# PPCSGN1 – The PPC Part B Application Procedure

This guidance note is one of a series of notes that provides a detailed explanation of a particular aspect of the Pollution Prevention and Control Regime for Part B activities. In this case, the guidance note provides detail about the application procedure for obtaining a PPC Part B permit. The other guidance notes in this series are:

- PPCSGN2 Variation and Transfer of Part B Permits
- PPCSGN3 Required Standards and BAT including factors to be considered in determining BAT.
- PPCSGN4 The meaning of substantial change and triviality for Part B activities.

All of the supplementary guidance notes should be read in collaboration with the Practical Guide for Part B Activities.

All of these documents are available from your local SEPA office, or from SEPA's website at www.sepa.org.uk.

## APPLICATION PROCEDURE FOR NEW INSTALLATIONS

### Requirement for PPC Installations to Obtain Permits

Applications for Part B permits are only required to be completed for new installations, that is where the operator has NOT been issued with a Part B authorisation under the Environmental Protection Act 1990. (EPA 1990).

If you have an authorisation issued under EPA 1990, then you will be subject to the deemed application procedure described in the Part B practical Guide.

Schedule 4 to the Regulations sets out the main requirements for the content of applications. SEPA may take up to 4 months to determine an application. It is important to understand that the Regulations place the onus on Operators to assess their own impacts, explore options for improvement and make proposals for SEPA's consideration. The application should NOT simply provide basic technical details of operating methods and levels of releases, leaving SEPA to assess environmental impacts and impose appropriate controls. To receive a permit, Operators of new Part B installations should submit applications that are sufficiently detailed and comprehensive to demonstrate that the operation of their installations will meet the requirements of the Regulations by applying BAT to the operation of the installation. Operators should send THREE copies of the application form to SEPA along with any other required material.

Failure to submit sufficient information to satisfy SEPA that the Regulations have been complied with may mean that the application will be returned (with the fee less any costs incurred by SEPA) as not being "duly made". Even where an application is accepted by SEPA as being "duly made" SEPA may still refuse the application or require further information to determine the application. This may result in delays as the statutory time period for determining applications of 4 months is extended by the amount of time it takes to obtain further information.

The application must be accompanied by a fee for the type of installation as specified in SEPA's charging scheme (The Air Pollution Fees & Charges (Scotland) Scheme 2002 - copy available on request). If the fee is not submitted with the application SEPA will return it to the Operator as not being "duly made".

An application form has been prepared and is available on the SEPA website or from any SEPA office. If an applicant wishes to submit an application in an electronic format they should contact SEPA prior to making any application for requirements and permission. Operators may also draw upon or attach other sources of information in preparing/submitting applications. This might include, for example, documents relating to an installation's regulation under the Control of Major Accident Hazards (COMAH) Regulations (SI 1999/743), or the operation of an environmental management system, e.g. ISO 14001 accreditation, EMAS etc.

For an existing Installation, as already noted, the operator will be deemed to have made application. The existing authorisation should be an accurate reflection of the current status of the activity, however SEPA may issue Regulation 26 notices requiring further information, particularly where additional associated activities may be included in the permit or where for example, insufficient information is available regarding matters not previously covered by EPA, such as releases of heat from the installation. A Regulation 26 notice is simply a formal notice specifying the information to be supplied, the format and timescale for response. It is an offence to fail to comply with this type of notice.

It should be noted that the mechanism for transferring existing LAPC authorisations into LAPPC permits is different in England + Wales as to the system in Scotland. The PPC Regulations (England + Wales) specify that entire industrial sectors will transfer at the same time. However in Scotland, due to the provisions for transfer, there will be a mix of EPA 1990 and PPC 2000 regulated installations until 2007 when all activities will be transposed to PPC control.

**Pre-application Discussions**

Pre-application discussions between the Operator and SEPA (and other parties if appropriate) may be conducted in advance of an application. Neither Operators nor SEPA are under any legal obligation to participate in such discussions. However, they may be an appropriate way to address certain issues. They may clarify whether or not a permit is likely to be required, thus avoiding an application that is not necessary. SEPA may also use pre-application discussions to give general advice to Operators on how to prepare their applications or direct Operators to relevant guidance.

**Meaning of "Operation"**

Whether or not an installation is brought into "operation" may be an important factor in determining when an application is required to be made. SEPA may take up to 4 months to determine an application.

The Scottish Ministers consider that "operation" should be taken to mean the installation coming into operation intended for beneficial production. This is significantly more than the first stages of commissioning. As a guide, the following are some examples of installations coming into operation:

a) a combustion plant - when the design fuel is first fed and burned in the main combustion unit;
b) a cremator – when the first human remains are introduced in to the combustion chamber
c) a road stone coating plant - when the first aggregate is coated with bitumen for commercial use.
d) a vehicle re-spraying operation: when a car is introduced to the booth as part of a repair.

