



STATUTORY INSTRUMENTS.

S.I. No. 279 of 2014

EUROPEAN COMMUNITIES (GEOLOGICAL STORAGE OF CARBON
DIOXIDE) (AMENDMENT) REGULATIONS 2014

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I, FERGUS O'DOWD, Minister of State at the Department of Communications, Energy and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009, hereby make the following regulations:

Citation

1. (1) These Regulations may be cited as the European Communities (Geological Storage of Carbon Dioxide) (Amendment) Regulations 2014.

(2) The European Communities (Geological Storage of Carbon Dioxide) Regulations 2011 and these Regulations may be cited together as the European Communities (Geological Storage of Carbon Dioxide) Regulations 2011 and 2014 and shall be construed together as one.

Interpretation Generally

2. (1) In these Regulations—

“Act of 1999” means Electricity Regulation Act 1999;

“Directive” means Directive 2009/31/EC of 23 April 2009 on the geological storage of carbon dioxide;

“Minister” means the Minister for Communications, Energy and Natural Resources;

“Principal Regulations” means the European Communities (Geological Storage of Carbon Dioxide) Regulations 2011;

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations that it has in the Directive.

Amendment of Regulation 2(1) of the Principal Regulations

3. The Principal Regulations are amended in Regulation 2(1) by inserting the following definitions:

“CO₂ stream” means a flow of substances that results from CO₂ capture processes;

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 20th June, 2014.

“Geological storage of CO₂” means injection accompanied by storage of CO₂ streams in underground geological formations;

“migration” means the movement of CO₂ within the storage complex;

“operator” means any natural or legal, private or public person who operates or controls the storage site or to whom decisive economic power over the technical functioning of the storage site has been delegated;

“significant risk” means a combination of a probability of occurrence of damage and a magnitude of damage that cannot be disregarded without calling into question the purpose of the Directive for the storage site concerned;

“storage site” means a defined volume area within a geological formation used for the geological storage of CO₂ and associated surface and injection facilities;

“transport network” means the network of pipelines, including associated booster stations, for the transport of CO₂ to the storage site;

“waste” means the substances defined as waste in Article 1(1)(a) of Directive 2006/12/EC.

Amendment of Regulation 4 of the Principal Regulations

4. The Principal Regulations are amended in Regulation 4 by inserting the following Regulations:

CO₂ stream acceptance criteria and procedure

4A. (1) A CO₂ stream shall consist overwhelmingly of carbon dioxide. To this end, no waste or other matter may be added for the purpose of disposing of that waste or other matter. However, a CO₂ stream may contain incidental associated substances from the source, capture or injection process and trace substances added to assist in monitoring and verifying CO₂ migration. Concentrations of all incidental and added substances shall be below levels that would:

- (a) adversely affect the integrity of the storage site or the relevant transport infrastructure;
- (b) pose a significant risk to the environment or human health; or
- (c) breach the requirements of applicable Community legislation.

(2) Regard shall be had to the guidelines adopted by the Commission, if any, identifying the conditions applicable on a case by case basis for respecting the criteria laid down in paragraph (1).

(3) Any operator of a CO₂ storage facility shall:

- (a) accept and inject CO₂ streams only if an analysis of the composition, including corrosive substances, of the streams and a risk assessment have been carried out, and if the risk assessment has shown that the contamination levels are in line with the conditions referred to in paragraph (1);
- (b) keep a register of the quantities and properties of the CO₂ streams delivered and injected, including the composition of those streams.

Third Party Access to transport network and storage sites

4B. (1) Potential third party users may be able to obtain access to transport networks and to storage sites for the purposes of geological storage of the produced and captured CO₂, in accordance with paragraphs (2), (3) and (4).

(2) The access referred to in paragraph (1) shall be provided and applied in a fair, open, transparent and non-discriminatory manner taking into account the following objectives:

- (a) the storage capacity which is or can reasonably be made available within the areas determined under Regulation 4, and the transport capacity which is or can reasonably be made available;
- (b) the proportion of the State's CO₂ reduction obligations pursuant to international legal instruments and to Community legislation that it intends to meet through capture and geological storage of CO₂;
- (c) the need to refuse access where there is an incompatibility of technical specifications which cannot be reasonably overcome;
- (d) the need to respect the duly substantiated reasonable needs of the owner or operator of the storage site or of the transport network and the interests of all other users of the storage or the network or relevant processing or handling facilities who may be affected.

(3) Transport network operators and operators of storage sites may refuse access on the grounds of lack of capacity. Duly substantiated reasons shall be given for any refusal.

(4) Any operator refusing access on the grounds of lack of capacity or a lack of connection shall make any necessary enhancements as far as it is economic to do so or when a potential customer is willing to pay for them, provided this would not negatively impact on the environmental security of transport and geological storage of CO₂.

Dispute settlement

4C. (1) For the purposes of Article 22 of the Directive, the competent authority designated pursuant to Regulation 5 shall be the authority in the

State to settle expeditiously disputes concerning refusal of access to transport networks and to storage sites, and its determination shall be binding upon the parties concerned.

(2) The competent authority shall take into account the criteria referred to in Regulation 4B (1) and (2). The parties shall provide all relevant information, including such information as the competent authority may determine should be produced, to enable the competent authority determine the dispute, subject to the rights of the parties to privilege.

(3) In cross border disputes where an application is made under paragraph (1) to the competent authority in relation to a dispute concerning refusal of access to transport networks which are situated in the territory of the State, on the seabed under the territorial seas of the State or on the continental shelf belonging to the State, the competent authority shall have jurisdiction to determine the dispute.

(4) In cross border disputes where an application is made under paragraph (1) to the competent authority in relation to a dispute concerning refusal of access to transport networks and to storage sites, other than those referred to in paragraph (3), part of which are situated in the territory of another state, on the seabed under the territorial seas of another state or on the continental shelf belonging to another state, the competent authority shall consult the relevant authorities in that other state with a view to ensuring the Directive is applied consistently.

Amendment of Regulation 9 of the Principal Regulations

5. The Principal Regulations are amended in Regulation 9 by inserting after the words "A person who fails to comply with Regulation 4" the following:

“and 4A(1)”

Amendment of Section 9 (functions of the Commission) of the Act of 1999

6. Section 9 of the Act of 1999 is amended in subsection (1) by inserting the following after paragraph (k):

“(ka) to act as the competent authority for the purposes of European Communities (Geological Storage of Carbon Dioxide) Regulations 2011 and 2014.”

The Minister for the Environment, Community and Local Government hereby consents to the foregoing Regulations in so far as they relate to the activities specified in Regulations 5, 7 and 8 of the Principal Regulations.



GIVEN under the Official Seal of the Minister for the Environment,
Community and Local Government,
12 June 2014.

PHIL HOGAN,
Minister for the Environment, Community and
Local Government.



GIVEN under my Official Seal,
9 May 2014.

FERGUS O'DOWD,
Minister of State at the Department of
Communications, Energy and Natural Resources.

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