



STATUTORY INSTRUMENTS.

S.I. No. 394 of 2004.

**ENVIRONMENTAL PROTECTION AGENCY
(LICENSING) (AMENDMENT) REGULATIONS 2004.**

The Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on him by sections 6 and 70 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) and sections 83, 84, 87 and 89 of the said Act (as substituted by section 15 of the Protection of the Environment Act 2003 (No. 27 of 2003)) hereby makes the following Regulations:—

Citation

1. (1) These Regulations may be cited as the Environmental Protection Agency (Licensing) (Amendment) Regulations 2004.

(2) These Regulations, the Environmental Protection Agency (Licensing) Regulations 1994, the Environmental Protection Agency (Licensing) (Amendment No. 2) Regulations 1995 and the Environmental Protection Agency (Licensing) (Amendment) (No. 2) Regulations 1996 may be cited together as the Environmental Protection Agency (Licensing) Regulations 1994 to 2004.

Commencement

2. These Regulations shall come into operation on 12 July 2004.

Interpretation

3. (1) In these Regulations, unless the context otherwise requires—

"the Act of 1992" means the Environmental Protection Agency Act 1992;

"the Act of 1996" means the Waste Management Act 1996;

"the Act of 2003" means the Protection of the Environment Act 2003;

"the Agency" means the Environmental Protection Agency established under section 19 of the Act of 1992;

"the Regulations of 1994" means the Environmental Protection Agency (Licensing) Regulations 1994.

(2) (a) In these Regulations, any reference to a Schedule or article which is not otherwise identified is a reference to a Schedule or article of these Regulations.

(b) In these Regulations, any reference to a sub-article, paragraph or subparagraph which is not otherwise identified is a reference to the sub-article, paragraph or subparagraph of the provision in which the reference occurs.

Amendment of Regulations of 1994

4. The Regulations of 1994 are amended by—

(a) substituting for article 10(1) the following:

"(1) An application for a licence shall be submitted to the headquarters of the Agency and shall be in such form as may be determined by the Agency.",

(b) substituting for article 10(2) the following:

"(2) Without prejudice to the generality of sub-article (1), an application for a licence shall—

(a) give the name, address and telephone number of the applicant and, if different, any address to which correspondence relating to the application should be sent and, if the applicant is a body corporate, the address of its registered or principal office,

(b) give:

(i) in the case of an established activity, the number of employees and other persons working or engaged in connection with the activity on the date after which a licence is required and during normal levels of operation, or

(ii) in any other case, the gross capital cost of the activity to which the application relates,

(c) give the name of the planning authority in whose functional area the activity is or will be carried on,

(d) in the case of a discharge of any trade effluent or other matter (other than domestic sewage or storm water) to a sewer of a sanitary authority, give the name of the sanitary authority in which the sewer is vested or by which it is controlled,

(e) give the location or postal address (including, where appropriate, the name of the relevant townland or townlands) and the National Grid reference of the premises to which the activity relates,

(f) specify the relevant class or classes in the First Schedule to the Act to which the activity relates,

(g) specify the raw and ancillary materials, substances, preparations, fuels and energy which will be produced by or utilised in the activity,

(h) describe the plant, methods, processes, ancillary processes, abatement, recovery and treatment systems, and operating procedures for the activity,

(i) indicate how the requirements of section 83(5)(a)(i) to (v) and (vii) to (x) of the Act shall be met, having regard, where appropriate, to any relevant specification issued by the Agency under section 5(3) of the Act and the reasons for the selection of the arrangements proposed,

(j) give particulars of the source, nature, composition, temperature, volume, level, rate, method of treatment and location of emissions, and the period or periods during which the emissions are made or are to be made,

(k) describe the arrangements for the prevention or minimisation of waste and, where waste is produced, the on and off site arrangements for the recovery or disposal of solid and liquid wastes,

(l) specify, by reference to the relevant European Waste Catalogue codes as prescribed by Commission Decision 2000/532/EC of 3 May 2000¹, the quantity and nature of the waste or wastes produced or to be produced by the activity,

¹ OJ No. L226, 06.09.2000, p. 3.

