM DIOXIDE

Titanium Dioxide.

99K.(1) This Part applies in relation to an installation where an industrial emissions directive activity that produces titanium dioxide is carried on.

(2) In granting a licence or revised licence in relation to an industrial emissions directive activity that produces titanium dioxide, the Agency shall attach one or more conditions that, in the opinion of the Agency, are necessary to give effect to Chapter VI of the Industrial Emissions Directive.

(3) Without prejudice to the generality of section 83(3), the Agency shall not grant a licence or revised licence in relation to an industrial emissions directive activity referred to in subsection (1) unless it is satisfied that the activity will be carried on in a manner which complies with the requirements of the Industrial Emissions Directive.”.

Amendment of First Schedule to Act of 1992.

23. The First Schedule (inserted by section 18 of the Act of 2003) to the Act of 1992 is amended—

(a) in the paragraph headed “Interpretation” by substituting—

“*Interpretation*

(1) If 2 or more activities falling within the same paragraph under a particular

heading of this Schedule are carried on in the same installation by the same person, then, for the purpose of any threshold specified in that paragraph, the capacities of such activities shall be aggregated.

(2) For waste management activities, the calculation referred to in subparagraph (1) shall apply at the level of activities referred to in paragraphs 11.2, 11.4(a) and 11.4(b).

(3) A process, development or operation specified in paragraph 1.1.1, 2.1, 3.1.1, 3.2.1, 3.3.1, 3.4.1, 3.6.1, 4.2.1, 4.3, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 6.1, 6.2, 7.2.1, 7.4.1, 7.7.1, 7.8, 8.1, 8.2, 8.3, 8.5.1, 8.6.1, 8.7, 9.3.1, 9.4.1, 9.4.2, 9.4.3, 10.2, 10.3, 10.4, 11.1 (in so far as the process, development or operation specified in paragraph 11.1 is carried on in an installation connected or associated with another activity that is an industrial emissions directive activity), 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 12.2.1, 12.3, 13.4.1, 13.5 or 13.6 and carried out in an installation is an industrial emissions directive activity and an activity shall not be taken to be an industrial emissions directive activity if it is carried on at an installation solely used for research, development or testing of new products and processes.

(4) A process, development or operation specified in paragraph 1.1.2, 1.2, 1.3, 1.4, 3.1.2, 3.2.2, 3.3.2, 3.4.2, 3.5, 3.6.2, 3.7, 3.8, 3.9, 4.1, 4.2.2, 4.4, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 7.1, 7.2.2, 7.3.1, 7.3.2, 7.3.3, 7.4.2, 7.5, 7.6, 7.7.2, 8.4, 8.5.2, 8.6.2, 9.1, 9.2, 9.3.2, 9.4.4, 10.1, 11.1 (in so far as the process, development or operation specified in paragraph 11.1 is carried on in an installation connected or associated with another activity that is an integrated pollution control activity), 12.1, 12.2.2, 13.1, 13.2, 13.3 or 13.4.2 and carried out in an installation is an integrated pollution control activity.

(5) In this Schedule—

‘fuel’ means any solid, liquid or gaseous combustible material;

‘waste incineration plant’ means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of waste, with or without recovery of the combustion heat generated, through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;

‘waste co-incineration plant’ means any stationary or mobile technical unit whose main purpose is the generation of energy or production of material products and which uses waste as a regular or additional fuel or in which waste is thermally treated for the purpose of disposal through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated.”,

for—

“Interpretation

If 2 or more activities falling within the same paragraph under a particular heading of this Schedule are carried on in the same installation by the same person, then, for the purpose of any threshold specified in that paragraph, the capacities of those activities shall be aggregated.”,

(b) in paragraph 1.1.1 by inserting “or the manufacture of asbestos-based products” after “asbestos”,

(c) by substituting the following for paragraph 2.1:

“2.1 Combustion of fuels in installations with a total rated thermal input of 50 MW or more.”,

(d) in paragraph 3—

(i) in paragraph 3.2.1(a) by inserting “operation of” before “hot-rolling mills”,

(ii) in paragraph 3.2.1(b) by inserting “operation of” before “smitheries”, and

(iii) by substituting the following for paragraph 3.4.1(b):