The Regulations do not prevent the Operator from proceeding with construction before a permit has been issued or even applied for. However, operation cannot begin without a permit. Therefore, any investment or construction before a permit is issued will be at the Operator's commercial risk. Moreover, any such investment in construction, which does not accord with SEPA's judgement of required standards, will normally be disregarded in assessing the balance of costs and advantages of alternative options for environmental improvements. It is important therefore that the operator discuss such proposals with the Regulator at an early stage in the design and/or construction of the plant.

## CONSULTATION PROCEDURES FOR APPLICATIONS FOR NEW PERMITS

"New permits" in this chapter means permits issued in response to an application for a Part B PPC permit.
For existing activities and Installations, there is no requirement for additional consultation.

There may be up to three types of consultation in respect of applications for new permits. Consultation with the public and with statutory consultees will almost always be required. In addition, in a situation where it is proposed to include an off site condition in a permit which requires the operator to carry out works on land belonging to a third party, then that third party will be consulted.

The purpose of consultation is :

a) to inform the public that an application has been made and provide them with access to the application details; and,
b) to provide SEPA with facts and views that it might not otherwise have,
c) to assist in determining the application and including suitable conditions in the permit.

SEPA will take into consideration any representations made by consultees during the specified time periods. However, this does not preclude SEPA from considering representations received after the formal deadline, and as a matter of good practice SEPA will do this whenever practicable and when the representations are pertinent to the application.

### Consultation with the Public

Public consultation is required in respect of almost all applications for new permits. This enables the public to raise local or wider issues or concerns which SEPA may not be aware of.

The Regulations require that SEPA maintain public registers of information. Copies of permit applications, less any information excluded on grounds of national security or commercial confidentiality, must be placed on these registers for public examination. SEPA's aim is to ensure, in particular, that the application is on the public register before the applicant advertises it.

The Regulations require the applicant to advertise an application in one or more newspapers, circulating in the locality in which the installation will be operated. The advertisement must be placed within a window of 28 days. This window begins 14 days after the application is submitted, which allows time for SEPA to check whether the application is duly made. However, in cases where there are claims of national security or commercial confidentiality, the window begins 14 days after the claims are finally determined. This advertising requirement does not apply to applications in relation to an installation involving only the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts. Applications to operate Part B mobile plant are also exempt from the requirement to advertise.

The advertisement must include details of the applicant, the address of the installation, the activities to be carried out, the register where the application can be examined, and the procedure and timeframe for making representations. Applicants may need to consult with SEPA on certain points, for example to determine what the advertisement should say about the location of the register and the address to which representations should be sent.

Advertisements must state that any person may make representations in writing to SEPA within 28 days of the date of the advertisement. For reasons of transparency, SEPA asks any person who makes representations via any other medium to also submit their comments in writing.

**Consultation with Statutory Consultees**

Under the LAPC regime, SEPA were required to consult the HSE and Local Council upon receipt of an application for a Part B authorisation (other than in the case of waste oil burners which were not subject to any consultation and petrol stations where only the local councils were required to be consulted) Under the PPC Regime SEPA must send copies of an application for a Part B PPC permit to the following consultees:

a) Health and Safety Executive in respect of installations on a site where a nuclear site licence is required under Nuclear Installations Act 1965 or a COMAH establishment;
b) the relevant Health Board in whose area the installation will be operated (other than for a Part B mobile plant)
c) the Local Authority;
d) Scottish Natural Heritage where the installation may affect a Site of Special Scientific Interest (SSSI) or a European site within the meaning of the Conservation (Natural Habitats) Regulations 1994 (other than Part B mobile plant);
e) such other persons as the Scottish Ministers may direct.

These consultation requirements do not apply for an application in the case of a permit to burn waste oil in an appliance with a net rated thermal input of less than 0.4 megawatts (a waste oil burner),

It should be noted that there is a change to the existing situation for activities, which involve the unloading of petrol at service stations or terminals. Under the EPA 1990, consultation was only required with the Local authorities for these, sites, however under the PPC Regulations, these applications are subject to the same consultation requirements as other Part B applications other than small waste oil burners)

While some statutory consultees are mandatory in all cases, others will depend on the potential effects of the installation. For example, Scottish Natural Heritage must be consulted only if a SSSI or other similarly categorised site may be affected by emissions from the activity. Care needs to be taken here, to ensure there are no omissions in the application, as that could lead to an authority being left out of consultation in error. Thus it is essential for Operators to provide complete applications, properly identifying any matters of interest to statutory consultees. Operators may therefore wish to consult with prospective statutory consultees directly, or with SEPA, to check they are addressing the relevant issues in preparing applications. SEPA may also request additional information once an application has been received to ensure that the interests of statutory consultees are given the necessary consideration. If there is doubt as to whether an installation could give rise to any matters relevant to a particular statutory consultee, the application will normally be provided to the consultee anyway.

SEPA must normally provide copies of applications to statutory consultees within 14 days of receipt. However, if an application contains claims for protection of data due to national security or commercial confidentiality, the copies are to be provided within a period of 14 days beginning 14 days after those claims are determined. To limit the circulation of sensitive data, protected information should not be provided to statutory consultees unless it is relevant to their consideration of the application.

Statutory consultees have 28 days after they are notified of an application to make representations. The purpose of statutory consultation is to access expertise in particular fields which SEPA may lack. Statutory consultees should provide SEPA with appropriate advice for determining the application and setting any permit conditions. This may relate to, for example:

a) the sensitivity of a particular part of the environment in which a statutory consultee has an interest;
b) other local issues including previous experience with the applicant;

c) requirements imposed on the installation under other regulatory regimes which may impact upon the PPC determination; or
d) specialist advice on impacts, such as the possible effects on the releases on human health

When a statutory consultee offers relevant advice within its field of expertise, SEPA will normally take account of this and should not normally adopt a different position based on its own judgement. SEPA will also need to weigh and balance the comments of different statutory consultees, other consultees and their technical assessments. SEPA may depart from the advice of individual statutory consultees in the light of this, although they should be able to justify such departures.

**Off-site Consultation**

The Regulations provide that a permit may include an "off-site" condition requiring an Operator to carry out works or to do other things in relation to land which does not form part of the installation. Such land may be owned by a third party so that the Operator would not, in normal circumstances, be entitled to carry out works. Therefore, the Regulations provide that any person whose consent is required must grant the rights needed to enable the Operator to comply with the permit condition. The Regulations provide that the person granting these rights may be entitled to compensation from the Operator. Before SEPA issues a permit containing an off-site condition, it must consult with the owner, lessee or occupier of the land concerned, or any other person who may need to grant rights in relation to the land. For new permits, the procedure for such consultation is set out in the Regulations. SEPA must serve a notice on the affected parties describing the permit condition in question and the nature of the required works. The notice must also specify the period allowed for representations. This must be at least 28 days. Any representations received within the period allowed must be considered by SEPA.

## DETERMINING APPLICATIONS FOR NEW PERMITS

### Determination Period for Requests for Additional Information

An application that is "duly made" normally should be determined within four months of submission. This does not include the time taken by the Operator to respond to any request from SEPA for additional information. A longer period may be agreed between SEPA and the Operator. If the Operator does not agree to a longer period, and the four months pass without a determination, the Operator may notify SEPA that it is treating this as a deemed refusal. The Operator may appeal against this. If the Operator does not treat a non-determination within four months as a deemed refusal, the determination period simply continues until a decision is reached.

### New Permits

Once an application has been accepted as duly made, SEPA must consult on the application as set out in Chapter 7 before determining it. In determining an application SEPA must take account of the following factors:

a) the Operator's application
b) the Operator's management systems and competence;
c) representations or comments from consultees;
d) any special arrangements established for certain types of installations, such as General Binding Rules;
e) the need to impose, permit conditions and any appropriate monitoring programme.

### Requests for Additional Information

Even though SEPA has concluded that an application is duly made, it may still judge that an application contains insufficient information to enable a permit to be granted. In such cases, SEPA may serve a notice on the applicant as outlined in the Regulations. This will specify further information to be provided and the time within which this must be submitted. The normal four-month determination period does not include time taken for the Operator to reply. SEPA will consider whether the further information provided merits additional consultation.

If information requested in this way is not submitted in the time specified, SEPA may notify the applicant that it is treating the application as having been withdrawn. SEPA will act reasonably. Time periods allowed will be sufficient for the information requested. Moreover, failure by the Operator to meet the deadline should not automatically lead to the conclusion that the application has been withdrawn. Rather, SEPA will consider the extent to which the information has been delayed and any reason for this put forward by the Operator.

If further information supplied to SEPA is still insufficient to provide a satisfactory basis for determination, SEPA may ask the Operator again to make good the deficiencies. SEPA will not determine the application until satisfied with the overall information supplied. SEPA will judge when this moment has been reached based on the facts of each case.

**Refusal of the Permit** This applies equally to applications for new permits and those which will transfer to PPC under the deemed application procedure.
SEPA must refuse a permit in certain circumstances. There are three main criteria.

Firstly, SEPA will refuse the permit where it considers that the applicant will not be the person who will have control over the operation of the installation or mobile plant. This might be the case where:

a) inadequate information is supplied by the Operator for determination of the permit or

b) requests by SEPA for further information have failed.

Secondly, SEPA must not grant a permit if it considers that the Operator will not comply with the conditions that would be imposed. This might be the case where:

a) there are inadequate management systems or insufficient competency to run the installation in accordance with the application or with any other permit conditions that SEPA would impose.

b) the proposed standards of performance outlined by the Operator do not fulfil the requirements of the Regulations or published indicative standards.

c) the environmental impact will be unacceptable. For instance a new installation could be proposed close to an extremely sensitive and valued environment but with no known way to provide adequate control.

It should be noted that refusal of a permit is equally applicable to new applications and to those deemed applications for existing processes. SEPA will act reasonably and will not refuse a permit unless the above criteria are not met.

**Grant of Permit with Conditions**

SEPA will grant a permit unless the application is refused or withdrawn. When determining the conditions of a permit, SEPA: will ensure that :

- all the appropriate preventative measures are taken against pollution, in particular through the application of BAT
- no significant pollution is caused.

The Regulations set out the specific requirements for the content of permits. The inclusion of conditions on certain issues is mandatory. In summary, SEPA will impose those conditions that it believes to be appropriate, based on BAT, and which are suitable for the individual installation.

Permits must include conditions pertaining to the following:

- ELVs for individual pollutants or groups of pollutants where appropriate. An indicative list of pollutants to be controlled is listed in Schedule 5 to the Regulations.
- avoidance of risks to the environment during periods when the installation is not operating normally, for example, during start up, malfunction, leaks or temporary stoppages.
- commissioning. Specific conditions may be required for start up of new plant.
- Setting out any monitoring of emissions to be undertaken by the Operator.

Additional conditions which can be imposed on Part B installations at the discretion of SEPA are:

- off site conditions, the setting of which will give rise to special consultation requirements.

- limits on the amount or composition of any substance produced or used in the installation, any conditions needed to reflect the requirements of certain other pieces of legislation, for example fulfilment of relevant Air Quality Standards.

8.14 All permits also contain an implied condition requiring the installation to operate in accordance with BAT, although this does not apply to particular aspects of the operation of the installation covered by explicit permit conditions.

**Competence**

The Regulations place a strong emphasis on the existence of appropriate and effective systems of management for installations to ensure a high level of protection of the environment. SEPA will consider the competence of the Operator and other aspects of the management of the installation as they determine applications and apply permit conditions.

The Regulations provide that SEPA must not issue a permit if it considers that the Operator will not operate the installation in compliance with the conditions that would be imposed. This applies to all PPC activities

The main considerations that might lead SEPA to conclude that permit conditions would not be complied with, and thus to refuse a permit, are that:

a) the operational responsibility for activities to be undertaken in the installation is unclear or inadequate;
b) the installation is not operated under a management system adequate for the purposes of ensuring compliance;
c) the Operator's technical competence is inadequate;
d) the Operator has a poor record of compliance with previous regulatory requirements.

**Types of Permit: Standard Permit and General Binding Rules**

SEPA has the option of issuing standard permits or permits defined under "General Binding Rules". General Binding Rules will be applicable to industry sectors where the activity operated is straightforward and where there is little or no variation in the way the activity is operated through out the sector. For example general binding rules may be applicable to simple coating activities or surface cleaning operations. The rules will take the form of a standard permit, for which there will be a simplified application procedure and potentially a reduced fee. At the time of writing no General Binding Rules have been generated.

Installations that do not qualify for regulation under GBRs will be subject to site-specific determination of applications and deemed applications and will be issued with a standard permit. This may involve "standard permit conditions" or a more bespoke approach to permitting, or a combination of the two. Standard permit conditions will be set out as indicative requirements in guidance notes. They will indicate the standards of performance that should normally be expected from an installation in the sector concerned, and from which any deviation should be justified. However, this approach will only be practicable for sectors that are relatively homogeneous. This approach will not work where variations in plant and operations make it impossible to identify reasonable indicative requirements for a sector or sub-sector. Permit conditions for such installations will need to be established on a case-by-case basis.

**Basis for Appeals**

The applicant has the right to appeal to the Scottish Ministers if the permit is refused (including deemed refusals) or if the applicant is dissatisfied with the conditions imposed. If SEPA treats the application as withdrawn because the Operator has not provided further information requested in the time allowed, there is no right of appeal. In this case, the Operator will have to make a fresh application if a permit is still required.