(m) provide:

(i) details, and an assessment, of the impacts of any existing or proposed emissions on the environment, including on an environmental medium other than that or those into which the emissions are or are to be made, and

(ii) details of the proposed measures to prevent or eliminate, or where that is not practicable, to limit, reduce or abate emissions,

(*n*) identify monitoring and sampling points and outline proposals for monitoring emissions and the environmental consequences of any such emissions,

(*o*) describe the condition of the site of the installation,

(*p*) describe in outline the main alternatives, if any, to the proposals contained in the application which were studied by the applicant,

(*q*) specify the measures to be taken to comply with an environmental quality standard where such a standard requires stricter conditions to be attached to a licence than would otherwise be determined by reference to best available techniques,

(*r*) describe the measures to be taken for minimising pollution over long distances or in the territory of other states;

(*s*) describe the measures to be taken under abnormal operating conditions, including start-up, shutdown, leaks, malfunctions, breakdowns and momentary stoppages,

(*t*) describe the measures to be taken on and following the permanent cessation of the activity or part of the activity to avoid any risk of environmental pollution and to return the site of the activity to a satisfactory state,

(*u*) describe, in the case of an activity which gives rise, or could give rise, to an emission containing a hazardous substance which is discharged to an aquifer and is specified in the Annex to Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances², the arrangements necessary to comply with the said Council Directive,

² OJ No. L20, 26.01.1980, p. 43.

(*v*) include any other information required under Article 6(1) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control³,

³ OJ No. L257, 10.10.1996, p. 26.

(*w*) include a non-technical summary of information provided in relation to the matters specified in paragraphs (*f*) to (*v*) of this sub-article,

(*x*) state whether the activity consists of, comprises, or is for the purposes of an establishment to which the European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000 apply.",

(*c*) substituting for subparagraph (ii) of article 11(2)(*b*) the following:

"(ii) require the applicant, within such period as may be specified by the Agency, to take such steps, or to furnish such further particulars, plans, drawings or maps, as may be necessary to comply with the said requirements and, where the applicant fails to comply with a requirement under this subparagraph, the Agency may, as it considers appropriate having regard to the extent of the failure, inform the applicant, by notice in writing, of such failure and that the application cannot be considered by the Agency.",

(*d*) substituting for paragraph (*b*) of article 13(1) the following:

"(*b*) require the applicant to comply with the said requirement within such period as may be specified by the Agency.",

(*e*) inserting after article 13(1) the following sub-article:

"(1A) Subject to sub-article (2) (*b*), where an applicant fails to comply with a requirement under sub-article (1) (*b*), the Agency may, as it considers appropriate having regard to the extent of the failure, inform the applicant, by notice in writing, of such failure and that the application cannot be considered by the Agency.",

14(2)(b) the following:

