

# PPCSGN2–Variation and Transfer of Part B Permits

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 procedures applicable to Part B activities undertaking a variation or transfer of a permit under PPC. The other guidance notes in this series are:

- PPCSGN1 The PPC Part B Application Procedure.
- 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](http://www.sepa.org.uk).

## **VARIATION PROCEDURES**

Once an Operator has obtained a permit, SEPA must be advised whenever a change in the operation of the installation is proposed. A “change” in this context is defined by the Regulations as “a change in the nature or functioning or an extension of the installation or mobile plant which may have consequences for the environment”. A “substantial change” is defined as a change in the above context which in the opinion of SEPA may have significant negative effects on human beings or on the environment. The Operator can tell SEPA about an intended change in one of two ways: a notification under Regulation 12; or an application under Regulation 13. Regulation 13 also allows SEPA to initiate a variation in the permit conditions. The procedure for variation is much the same as currently used under EPA 1990, the main difference under PPC is the requirement for the operator to make notification under Regulation 12.

### **Regulation 12**

Regulation 12 requires Operators to notify “changes in operation” to SEPA. Notification is not required when an application for a variation is made under Regulation 13. Therefore, operators should consider in the first instance whether any change they are proposing could breach the existing permit conditions, require new permit conditions, or if SEPA is likely to want to review the permit in light of the proposal. Thus notifications under Regulation 12 generally will only be appropriate in the case of minor changes in the operation of an installation. When in doubt the Operator should seek advice from SEPA as to whether a notification under Regulation 12 or an application under Regulation 13 should be made.

If an Operator decides to proceed under Regulation 12, the notification must be provided to SEPA at least 4 days before any change is intended to take place. SEPA will then acknowledge receipt of such a notification. Unless SEPA takes steps to prevent it, the Operator may go ahead with a change as long as this will not cause an offence by breaching any permit conditions. As a matter of good practice, if SEPA believes that the proposed change can proceed, it should confirm this to the Operator. Conversely, if SEPA believes that the change might in fact breach the existing permit conditions, or otherwise be subject to a formal variation under Regulation 13, then it should act to prevent the change. Ideally SEPA will advise the Operator either way within the 14 day period. However, if an Operator has not had any specific comment SEPA at the end of the 14 days, then it is responsible for ensuring that the permit conditions are not breached if it decides to go ahead with the change.

SEPA may act in several ways to prevent a change notified under Regulation 12. For example, if SEPA believes that the change might breach an existing permit condition, it could simply advise the Operator of this view and indicate that the change should not therefore proceed. If necessary, an enforcement notice can be issued to prevent the contravention of any permit conditions. Alternatively, if SEPA thinks the change would need the permit conditions to be changed, the operator may be invited to apply for a variation under Regulation 13. This may be appropriate either because it is apparent that a proposed change might breach existing permit conditions, or because the nature of the change means that a more detailed reconsideration of the permit conditions is needed. The proper submission of an application under Regulation 13 would then give SEPA the information needed to determine whether the change should be permitted. In some cases, SEPA may already know what new conditions are required, and so may issue a variation notice under Regulation 13.

This may seem complex however the important thing to remember is that if you plan on making a change to the operation of the process, then you should tell SEPA and advice will be given as to the route you should take.

### **Regulation 13: Applications to Vary Conditions**

The Operator may apply to SEPA for a variation in the permit conditions, for example when proposing to extend the installation or change operating procedures. The procedures for making and determining such an application are set out in the Regulations. They are broadly similar to those for new applications.

The application must be made in writing and the standard SEPA application form must be used. It must be accompanied by the relevant fee and contain certain information, including:

- a) name and address of the applicant and installation or mobile plant;
- b) a description of the proposed changes and variations the Operator is requesting;
- c) any additional information which the Operator wishes to be taken into account; and
- d) a statement of any changes that will arise in the matters dealt with in the original permit application (for example, the nature and quantity of foreseeable emissions, the proposed technology for reducing emissions, etc.).

A proposed variation that would involve a “substantial change” will be subject to the same consultation and advertising procedure as an application for a new permit which is detailed in Supplementary Guidance Note PPCSGN1. SEPA will notify the Operator that this is the case.

The procedures for consultation may also be followed in cases other than those concerning substantial changes. SEPA may determine that this is appropriate for some other reason, for example if the installation is located in a particularly sensitive area. In such cases, SEPA will notify the Operator of its determination. The consultation will then proceed in the same manner as if there were a substantial change.