“(b) melting, including the alloyage, of non-ferrous metals, including recovered products and operation of non-ferrous metal foundries, with a melting capacity exceeding 4 tonnes per day for lead and cadmium or 20 tonnes per day for all other metals.”,

(e) in paragraph 4—

(i) by substituting the following for paragraph 4.1:

“4.1 Other than where carried on in conjunction with the activity specified in paragraph 1.1.1, the processing of asbestos and asbestos-based products.”,

and

(ii) in paragraph 4.3 by deleting “or 5,000 tonnes per year”,

(f) in paragraph 5—

(i) by substituting “means the production on an industrial scale by chemical or biological processing” for “means the production on an industrial scale by chemical processing”,

(ii) in paragraph 5.12—

(I) by substituting “production of organic chemicals” for “production of basic organic chemicals”,

(II) in clause (b) by substituting “esters and mixtures of esters” for “esters”, and

(III) in clause (h) by substituting “plastic materials” for “basic plastic materials”,

(iii) in paragraph 5.13 by substituting “production of inorganic chemicals” for “production of basic inorganic chemicals”,

(iv) in paragraph 5.15 by substituting “production of plant health products” for “production of basic plant health products”, and

(v) by substituting the following for paragraph 5.16:

“5.16 The production of pharmaceutical products including intermediates.”,

(g) in paragraph 6—

(i) by substituting the following for paragraph 6.1:

“6.1(a) The rearing of poultry in installations where the capacity exceeds 40,000 places.

(b) In clause (a) ‘poultry’ shall be construed in accordance with Regulation 2(2) of the European Communities (Poultry and Hatching Eggs) Regulations 2010 (S.I. No. 564 of 2010).”

and

(ii) by substituting the following for paragraph 6.2:

“6.2The rearing of pigs in an installation where the capacity exceeds—

(a)750 places for sows, or

(b)2,000 places for production pigs which are each over 30kg.”

(h) in paragraph 7—

(i) in paragraph 7.7.1 by substituting “animal carcasses or animal waste” for “animal carcasses and animal waste”, and

(ii) by substituting the following for paragraph 7.8:

“7.8(a) The treatment and processing, other than exclusively packaging, of the following raw materials, whether previously processed or unprocessed, intended for the production of food or feed from:

(i) only animal raw materials (other than exclusively milk) with a finished product production capacity greater than 75 tonnes per day;

(ii) only vegetable raw materials with a finished product production capacity greater than 300 tonnes per day or 600 tonnes per day where the installation operates for a period of no more than 90 consecutive days in any year;

(iii) animal and vegetable raw materials, both in combined and separate products, with a finished product production capacity in tonnes per day greater than:

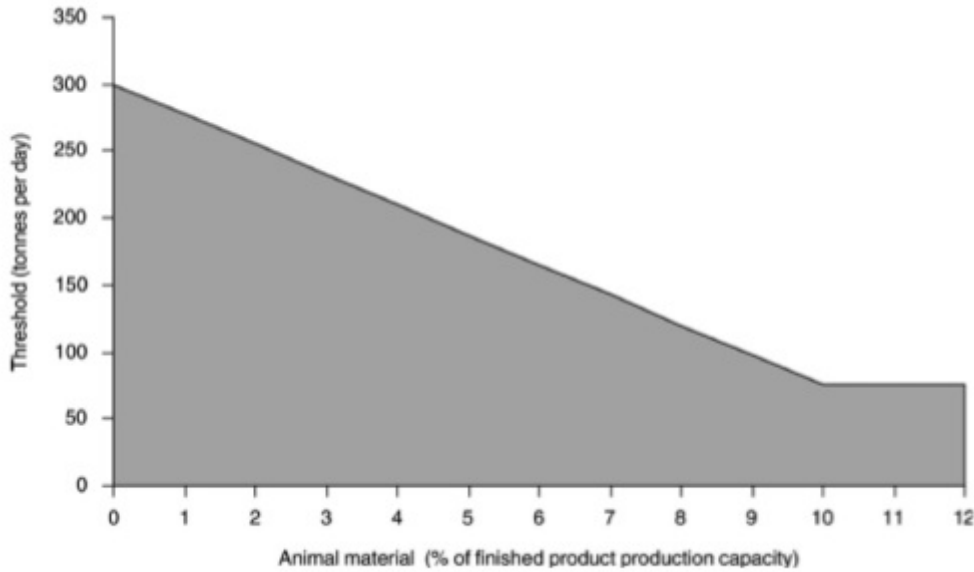
(I)75 if A is equal to 10 or more; or

(II)[300-(22.5 x A)] in any other case,

where ‘A’ is the portion of animal material (in percent of weight) of the finished product production capacity.