- (f) inserting after "require the applicant to submit" in article "within such period as may be specified by the Agency",
- (g) inserting after article 14(2)(b) the following paragraph:
 - "(c) Where an applicant fails to comply with a requirement under paragraph (b), the Agency may, as it considers appropriate having regard to the extent of the failure, inform the applicant, by notice in writing, of such failure and that the application cannot be considered by the Agency.",
 - (h) substituting for article 17(4) the following:
 - "(4) Where there is a failure or refusal to comply with a requirement under any of the foregoing sub-articles within one month of the date of notice of such requirement, the Agency may, if it thinks fit—
 - (a) proceed with its consideration of the application or the review and give a notification under section 87(2) of the Act in the absence of the particulars, plans, drawings, maps, information or evidence specified in the requirement, or
 - (b) inform the applicant, by notice in writing, of such failure and that the application or review cannot be considered by the Agency.",
 - (i) substituting for paragraphs (a) to (n) of article 20(1) the following:
 - "(a) the Minister for the Environment, Heritage and Local Government,
 - (b) the Minister for Communications, Marine and Natural Resources,
 - (c) the Central Fisheries Board,
 - (d) An Taisce — The National Trust for Ireland,
 - (e) each local authority in whose functional area the activity is or will be situate,
 - (f) in the case of a discharge to which section 99E of the Act relates, the relevant sanitary authority,
 - (g) the appropriate health board,
 - (h) the National Authority for Occupational Safety and Health,
 - (i) Fáilte Ireland,
 - (j) Teagasc,
 - (k) in the case of an activity any part of which is situate within the functional area of the Shannon Free Airport Development Company Limited, that company, and
 - (l) such other public authorities, persons or bodies, if any, as the Agency considers appropriate.",
 - (j) substituting for article 25 the following:
 - "Advertisement of proposed determinations by Agency*
 - 25. The Agency shall, within 7 days of the giving of a notification under section 87(2) of the Act, publish in a newspaper circulating in the district in which the activity is or will be situate, a notice indicating—
 - (a) the reference number given under article 42(2) to the application or review in the register of licences,
 - (b) the name and address of the applicant or the licensee,
 - (c) the class or classes of activity and nature of the activity in accordance with the First Schedule to the Act,

(d) the location and postal address (including, where appropriate, the name of the relevant townland or townlands) and the National Grid reference of the premises to which the application or review relates,

(e) the date of the giving of the notification under section 87(2) of the Act,

(f) the manner in which the Agency proposes to determine the application or review,

(g) where a copy of the proposed licence or revised licence or the proposed reasons for refusal, as the case may be, may be obtained,

(h) that an objection which shall include the grounds for the objection and be accompanied by the appropriate fee specified in accordance with section 99A of the Act, may be made to the Agency within the appropriate period, and

(i) that a person making an objection may, within the appropriate period and in writing, request an oral hearing of the objection and that the request shall not be considered by the Agency unless it is accompanied by the appropriate fee specified in accordance with section 99A of the Act.",

(k) substituting in subparagraph (f)(ii) of article 27 "28" for "21", and

(l) substituting for sub-articles (2) to (4) of article 41 the following:

"(2) The Agency shall, within 7 days of the giving of a decision referred to in sub-article (1)(a), publish in a newspaper circulating in the district in which the activity is or will be situate, a notice indicating—

(a) the reference number given under article 42(2) to the application or review in the register of licences,

(b) the name and address of the applicant or licensee,

(c) the class or classes of activity and nature of the activity in accordance with the First Schedule to the Act,

(d) the location and postal address (including, where appropriate, the name of the relevant townland or townlands) and the National Grid reference of the premises to which the decision relates,

(e) the nature of the decision,

(f) the date of the giving of the decision,

(g) where a copy of the licence or revised licence or the reasons for refusal, as the case may be, may be obtained, and

(h) that any application for judicial review or any other legal proceedings which question the validity of the decision of the Agency must, in accordance with section 87 (10) of the Act, be instituted within the period of 8 weeks beginning on the date indicated in accordance with paragraph (f).".

Principal Polluting Substances

5. The Agency shall have regard, in fulfilling its duty under section 83(4)(a) of the Act of 1992, to the principal polluting substances listed in the Schedule.

Prescribed offences for the purposes of section 84(4) of the Act of

1992

6. For the purposes of section 84(4)(a) of the Act of 1992—

(a) a contravention of section 82(2), 82(3), 82(4), 82(9), 98(3) or 98(5) of the Act of 1992,

1992, (b) an offence under section 83(7), 86(6) or 89(3)(a) of the Act of
1996, (c) a contravention of section 32(1), 32(3) or 39(1) of the Act of
1996, (d) an offence under section 14(6), 15(3), 34(1), 36(3), 45(4),
57(4) or 58(7) of the Act of 1996, (e) an offence under section 3, 4, 10, 12 or 16 of the Local
Government (Water Pollution) Act 1977, or
1987, (f) a contravention of section 24 or 26 of the Air Pollution Act
shall be a prescribed offence.

