

Guidance on the Greenhouse Gas Emissions Trading Scheme “Operator”

1. INTRODUCTION

- 1.1. This note provides guidance on understanding the meaning of “Operator” for the purposes of the Regulations.

2. THE DEFINITION OF OPERATOR

- 2.1. “Operator” is defined by the Greenhouse Gas Emissions Trading Scheme Regulations as: “*in relation to an installation, the person who has control over its operation*” (see Regulation 2(1)).
- 2.2. This concept of “Operator” is further expanded by the Greenhouse Gas Emissions Trading Scheme Regulations.
- a) Prior to an installation being put into operation the person who will have control over its operation is also treated as the Operator.
- b) After an installation has ceased to be in operation the person who holds the applicable permit is treated as the Operator.
(See Regulation 2(2)(a) and (b)).
- 2.3. A permit may not be granted if the regulator considers that the applicant will not be the person who will have control over the operation of the installation concerned. A regulator may not transfer a permit if it considers that the proposed transferee will not have control over the operation of the installation covered by the transfer. Enforcement notices can only be served on an Operator. A regulator may however revoke a permit where the holder of the permit has ceased to be the Operator of the installation covered by the permit.

3. WHAT DOES CONTROL MEAN?

- 3.1. The central issue is whether the applicant is able to exercise control over the operation of the installation. An Operator must also have the authority and ability to ensure that the permit is complied with.
- 3.2. A potential applicant should consider the following factors (this list is not exclusive and other relevant factors may be taken into account).

Does the Operator/proposed Operator have the authority and ability to:

- manage site operations through having day-to-day control of plant operation including the manner and rate of operation;
 - ensure that permit conditions are effectively complied with;
 - Control, monitor and report emissions of carbon dioxide
 - Be responsible for trading in Allowances so that at the end of a reporting period they can balance allowances against reported emissions.
- 3.3. The Operator might normally be expected to be the owner of the technical unit in which the activity is carried on. There may be some circumstances in which actual control of some or all of the schedule 1 activities is not in the hands of the owner (being contracted out, for example). In such cases, it

would be the person with actual control who is "the operator" and who should make the application.

- 3.4. Operations are often contracted out (particularly heat and power plants) and there is a wide range of possible arrangements from a plant that is wholly owned and operated by the contractor at one extreme to another extreme where the contractor only provides maintenance. In the former case the contractor should apply, in the latter the client should apply. There may also be complex leasing arrangements between client, contractor and in some cases third parties which the client and contractor will need to take account of in deciding who is best described as "the Operator".
- 3.5. An applicant may argue that it is the Operator of an installation because it has entered into a contract with a contractor such that the Applicant Company retains control through the contract over all of the operations. Whilst each case should be considered on its merits, the Regulators consider such arrangements might undermine the intention of the Greenhouse Gas Emissions Trading Scheme Regulations that the permit holder should be in actual control of operations at an installation. The regulators would have no way of knowing whether any such contracts remained in place and considers that they cannot monitor such commercial arrangements between operating companies and contractors. In most cases where a company has contracted out the operation of an installation the contractor rather than the contractee will be the Operator. An exception would be where the contractor provides the majority of the staff and perhaps equipment for the installation, but the contractee retains the senior staff providing primary management and operational responsibility, and thus maintains control.
- 3.6. In the case of a new installation or a modified existing installation a turnkey contractor may build the installation or modification and carry out commissioning before handing over the installation to an operating company. The turnkey contractor can only carry on schedule 1 activities in the installation under the ETS Regulations if it either holds the permit itself or if it operates the installation as a sub-contractor to the exact instruction of a permit holding operating company.
- 3.7. Where the Greenhouse Gas Emissions Trading Scheme Regulations installation is also permitted under Part 1 of the Environment Protection Act 1990 or under the PPC Regulations 2003 then the Operator identified in those permits would normally also be the Operator under the Greenhouse Gas Emissions Trading Scheme Regulations.