

2007 No. 2325

ENVIRONMENTAL PROTECTION

**The Large Combustion Plants (National Emission Reduction
Plan) Regulations 2007**

<i>Made</i>	- - - -	<i>5th August 2007</i>
<i>Laid before Parliament</i>		<i>9th August 2007</i>
<i>Coming into force</i>	- -	<i>10th September 2007</i>

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to the control of air pollution(b).

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999, the Secretary of State has consulted—

- (a) the Environment Agency;
- (b) the Scottish Environment Protection Agency;
- (c) such bodies or persons appearing to him to be representative of the interests of local government, industry, agriculture and small businesses as he considers appropriate; and
- (d) such other bodies and persons as he considers appropriate.

He makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 2 of the Pollution Prevention and Control Act 1999(c).

Citation and commencement

1. These Regulations —

- (a) may be cited as the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007; and
- (b) come into force on 10th September 2007.

Interpretation

2.—(1) In these Regulations—

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- (a) 1972 c. 68.
 - (b) S.I. 1988/785. Notwithstanding section 53(1) of the Scotland Act 1998 (1998 c. 46), the power of the Secretary of State to make subordinate legislation as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972 remains exercisable by virtue of section 57(1) of the Scotland Act 1998. Notwithstanding the provisions of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958), the power of the Secretary of State to make subordinate legislation as regards Wales for the purposes specified in section 2(2) of the European Communities Act 1972 remains exercisable by virtue of section 58(5) of, and paragraph 5 of Schedule 3 to, the Government of Wales Act 2006 (c. 32).
 - (c) 1999 c.24.

“the Agency” means the Environment Agency;

“calendar year” means the period of 12 months beginning on 1st January in any year;

“the Chief Inspector” means the inspector constituted to be the chief inspector under regulation 8(3) of the Pollution Prevention and Control Regulations (Northern Ireland) 2003(a);

“the Directive” means Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants (b);

“emission allowance” means the amount of emission for each of the LCPD pollutants expressed in tonnes or kilotonnes per annum and calculated in accordance with the second paragraph of Article 4.6;

“emission plan” means a national emission reduction plan referred to in Article 4.6;

“large combustion plant” means an existing plant, within the meaning given in Article 2(10), the rated thermal input of which is equal to or greater than 50 megawatts;

“LCPD pollutants” means nitrogen oxides, sulphur dioxide and dust;

“National Emission Reduction Plan” means the emission plan prepared by the Secretary of State pursuant to regulation 4(1);

“the register” means the register maintained by the Agency in accordance with regulation 6(1);

“SEPA” means the Scottish Environment Protection Agency;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(c).

(2) Other expressions used in these Regulations and in the Directive which are not defined in these Regulations have the same meaning in these Regulations as they have in the Directive.

(3) A reference in these Regulations to a numbered Article is a reference to the Article so numbered in the Directive.

Meaning of “participating plant”

3.—(1) In these Regulations, “participating plant” means,

- (a) as regards England and Wales, a large combustion plant in respect of which the permit granted under Part II of the Pollution Prevention and Control (England and Wales) Regulations 2000(d) contains a NERP provision;
- (b) as regards Scotland, a large combustion plant in respect of which the permit granted under Part II of the Pollution Prevention and Control (Scotland) Regulations 2000(e) contains a NERP provision;
- (c) as regards Northern Ireland, a large combustion plant in respect of which the permit granted under Part 2 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003 contains a NERP provision.

(2) In this regulation, “NERP provision” means a provision which requires that the operation of the large combustion plant complies with the National Emission Reduction Plan.

Preparation of plans by the Secretary of State

4.—(1) The Secretary of State must publish an emission plan in relation to large combustion plants in the United Kingdom.

(a) S.R. 2003/46.

(b) OJ No. L 309, 27.11.2001, p. 1, as corrected by corrigendum OJ No. L 319, 23.11.2002, p. 30 and amended by the Act of Accession OJ No. L 236, 23.9.2003, p. 33.

(c) 1971 c. 80.