Criteria for the determination by the Agency of a relevant person

7. In determining whether a person shall be a relevant person for the purposes of section 84(4) and (5) of the Act of 1992, the Agency shall, where an applicant or licensee is a body corporate, have regard to whether the said person is a director, manager, secretary or other similar officer of that body corporate or is otherwise in, or likely to be in, a position to direct or control the carrying on of the activity to which the relevant application or licence, as the case may be, relates.

State of the Environment Reports

8. The Agency shall prepare and publish the report required by section 70 of the Act of 1992 in 2008 and in every fourth year thereafter.

Revocation

9. Article 21 of the Regulations of 1994 is hereby revoked.

Article 5

INDICATIVE LIST OF THE PRINCIPAL POLLUTING
SUBSTANCES TO BE TAKEN INTO ACCOUNT (IF RELEVANT) BY THE AGENCY
FOR THE FIXING OF EMISSION LIMIT VALUES

Air

- (1) Sulphur dioxide and other sulphur compounds
- (2) Oxides of nitrogen and other nitrogen compounds
- (3) Carbon monoxide
- (4) Volatile organic compounds
- (5) Metals and their compounds
- (6) Dust
- (7) Asbestos (suspended particulates, fibres)
- (8) Chlorine and its compounds
- (9) Fluorine and its compounds
- (10) Arsenic and its compounds
- (11) Cyanides
- (12) Substances and preparations which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction via the air
- (13) Polychlorinated dibenzodioxins and polychlorinated dibenzofurans

Water

- (1) Organohalogen compounds and substances which may form such compounds in the aquatic environment

- (2) Organophosphorus compounds
- (3) Organotin compounds
- (4) Substances and preparations which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction in or via the aquatic environment
- (5) Persistent hydrocarbons and persistent and bio-accumulable organic toxic substances
- (6) Cyanides
- (7) Metals and their compounds
- (8) Arsenic and its compounds
- (9) Biocides and plant health products
- (10) Materials in suspension
- (11) Substances which contribute to eutrophication (in particular, nitrates and phosphates)
- (12) Substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters such as BOD, COD, etc.).



GIVEN under the Official Seal of the Minister for the Environment, Heritage and Local Government this 22nd day of June 2004.

MARTIN CULLEN,

Minister for the Environment, Heritage and Local Government.

EXPLANATORY NOTE.

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

The principal purpose of these Regulations is to amend the Environmental Protection Agency (Licensing) Regulations 1994 for the purpose of ensuring that the integrated licensing system operated by the Environmental Protection Agency under the Environmental Protection Agency Act 1992 (as amended by the Protection of the Environment Act 2003) complies in all respects with the provisions of Council Directive 96/61/EC concerning integrated pollution prevention and control.

In particular, the Regulations amend and extend the range of documentation that must accompany an application for a licence; extend the powers of the Environmental Protection Agency to decline to process licence applications where the applicant fails to provide additional information within specified timescales; update the range of bodies that the Agency must give notifications to; replace a requirement on the Agency to maintain and publish lists of proposed determinations and decisions by clear requirements to advertise the making of such determinations and decisions; and require the Agency to have regard to specified polluting substances when specifying emission limit values.

Furthermore, the Regulations prescribe offences for the purposes of the Agency making decisions on whether an applicant is a fit and proper person (as defined in the Act) to hold a licence and define a relevant person in the case of companies etc. for the purposes of the fit and proper person requirement.

The Regulations also require the Agency to publish, every four years, their report on the State of the Environment. While the Agency currently publishes the report on a four year cycle, the Regulations give legal effect to the current practice and are a first step towards transposing into Irish law Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC.