

EU Emissions Trading Scheme

Guidance to Operators in relation to Temporary Closures & Rationalisation

Version 2, June 2010

Cessation of Schedule 1 activities

“An installation is considered to have closed when:

- *the Annex I activity at the installation has ceased operating; or*
- *the capacity of the Annex I activity at the installation has dropped below the thresholds contained in Annex I.”* (paragraph 71 of Appendix D of the National Allocation Plan (NAP))

Operators that cease carrying out all Schedule 1 activities at an installation must apply to surrender their permit within one month of the cessation, unless the NAP provides otherwise (regulation 16 of the Greenhouse Gas Emissions Trading Scheme Regulations 2005).

The NAP provides 2 main mechanisms under which the above requirement does not apply:

1. Rationalisation

An operator which ceases to carry out Schedule 1 activities at an installation may apply to retain allowances for the closing installation, where certain conditions as specified in the NAP are met. An application to retain allowances must be submitted within **one month of the cessation of Schedule 1 activities** using form ETS12.

The criteria for rationalisation are set out in Section F1 of Appendix D of the NAP.

If an operator submits an application to retain allowances within one month of the cessation of Schedule 1 activities, the operator is not required to surrender its permit.

2. Temporary Closures

The distinction between activities that have permanently ceased operating and activities that have only temporarily ceased is important because of the effect that this determination has on the issue of allowances under the scheme.

Paragraph 73 of Appendix D of the NAP states that:

“An operator must also notify the regulator if an installation temporarily ceases an Annex I activity and this temporary closure is intended to be, or becomes, 50 days or longer. The

regulators will use their discretion to distinguish between permanent closure and cases where a temporary period of closure has occurred during the normal course of business. Closures that are outside the “normal course of business” would be treated as having permanently ceased operation.”

If we determine that a temporary period of closure has occurred during the normal course of business, the operator is not required to surrender its permit. In order to provide the regulator with the information needed to make this determination, condition 16 of the Greenhouse Gas Emissions Permit states that:

“The Operator shall notify the Regulator of any Temporary Closure affecting The Installation, on or before the day that the period of cessation becomes 50 days in length. Any notifications shall be in writing and shall include the following:

- (a) a description of and reasons for the cessation;*
- (b) the date(s) of the cessation and the proposed re-start date(s) of the Schedule 1 activity or activities at The Installation; and*
- (c) sufficient evidence, to the satisfaction of the Regulator, to support the proposed re-start date(s).”*

Notifications under condition 16 should be submitted using form ETS8, accompanied by appropriate documentary evidence.

If Schedule 1 activities have permanently ceased at an installation, the installation will retain its allowances for the year in which the cessation occurs but the allowances will not be issued to the installation for the years after closure.

Temporary vs Permanent Closure

In order to determine that a closure is only temporary in accordance with Appendix D of the NAP, we must be satisfied that the cessation of activities at the installation is (1) in fact temporary and (2) if so, it is in the “normal course of business”.

Is the closure temporary?

An operator must provide a re-start date, justified and supported by evidence. If there is doubt as to whether or not the closure is in fact temporary, we are likely to delay our determination until the position becomes clear. If an operator has not provided a definite re-start date, supported by strong evidence within a year of the closure, the closure is likely to be treated as permanent.

Is the temporary closure in the normal course of business?

An operator must demonstrate that the closure is in the normal course of business in relation to their particular industry. Typical examples would include major maintenance shutdowns or unplanned major breakdowns. Such events lasting more than 50 days are likely to be infrequent.

Closures due to market conditions

Some sectors may also be particularly affected by market conditions and, in particular, long term business cycles and periodic recessions.

In these cases, an operator must provide evidence to show that such closure is in the normal course of business for its particular industry. Such evidence may include:

- An explanation of why and how the particular market conditions are affecting the operation of the installation;
- Documentary evidence that the installation (or similar installations) had undergone temporary closure during previous occurrences of similar market conditions; and
- Documentary evidence that the installation (or similar installations) had restarted as the market conditions had improved and the timescales involved.