(d) S.I. 2000/1973; relevant amending instruments are S.I. 2002/1559, S.I. 2002/2980, S.I. 2003/3311 and S.I. 2004/107.

(e) S.S.I. 2000/323.

- (2) Before publishing an emission plan, the Secretary of State must consult—
- (a) the Scottish Ministers, as regards large combustion plants in Scotland;
 - (b) the National Assembly for Wales, as regards large combustion plants in Wales; and
 - (c) the Department of the Environment Northern Ireland, as regards large combustion plants in Northern Ireland.

Provision of information by the Secretary of State

5.—(1) Within two months of the coming into force of these Regulations, the Secretary of State must provide the Agency with the information referred to in—

- (a) paragraphs 2, 3 and 4; and
- (b) in so far as it relates to the calendar year 2008, paragraph 5(a)(i),

of Part 2 of Schedule 1.

(2) After consulting—

- (a) the Scottish Ministers;
- (b) the National Assembly for Wales; and
- (c) the Department of the Environment Northern Ireland,

the Secretary of State must confirm the information referred to in paragraphs 2, 3, 4 and 5(a)(i), with or without any variations, to the Agency no later than 20th November in each year, other than in the year 2007.

(3) Any such variation, other than a variation falling within paragraph (4), takes effect on the 1st January in the following calendar year.

(4) Where it is necessary for the Secretary of State to vary the information referred to in paragraphs 2, 3, 4 and 5(a)(i) of Part 2 of Schedule 1 because a large combustion plant becomes a participating plant, the variation takes effect immediately the Agency enters the information relating to that plant on the register.

(5) Subject to paragraph (6), the Secretary of State may not vary the information referred to in paragraph (1) by deleting a participating plant.

(6) The Secretary of State may vary the information referred to in paragraph (1) by deleting a participating plant with effect from and including 1st January 2016 or from and including 1st January 2018.

(7) Before varying the information under paragraph (6), the Secretary of State must not only consult as required under paragraph (2), but must also consult the operators of all large combustion plants.

National Emission Reduction Plan register

6.—(1) The Agency must establish and maintain a register for the purposes of the National Emission Reduction Plan.

(2) The register—

- (a) must be kept in electronic form; and
- (b) must contain the information referred to in Part 2 of Schedule 1.

(3) The Agency must enter on the register—

- (a) the information which it receives from the Secretary of State under regulation 5(1); and
- (b) any variation to that information,

within 10 working days of the receipt of the information or the variation.

(4) The Agency must ensure that the register is clearly displayed on the internet.

(5) SEPA and the Chief Inspector must provide links from their respective websites to the register displayed on the internet.

Verification of reports of annual mass emissions

7.—(1) The Agency must verify the annual report of each operator of a participating plant in England and Wales relating to the actual annual mass emission of each of the LCPD pollutants from the participating plant.

(2) SEPA must verify the annual report of each operator of a participating plant in Scotland relating to the actual annual mass emission of each of the LCPD pollutants from the participating plant.

(3) The Chief Inspector must verify the annual report of each operator of a participating plant in Northern Ireland relating to the actual annual mass emission of each of the LCPD pollutants from the participating plant.

(4) SEPA and the Chief Inspector must notify the Agency of the emissions verified by them in accordance with paragraph (2) and (3) by 28th February in the year following the calendar year to which the annual report of the operator in question relates.

Transfers of emission allowances

8.—(1) Where a part of an emission allowance is transferred from one participating plant to another participating plant, the operator of each plant must notify the Agency of the transfer by—

- (a) correctly completing the form provided by the Agency for the purpose; and
- (b) sending it to the Agency within 5 working days of the date on which the transfer is made.

(2) A part of an emission allowance may be transferred at any time during the period comprising—

- (a) the calendar year in respect of which the emission allowance has been allocated by the Secretary of State; and
- (b) the period of three months following the end of that calendar year.

(3) The form referred to in paragraph (1)(a) may be provided by, and, when duly completed, sent to, the Agency electronically.

(4) If the requirements to notify under paragraph (1) are not complied with, the transfer becomes void.

(5) The Agency must not record a transfer in the register unless it has been notified of the transfer in accordance with this regulation.

(6) The Agency must record a transfer within 10 working days of notification.

(7) No emission allowance in respect of a participating plant may be carried forward from one calendar year to the next.

(8) The transfer of an emission allowance which results in a participating plant having an emission allowance of zero or less than zero has no effect.

Determination of emission allowance on plant closure

9.—(1) Where the regulator receives a notification of the closure of a participating plant, the regulator must determine the amount of the reduction of the emission allowance in relation to that participating plant for the calendar year in which the closure will take effect.

(2) Where a determination is made by SEPA or the Chief Inspector—

- (a) SEPA or the Chief Inspector, as the case may be, must notify the Agency of the amount of the reduction within 10 working days of the receipt of the notification of closure; and
- (b) the Agency must amend the emission allowance for the participating plant recorded in the register within 10 working days of receipt of the notification of the amount of the reduction.

(3) Where a determination is made by the Agency, the Agency must amend the emission allowance for the participating plant recorded in the register within 10 working days of receipt of the notification of closure.

(4) In this regulation—

- (a) “notification of closure” means notification of the closure of a participating plant; and
- (b) “the regulator” means—
 - (i) the Agency, if the participating plant in question is in England or Wales,
 - (ii) SEPA, if the participating plant in question is in Scotland, or
 - (iii) the Chief Inspector, if the participating plant in question is in Northern Ireland.

Derogations

10.—(1) If the operator of a participating plant wishes to benefit from the derogation contained in footnote (2) of part A of Annex VI to the Directive, he must apply to the Secretary of State in writing no later than 1st October in the year preceding the calendar year in which the derogation is to take effect.

(2) If the Secretary of State grants the derogation, he must inform the Agency of the derogation when he complies with regulation 5(2).

Environment Agency’s duties

11.—(1) The Agency must retain a copy of the register—

- (a) as at 1st January 2008 and 1st January in each succeeding calendar year; and
- (b) as at 30th April 2009 and 30th April in each succeeding calendar year,

unless the Secretary of State directs the Agency otherwise.

(2) The Agency must give to the Secretary of State the copies referred to in paragraph (1) within 5 working days of being directed by him to do so.

Environment Agency’s costs

12. The Agency may charge—

- (a) SEPA; and
- (b) the Chief Inspector,

a reasonable proportion of its costs in establishing and maintaining the register.

Directions

13. A direction under these Regulations—

- (a) must be in writing;
- (b) may be amended at any time by a further direction; and
- (c) may be revoked in writing at any time.

Consequential amendments

14. Schedule 2 has effect.

5th August 2007

Jonathan Shaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

THE REGISTER

PART 1

Interpretation

1. In this Schedule—

“cumulative in-year mass emissions” means the cumulative in-year mass emissions reported by the operator—

- (a) of a participating plant in England or Wales, to the Agency in accordance with the conditions of the permit granted under Part II of the Pollution Prevention and Control (England and Wales) Regulations 2000(a);
- (b) of a participating plant in Scotland, to SEPA in accordance with the conditions of the permit granted under Part II of the Pollution Prevention and Control (Scotland) Regulations 2000(b); or
- (c) of a participating plant in Northern Ireland, to the Chief Inspector in accordance with the conditions of the permit granted under regulation 12 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003(c); and

“verified annual mass emission”, in relation to a LCPD pollutant, means the total amount emitted in each calendar year verified in accordance with regulation 7.

PART 2

Contents of the register

2. Every participating plant.

3. In respect of each participating plant—

- (a) the name;
- (b) the national grid reference;
- (c) the postal address; and
- (d) the name of the operator,

of the plant.

4. In respect of each operator of a participating plant—

- (a) the name;
- (b) the postal address;
- (c) the email address; and
- (d) the telephone number,

of the operator, and, where the operator is a company, its registered address.