(b) For the purposes of clause (a), packaging shall not be included in the final weight of the product.

(c) Clause (a) shall not apply where the raw material is milk only.



”

(i) in paragraph 8—

(i) by substituting the following for paragraph 8.3:

“8.3 The preservation of wood and wood products with chemicals with a production capacity exceeding 75 m³ per day other than exclusively treating against sapstain.”

and

(ii) by inserting the following paragraph after paragraph 8.6.2:

“8.7 The production of one or more of the following wood-based panels: oriented strand board, particleboard or fibreboard with a production capacity exceeding 600 m³ per day.”

(j) in paragraph 9—

(i) by substituting the following for paragraph 9.4.1:

“9.4.1 The production of coke.”,

and

(ii) by substituting the following for paragraph 9.4.2:

“9.4.2 The gasification or liquefaction of:

(a) coal;

(b) other fuels in installations with a total rated thermal input of 20 MW or more.”,

(k) by substituting the following for paragraph 10:

“10 Cement, Lime and Magnesium Oxide

10.1 Other than the production of cement referred to in paragraph 10.2, the production of cement.

10.2 Production of cement clinker in rotary kilns with a production capacity

exceeding 500 tonnes per day or in other kilns with a production capacity exceeding 50 tonnes per day.

10.3 Production of lime in kilns with a production capacity exceeding 50 tonnes per day.

10.4 Production of magnesium oxide in kilns with a production capacity exceeding 50 tonnes per day.”,

(l) by inserting the following after paragraph 11.1:

“11.2 Disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day involving one or more of the following activities:

(a) biological treatment;

(b) physico-chemical treatment;

(c) blending or mixing prior to submission to any of the other activities listed in paragraph 11.2 or 11.3;

(d) repackaging prior to submission to any of the other activities listed in paragraph 11.2 or 11.3;

(e) solvent reclamation or regeneration;

(f) recycling or reclamation of inorganic materials other than metals or metal compounds;

(g) regeneration of acids or bases;

(h) recovery of components used for pollution abatement;

(i) recovery of components from catalysts;

(j) oil re-defining or other reuses of oil;

(k) surface impoundment.

11.3 Disposal or recovery of waste in waste incineration plants or in waste co-incineration plants—

(a) for non-hazardous waste with a capacity exceeding 3 tonnes per hour,

(b) for hazardous waste with a capacity exceeding 10 tonnes per day.

11.4 (a) Disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day involving one or more of the following activities:

(i) biological treatment;

(ii) physico-chemical treatment;

(iii) pre-treatment of waste for incineration or co-incineration;

(iv) treatment of slags and ashes;

(v) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.

(b) Recovery, or a mix of recovery and disposal, of non-hazardous waste with a capacity exceeding 75 tonnes per day involving one or more of the following activities, (other than activities to which the Urban Waste Water Treatment Regulations 2001 (S.I. No. 254 of 2001) apply):

(i) biological treatment;

(ii) pre-treatment of waste for incineration or co-incineration;

(iii) treatment of slags and ashes;

(iv) treatment in shredders of metal waste, including waste electrical and

electronic equipment and end-of-life vehicles and their components.

(c) Notwithstanding clause (b), when the only waste treatment activity carried out is anaerobic digestion, the capacity threshold for that activity shall be 100 tonnes per day.

11.5 Landfills, within the meaning of section 5 (amended by Regulation 11(1) of the Waste Management (Certification of Historic Unlicensed Waste Disposal and Recovery Activity) Regulations 2008 (S.I. No. 524 of 2008)) of the Act of 1996, receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25,000 tonnes, other than landfills of inert waste.

11.6 Temporary storage of hazardous waste, (other than waste referred to in paragraph 11.5) pending any of the activities referred to in paragraph 11.2, 11.3, 11.5 or 11.7 with a total capacity exceeding 50 tonnes, other than temporary storage, pending collection, on the site where the waste is generated.

11.7 Underground storage of hazardous waste with a total capacity exceeding 50 tonnes.”,

and

(m) in paragraph 13—

(i) by substituting the following for paragraph 13.3:

“13.3 Other than production of lime in a kiln referred to in paragraph 10.3, the production of lime.”,

(ii) by inserting the following after paragraph 13.5 inserted by Regulation 3 of the Environmental Protection Agency Act 1992 (First Schedule) (Amendment) Regulations 2011 (S.I. No. 308 of 2011):

“13.6 Independently operated treatment of waste water (to which the Urban Waste Water Treatment Regulations 2001 do not apply) and discharged by an installation to which Part IV applies.”.

Part 3

Amendment of Waste Management Act 1996

Amendment of section 2 of Act of 1996.

24. Section 2 of the Act of 1996 is amended in the Table (amended by Regulation 3 of the European Communities (Waste Directive) Regulations 2011) to that section by deleting “Directive 2008/1/EC of the European Parliament and of the Council of 15 January 20083 covering integrated pollution and control.

3 O.J. No. L24, 29.1.2008, p. 8.”.

Amendment of section 5 of Act of 1996.

25. Section 5 of the Act of 1996 is amended—

(a) in subsection (1) by inserting the following definitions—

“ ‘Industrial Emissions Directive’ means Directive 2010/75/EU1 of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast);

‘integrated pollution control activity’ has the same meaning as it has in section 3 (amended by Regulation 4 of the European Union (Industrial Emissions) Regulations 2013) of the Act of 1992;

1 O.J. No. L334, 17.12.2010, p. 17”,

and

(b) in subsection (2) by deleting subparagraph (c) (inserted by section 20(3) of the Act of 2003).

Amendment of section 32 of Act of 1996.

26. Section 32(6) of the Act of 1996 is amended in paragraph (b) (inserted by section 29 of the Act of 2003) by inserting “for an integrated pollution control activity” after “or a licence or revised licence”.

Amendment of section 39A of Act of 1996.

27. Section 39A (inserted by section 34 of the Act of 2003) is amended—

(a) in subsection (1) by substituting “or, in relation to an integrated pollution control activity, Part IV of the Act of 1992” for “or Part IV of the Act of 1992”,

(b) in subsection (2)(b) by substituting “an integrated pollution control activity” for “an activity”,

(c) in subsection (3)(b) by inserting “for an integrated pollution control activity” after “the grant of a licence”,

(d) in subsection (4)(a)—

(i) by substituting “shall be regarded as an integrated pollution control activity” for “shall be regarded as an activity”, and

(ii) in subparagraph (i) by substituting “a licence for an integrated pollution control activity under Part IV” for “a licence under Part IV”,

and

(e) in subsection (7) by substituting “or a licence for an integrated pollution control activity under section 82” for “or a licence under section 82”.

Insertion of section 76A of Act of 1996.

28. The Act of 1996 is amended by inserting the following after section 76:

“Transitional matters for activities not licensed under this Act consequent upon Industrial Emissions Directive.

76A.(1) In this section—

“earlier Part V” means Part V as it had effect before the coming into operation of the European Union (Industrial Emissions) Regulations 2013;

“licence or revised licence” means a licence or revised licence under Part IV of the Act of 1992.

(2) On or after 7 January 2014 a person shall not carry on an activity to which subsection (3) applies unless—

(a) on the coming into operation of this section a waste licence or revised waste licence under the earlier Part V is in force in relation to the activity, or

(b) in respect of the activity—

(i) on the coming into operation of this section an application has been made to

the Agency under the earlier Part V for a waste licence or revised waste licence and the requirements of regulations made under section 45 in relation to the application for the waste licence or revised waste licence have been complied with by the applicant, and

(ii) on or before 7 January 2014—

(I) a waste licence or revised waste licence, or, as the case may be, a licence or revised licence, on foot of the application referred to in subparagraph (i), subject to subsection (6), is granted if required, under the earlier Part V or, as the case may be, Part IV of the Act of 1992, and

(II) the licensee concerned commences carrying on the activity.

(3) Subsection (2) applies to any of the following activities:

(a) an activity specified in paragraph 11.2 or 11.3 of the First Schedule to the Act of 1992 provided that Directive 2008/1/EU1 of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (in this section referred to as “Directive 2008/1/EC”) applies to the activity;

(b) an activity specified in paragraph 11.4(a)(i) or (ii) or paragraph 11.5 of the First Schedule to the Act of 1992.

(4) On or after 7 July 2015 a person shall not continue to carry on an activity to which subsection (5) applies unless—

(a) on the coming into operation of this section a waste licence or revised waste licence granted under the earlier Part V is in force in relation to that activity, or

(b) in respect of the activity—

(i) on the coming into operation of this section an application has been made to the Agency under the earlier Part V for a waste licence or revised waste licence and the requirements of regulations made under section 45 in relation to the application for the waste licence or revised waste licence have been complied with by the applicant, and

(ii) on or before 7 July 2015—

(I) a waste licence or revised waste licence licence, or, as the case may be, a licence or revised licence, on foot of the application referred to in subparagraph (i), subject to subsection (7), is granted if required, under the earlier Part V or, as the case may be, Part IV of the Act of 1992, and

(II) the licensee concerned commences carrying on the activity.

(5) Subsection (4) applies to any of the following activities:

(a) an activity specified in paragraph 11.2 or 11.3 of the First Schedule to the Act of 1992 provided that Directive 2008/1/EC does not apply to the activity;

(b) an activity specified in paragraph 11.4(a)(iii), 11.4(a)(iv), 11.4(a)(v), 11.4(b), 11.6 or 11.7 of the First Schedule to the Act of 1992.

(6)(a) Where an application to which subsection (2)(b) refers is determined or completed by the Agency before 30 September 2013 it shall be dealt with by the Agency, and be determined or completed by it under the earlier Part V.

(b) Where an application to which subsection (2)(b) refers is determined or completed by the Agency on or after 30 September 2013, it shall, subject to this section, be dealt with by the Agency, and be determined or completed by it, under Part

IV of the Act of 1992 and the licence or revised licence concerned shall be deemed to have been granted under Part IV of the Act of 1992 and shall not be a waste licence or a revised waste licence.

(7)(a) Where an application to which subsection (4)(b) refers is determined or completed by the Agency before 28 February 2014 it shall be dealt with by the Agency, and be determined or completed by it under the earlier Part V.

(b) Where an application to which subsection (4)(b) refers is determined or completed by the Agency on or after 28 February 2014, it shall, subject to this section, be dealt with by the Agency, and be determined or completed by it, under Part IV of the Act of 1992 and the licence or revised licence concerned shall be deemed to have been granted under Part IV of the Act of 1992 and shall not be a waste licence or a revised waste licence.

(8) A waste licence or revised waste licence referred to in subsection (2)(a) in force on the coming into operation of this section or (2)(b) and granted in accordance with subsection (6)(a) under the earlier Part V, shall continue in force as if this section had not come into operation until the Agency, not later than 7 January 2014, shall have—

(a) examined the terms of every waste licence and revised waste licence referred to in subsection (2)(a) or (2)(b) which was granted under the earlier Part V and determined whether, having regard to the provisions of the Industrial Emissions Directive, the waste licence or revised waste licence is to be amended to bring it into conformity with that Directive, and

(b) if—

(i) it has determined that the waste licence or revised waste licence requires to be so amended, completed the amendment in accordance with subsection (11), or

(ii) it has determined that the waste licence or revised waste licence does not require to be so amended and accordingly, that no further action is required, declared in writing that it is of that opinion.

(9) A waste licence or revised waste licence referred to in subsection (4)(a) in force on the coming into operation of this section or (4)(b) and granted, in accordance with subsection (7)(a) under the earlier Part V, shall continue in force as if this section had not come into operation until the Agency, not later than 7 July 2015, shall have—

(a) examined the terms of every waste licence and revised waste licence referred to in subsection (4)(a) or (4)(b) which was granted under the earlier Part V and for the time being in force and determined whether, having regard to the provisions of the Industrial Emissions Directive, the waste licence or revised waste licence is to be amended to bring it into conformity with that Directive, and

(b) if—

(i) it has determined that the waste licence or revised waste licence requires to be so amended, completed the amendment in accordance with subsection (11), or

(ii) it has determined that the waste licence or revised waste licence does not require to be so amended and accordingly, that no further action is required, declared in writing that it is of that opinion.