If the proposed variation would result in the inclusion of an off-site condition in the permit the owner, lessee or occupier of the land must be notified and given the opportunity to comment

SEPA may request further information from the Operator, in the same way as it would do for an application for a new permit. If this is not supplied in the time specified SEPA may give notice that it treats the application as withdrawn.

If SEPA decides to vary the conditions, it will issue a “variation notice” under Regulation 13. This will specify the variations and the date(s) on which they will take effect. SEPA need not simply accept the Operator’s proposals, and must ensure that conditions sufficient to comply with the Regulations are imposed. SEPA may decide that some parts of the variation requested by the Operator may be reflected in new permit conditions, but others may not be permitted. SEPA may also need to impose conditions that are stricter than or additional to the Operator’s proposals. SEPA should only do this when confident the Operator will comply with the conditions. If this is not the case, the application should be refused.

If SEPA decides not to vary any part of the permit conditions upon determining an application, it must notify the Operator of this decision under Regulation 13. The Operator may appeal against this, or against the condition imposed where SEPA decides that a variation may be made.

The Regulations define the specific time periods within which applications for variations should be determined, subject to special allowances where the Scottish Ministers make the determination. Applications subject to consultation with the public and statutory consultees normally should be determined within four months of receipt by SEPA. Where such consultation is not undertaken, the period is three months. These periods do not include any time taken by the Operators to respond to requests for additional information. In addition, in either case SEPA and the applicant may agree a longer period. If the Operator does not agree to this, and SEPA fails to decide on an application within the requisite time period, the Operator may give notice that it treats the application as having been refused. The Operator may appeal against this.

### **Regulation 13: Variation of Conditions by SEPA**

Under Regulation 13 SEPA may decide to vary the conditions of the permit at any time, even if the Operator has not requested this. The most likely reason for this are findings of a permit review under Regulation 11, or the need to impose additional conditions to deal with new matters arising. However, a variation may be necessary for another reason, such as the adoption of a new EQS or development of a new technique which is considered to be BAT.

Where SEPA decides to vary the conditions of a permit, it will serve a variation notice under Regulation 13. Various aspects of consultation on a proposed variation notice will be required or may be undertaken much the same as in the case of a variation requested by the Operator.

### **Other Variations**

Regulation 13 makes provision for variations which do not affect the conditions of a permit. This could be used, for example, where the name of the Operator changes but the actual operation of the installation does not change hands, or the map or plan which must accompany the permit is amended. Regulation 7 of the Regulations also allows SEPA to replace a permit with a consolidated permit, without varying the conditions. This might be appropriate if a permit has been amended several times and a single version is to be issued for clarity

## **TRANSFER OF PERMITS**

Ownership of PPC installations may change through normal business transactions. The Regulations make provisions for permit transfers. It aims to ensure that new Operators have adequate management systems and competence to run installations properly.

### **Applications for Transfers**

The Operator of an installation wishing to transfer the whole or part of a permit to another person must make a joint application with the proposed transferee to effect the transfer. The permit and any relevant fee must be forwarded to SEPA along with contact details for the Operator and the proposed transferee. For a partial transfer, where the original Operator intends to retain part of the permit, a map or plan identifying those parts of the site and installation(s) to be transferred must accompany the application.

### **Determination of Applications**

SEPA must determine whether or not the transfer should be allowed. The Regulations, which apply to all installations, provide that SEPA is to effect the transfer unless it considers that the proposed transferee will not comply with the conditions of the transferred permit

The Regulations stipulate a two-month period for transfer applications to be determined, however a longer period may be permitted if both parties agree. If SEPA has neither effected the transfer nor rejected the application within the time allowed or agreed, the applicants may give notification that they are treating this as a deemed refusal. The applicants may then appeal against this decision to the Scottish Ministers.

### **Effecting Transfers**

Where SEPA effects the transfer of the whole permit, it must endorse the permit with the particulars of the proposed transferee as the new Operator. In the case of partial transfer, SEPA must issue a new permit to the proposed transferee covering all parts of the operation which have been transferred. This should contain the same conditions as the original permit in so far as they are relevant. At the same time, SEPA must return the old permit to the original Operator indicating the extent of the transfer, and thus the parts of the permit which remain applicable.

SEPA should consider whether the division of an installation following a partial transfer requires any new or modified permit conditions. For example, conditions may become necessary upon shared operation, to ensure that any inter-reliance needed for proper control of the installation as a whole are maintained.