5. In respect of each participating plant—

- (a) for the year commencing on 1st January 2008 and each subsequent calendar year—
 - (i) the emission allowance allocated by the Secretary of State, and

(a) S.I. 2000/1973.
(b) S.S.I. 2000/323.
(c) S.R. 2003/46.

- (ii) the verified annual mass emission for each LCPD pollutant;
- (b) every variation of the emission allowance in each calendar year as a result of —
 - (i) a transfer of an emission allowance notified in accordance with regulation 8, or
 - (ii) a notification of a closure;
- (c) if the Agency is so notified, the amount of emission allowance which the operator of the participating plant wishes to transfer;
- (d) if the Agency is so notified, the amount of emission allowance which the operator of the participating plant wishes to acquire;
- (e) the cumulative in-year mass emissions;
- (f) such other information relating to the operation of the National Emission Reduction Plan as the Secretary of State may direct the Agency to include in the register.

SCHEDULE 2

Regulation 14

CONSEQUENTIAL AMENDMENTS

1. In regulation 38 of the Pollution Prevention and Control (England and Wales) Regulations 2000—

- (a) in paragraph (1), for “The Secretary of State”, substitute “Subject to paragraph (3), the Secretary of State”; and
- (b) for paragraph (3) substitute—
 - “(3) This regulation shall not apply to an emission plan.
 - (4) In this regulation—
 - (a) “emission” means the direct or indirect release of any substance from individual or diffuse sources into the air, water or land; and
 - (b) “emission plan” has the meaning given in the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007.”.

2. In regulation 25 of the Pollution Prevention and Control (Scotland) Regulations 2000—

- (a) in paragraph (1), for “The Scottish Ministers”, substitute “Subject to paragraph (3), the Scottish Ministers”; and
- (b) for paragraph (3), substitute—
 - “(3) This regulation shall not apply to an emission plan.
 - (4) In this regulation—
 - (a) “emission” means the direct or indirect release of any substance from individual or diffuse sources into the air, water or land; and
 - (b) “emission plan” has the meaning given in the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007.”.

3. In regulation 39 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003—

- (a) in paragraph (1), for “The Department”, substitute “Subject to paragraph (3), the Department”; and
- (b) for paragraph (3), substitute—
 - “(3) This regulation shall not apply to an emission plan.
 - (4) In this regulation—

- (a) “emission” means the direct or indirect release of any substance from individual or diffuse sources into the air, water or land; and
- (b) “emission plan” has the meaning given in the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain provisions relating to large combustion plants (defined in regulation 2(1) of these Regulations) and a national emissions reduction plan which Member States may define and implement under Article 4(6) of Directive 2001/80 of the European Parliament and the Council on the limitation of emissions of certain pollutants into the air from large combustion plants (OJ No L 309, 27.11.2001) (“the Directive”). The principal provisions are as follows.

Definitions of the terms used in the Regulations are contained in regulations 2 and 3.

Under regulation 4, the Secretary of State must publish a national emissions reduction plan (“the Plan”), but before doing so, must consult Scottish Ministers, the National Assembly for Wales and the Department of the Environment Northern Ireland.

Regulation 5 and Part 2 of Schedule 1 contain provisions about the provision of information by the Secretary of State concerning participating plants. (The term “participating plant” is defined in regulation 3.)

Under regulation 6, the Environment Agency must establish and maintain a register for the purposes of the Plan.

Regulation 7 contains provisions about the verification of the annual reports of the operators of participating plants.

Transfers of parts of emission allowances may be made under regulation 8. (The term “emission allowance” is defined in regulation 2(1).)

Regulation 9 provides for the calculation of the reduction of emission allowances where a regulator receives notification of closure of a participating plant. (The terms “notification of closure” and “regulator” are defined in regulation 9(4).)

Regulation 10 contains provisions about the derogation in footnote (2) of part A of Annex VI to the Directive. Provision is made about certain duties and costs of the Environment Agency in regulations 11 and 12. Schedule 2 contains consequential amendments.

A partial regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Air and Environment Quality Division, Department for Environment, Food and Rural Affairs, Area 3C Ergon House, 17 Smith Square, London SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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