(10)(a) None of the requirements of section 90 of the Act of 1992 shall apply to the exercise of the power under subsection (8) or (9) but the Agency shall, where appropriate, consult with the licensee before exercising the power.

(b) Where the Agency considers that it is necessary for the purpose of performance of the functions conferred on the Agency under subsection (8) or (9), it may give notice to the licensee to furnish to the Agency, within the period specified in the notice, information, documents or other particulars specified in the notice.

(c) The Agency shall, as soon as may be after the exercise of the power under subsection (8) or (9), notify particulars of the amendment effected by that exercise to each person who made an objection to the Agency under section 42(3) in relation to any exercise of the powers under section 40 or 46 as respects the waste licence or revised waste licence concerned.

(11) If the bringing into conformity with the Industrial Emissions Directive of a waste licence or revised waste licence under subsection (8) or (9) can, in the opinion of the Agency, be achieved by amending one or more of the conditions of or schedules to the waste licence or revised waste licence (and the making of the amendment will not significantly alter the character of the licence) then the Agency shall make those amendments of the conditions of or schedules to the waste licence or revised waste licence (which, by virtue of this subsection, it has power to do).

(12) On and from the performance of its functions by the Agency under subsection (8) or (9)—

(a) Part IV of the Act of 1992 applies to the licence in relation to which the Agency has made its determination under either subsection,

(b) the licence concerned shall be deemed to have been granted under Part IV of the Act of 1992, and

(c) the licence concerned shall not be a waste licence or a revised waste licence.

1 O.J. No. L24, 29.1.2008, p.8”.

Amendment of First Schedule to Act of 1996.

29. The First Schedule (inserted by the European Communities (Waste Directive) Regulations 2011 (S.I. No. 126 of 2011)) to the Act of 1996 is amended—

(a) in paragraph 6 by substituting “the Industrial Emissions Directive” for “Directive 2008/1/EC”, and

(b) in paragraph 7 by substituting “the Industrial Emissions Directive” for “Directive 2008/1/EC”.

Part 4 Consequential Amendments

Amendment of European Communities (Greenhouse Gas Emissions Trading) Regulations 2012.

30. The European Communities (Greenhouse Gas Emissions Trading) Regulations 2012 (S.I. No. 490 of 2012) are amended in Regulation 33(2)(a) by substituting “sections 83(4)(a), 83(5)(a)(vi), 86(1)(a)(i), 86(1)(b)(i), 86A(2), 86A(3)(b), 86A(3)(c)(ii) and (c)(iii) (in so far as it applies to emission limit values), 86A(4), 86A(5), 86A(6), 90(4)(a)(i) and 90(4)(a)(ia)” for “Sections 83(4)(a), 83(5)(a)(vi), 86(1)(a)(i), 86(1)(b)(i) and 90(4)(a)(i)”.

Amendment of Waste Management (Management of Waste from the Extractive Industries) Regulations 2009.

31. The Waste Management (Management of Waste from the Extractive Industries)

Regulations 2009 (S.I. No. 566 of 2009) are amended in Regulation 3(2) by substituting, in the definition of “best available techniques”.

“Article 3(10) of Directive 2010/75/EU4.

4 O.J. No. L334, 17.12.2010, p. 17”

for

“Article 2(11) of Directive 96/61/EC4.

4 O.J. No. L257, 10.10.1996, p. 26”.



GIVEN under my Official Seal,

23 April 2013.

PHIL HOGAN,

Minister for the Environment, Community and Local Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations primarily amend the Environmental Protection Agency Act 1992 and the Waste Management Act 1996 to transpose Chapters II and VI of Directive 2010/75/EC of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast). The Regulations apply to the industrial emissions directive activities specified in the First Schedule to the Environmental Protection Agency Act 1992 , as amended by these Regulations.

The Regulations also include other consequential amendments to regulations affected by the transposition of Chapter II of the Directive.

1 OJ No. L334, 17.12.2010, p. 17

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