**Determination by the Scottish Ministers**

The Scottish Ministers may give directions to SEPA requiring any particular application or class of application be sent to him for determination. The Operator is to be informed if this is the case. Once the Scottish Ministers have determined the application, they will give directions to SEPA as to whether or not a permit should be issued, and the conditions to be included in the permit. In the case of applications not determined by them, the Scottish Ministers may still give directions to SEPA as described in the Regulations. These may specify conditions to be contained in all permits, permits of specified description (for example, across a particular sector) or any particular permit.

## INFORMATION AND PUBLIC REGISTERS

The PPC regime is designed to encourage public involvement in the regulatory process. This includes making information relating to applications and permits readily available to the public, through a network of registers, and the establishment of a new inventory of emissions.

The register can be of any form that affords proper public access. SEPA may choose, for example, to maintain electronic registers. If they do this they should ensure that assistance is available for members of the public who are unfamiliar with such technology.

Registers must contain the information set out in paragraph 1 of Schedule 9 to the Regulations. In summary, this mainly comprises details of:

a) all permit applications and applications for variations, including SEPA's requests for further information and Operators' responses, advertisements and comments from all consultees;
b) any permit granted by SEPA, and any variation, transfer, surrender or revocation of any permit;
c) any enforcement or suspension notice issued by SEPA;
d) any appeal, including representations from the applicant, SEPA or any other person, and the Scottish Ministers' determination of the appeal;
e) any conviction of any person for an offence under the Regulations including the person's name, date of conviction and penalty imposed;
f) any monitoring information relating to an installation obtained by SEPA as a result of its own monitoring or furnished in writing by virtue of a condition of the permit or under Regulation 24(2) and any report published by SEPA relating to an assessment of the environmental consequences of an installation;
g) any other information furnished to SEPA in compliance with a condition of a permit, a variation notice, an enforcement notice or a suspension notice; and,
h) any Direction, other than one relating to national security, given to SEPA by the Scottish Ministers under the Regulations.

### National Security

The Regulations allow information to be kept from public registers for national security. This requires a determination by the Scottish Ministers that placing the information on the register would be contrary to the national interest. An Operator who believes any information meets this test may apply to the Scottish Ministers. The Operator must notify SEPA that such a determination has been sought, but must not exclude the information from any required submission (for example a permit application) to SEPA (Figure 2/3). The Scottish Ministers will direct SEPA on the information to be excluded from the Register.

**Commercial Confidentiality**

The Regulations allow information to be withheld from the public registers as commercially confidential. Any person may apply to SEPA to have information that would otherwise be put on the register protected in this way. SEPA must give notice of its determination within 28 days, or the information is to be treated as non confidential (Figure 2). If information is accepted as confidential, the Scottish Ministers may still require it to be put on the register in the public interest. Conversely, if SEPA judges that the information is not confidential, the applicant will have 21 days to appeal to the Scottish Ministers. If there is no appeal, the information will be placed on the register.

Under the Regulations information is commercially confidential "if it's being contained in the register would prejudice to an unreasonable degree the commercial interest of any person". Operators claiming confidentiality must clearly explain how such prejudice would arise. It will not be sufficient to state a general concern over public opposition, or to assert commercial prejudice without substantiation. Operators should also ensure any confidentiality claims are complete in the first instance. SEPA may only determine claims from the information presented. If an application does not clearly demonstrate that information may legitimately be protected, SEPA must determine that it is not confidential.

Confidentiality claims may be granted for up to four years, although a shorter period may be specified. A person may re-apply for continued protection before the period ends. Where commercially confidential information is protected, the Regulations require a statement to this effect to be put on the register. If monitoring data are withheld, the Regulations also require a statement in the register indicating whether or not the permit conditions have been complied with.

**Other Exclusions**

Representation by third parties, for example on applications, must be put on the register, unless a person making representation requests otherwise. SEPA shall put a statement on the register indicating that such representations have been made, without identifying their source.

**Withdrawal of Information**

If an application for a permit or variation is withdrawn before it is determined, all references to it should be taken off the register between two and three months after the withdrawal. No further information relating to the application should be included in the register. Similarly, if an installation ceases to fall under PPC due to amendments to the Regulations, the information is to be removed from the register between two and three months after the amendment is made. Monitoring information and other information relating to the installation which is superseded by new information, may be withdrawn from the register after four years.

## WHAT TO DO NEXT

Should you require any assistance in making your application please contact your local SEPA office.

A large variety of PPC guidance is available on SEPAs website at www.sepa.org.uk.