

PPCSGN4 – The Meaning of Substantial Change and Triviality for PPC Part B Activities.

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 meaning of substantial change and triviality for PPC Part B activities. The other guidance notes in this series are:

- PPCSGN1 The PPC Part B Application Procedure
- PPCSGN2 Variation and Transfer of Part B Permits
- PPCSGN3 Required Standards and BAT including factors to be considered in determining BAT.

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.

THE MEANING OF SUBSTANTIAL CHANGE AND TRIVIALITY FOR PPC PART B ACTIVITIES.

SUBSTANTIAL CHANGE

This note provides guidance on criteria for deciding “substantial change” under PPC for the purposes of the Pollution Prevention and Control (Scotland) Regulations 2000 (the PPC Regulations).

Definition of Substantial Change

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.

This document aims to give guidance only on gives whether a change constitutes a substantial change. Whether SEPA will grant or permit such a change is a decision that cannot be made until the application details are available.

If an operator proposes to make a change to the operation of their process which SEPA considers to be substantial, then full consultation on the application will be required and the operator will be subject to a fee. The appropriate fees are listed in the Air Pollution Fees and Charges (Scotland) Scheme 2002 which can be accessed on SEPA's website or obtained from any SEPA office.

REQUIREMENTS FOR DETERMINING SUBSTANTIAL CHANGE AND IMPLICATIONS OF DECISIONS

A proposed change will be initially assessed in terms of the likely environmental impact of individual substances released to air. If a significant negative effect can be identified in terms of any individual substance then the change will be deemed to be substantial. If it cannot, then the assessment will move on to consider the overall impact on the environment from the proposed change. If the impact of each individual substance in the air is only small but collectively, in the view of SEPA, the aggregation of these small changes could have an overall significant negative effect, then the proposal will be deemed to be a substantial change. Similarly, if a mixture of substances is released then consideration will revolve around the consequences of the mixture on the environment.

The overall impact of a proposal might be positive, but if there are any significant negative effects on air quality resulting from an increase in one particular substance only, then that alone is sufficient to make the proposed modification a substantial change.

LEGAL DEFINITIONS

Substantial Change

A “substantial change in operation” is defined in the PPC Regulations as:

“a change in operation which, in the opinion of the Regulator, may have significant negative effects on human beings or the environment”.

It is important to note that this is different to the relevant definition used in Part 1 EPA'90, where a “substantial change” is:

“a substantial change in the substances released from the process or in the amount or any other characteristic of any substance so released”.

The PPC definition is therefore more specific than the EPA definition of substantial change in that:

- the PPC definition refers to potential negative effects on human beings or the environment, while the EPA definition applies to both positive and negative changes; and
- the PPC definition requires a change in effect (i.e. impact), while the EPA definition only requires a change in releases (regardless of impact).

Change in Operation

A “change in operation” is defined as:

“in relation to an installation or mobile plant a change in the nature or functioning or an extension of the installation which may have consequences for the environment”.

A change in the nature of an installation will be interpreted as a change made in relation to the activities carried out in the installation. (Note, however, that where the purpose of an installation is changed entirely, with one set of activities replacing a completely different set, SEPA would consider this to constitute a new installation and consequently a new application would require to be made).

A change in the functioning of an installation will be interpreted as a change in how those activities are carried out. Changes in procedures, control programs, process (e.g. order of addition of components) also constitutes a change in the functioning of the installation (i.e. changing the techniques used to carry out those activities).

An extension of an installation will cover physical extensions of capacity or size in relation to the activities carried out.

FURTHER GENERAL SEPA INTERPRETATION

Further to the above guidance, in assessing whether a proposal involves substantial change it is necessary to assess the fine or marginal addition in terms of environmental impact over the existing environmental impact of the installation as currently authorised. SEPA will assess the environmental impact of the proposed change as described and compare this to the impact of the installation as currently authorised.

Occasionally there may be repeated small extensions or changes resulting overall in significant but incremental change. Each incremental change will be addressed on its own merits on the basis of this guidance. However, there may come a point where the effects of these small changes will have an overall significant negative impact. In such a case, any individual change still would not be considered a substantial change if it does not meet the definition in its own right, but consideration will be given to requiring statutory consultation anyway (as provided for under paragraph 4(2) of Schedule 7 to the PPC Regulations).

What Impacts are Relevant?

A substantial change is a change in operation which “may have significant negative effects on human beings or the environment”. The use of the word “may” here indicates that possible or potential environmental impacts can be taken into account: it does not have to be *certain* that an impact will occur before it can be considered. However, potential impacts clearly should not be too speculative.

In terms of the scope of the “effects on human beings or the environment” which may be relevant for these purposes, it is useful to consider the definitions of “pollution” and “emission” together with other aspects of the Regulations, such as the “general principles” of Regulation 8. Together these prescribe the environmental scope of the regime.

These relevant definitions are contained in Regulation 2, as follows:

“pollution” means emissions as a result of human activity which may be harmful to human health or the quality of the environment, cause offence to any human senses, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment; and

“emission” means the direct release of substances or heat from individual or diffuse sources in an installation into the air.

PRACTICAL TESTS FOR RAPID DETERMINATION OF SUBSTANTIAL CHANGE

Within the time constraints SEPA has to form an opinion on whether or not the change proposed is substantial.

Any proposed change will be initially reviewed against the criteria identified in SEPA guidance for determining “low impact” installations (SEPA Regulatory Guidance No. 2). This guidance is available on the SEPA website or from any SEPA office. Changes at or below these levels will not be considered as substantial changes.

The following represents a rapid screening assessment. If this screening test fails to demonstrate conclusively that the change is substantial then reference should be made to the full SEPA guidance on substantial change. This can be found on SEPA’s website or from any SEPA office. There is no requirement to pursue either series of tests beyond the point where SEPA considers a substantial change criterion has been met.

As to whether or not a change is substantial is a judgement for SEPA to determine. However the following tests will provide operators with an indication as to SEPA’s determination process in this matter. If there is any doubt regarding a proposed change, the operator should contact their local SEPA officer who will be able to give advice as to whether the change is deemed to be substantial.

Rapid Screening Assessment

The following questions will be applied to the change proposal. Any positive response will indicate that the proposed change is substantial.

Does the proposed change:

- Extend the boundary of the installation?
- Introduce any effects on specifically protected areas, species or other assets of particular significance?
- Introduce materials or techniques which adversely alter the probability, magnitude and duration or complexity of the site transboundary impact?
- Introduce or extend an activity which would require a permit in its own right?
- Require an Environmental Impact Assessment to inform decision makers under land use planning legislation?
- Increase VOC emissions defined as substantial in the Solvents Directive (99/13/EC)?
- Involve the incineration or co-incineration of waste materials displaying hazardous properties that were not previously authorised?

For all changes, determining whether a proposed change could have a significant negative effect on human beings or the environment will remain paramount in this Assessment.

FOR FURTHER INFORMATION

Further information is available in “PPC REGULATORY GUIDANCE No. 1 - CRITERIA FOR DECIDING “SUBSTANTIAL CHANGE UNDER PPC”, available on SEPA’s website. This guidance has been prepared for all PPC activities, i.e. both Part A’s and Part B’s. **It should be remembered that references to discharges to land and water are not applicable to Part B activities.**

TRIVIALITY

Some types of activity that would normally fall within the remit of the PPC Regulations may be exempt from regulation on the grounds of triviality. Triviality is defined Under Part 2 of Schedule 1 of the Regulations, and is reproduced below:

<p>PART 2</p> <p>INTERPRETATION OF PART 1</p> <p>1. The following applies for the interpretation of Part 1 of this Schedule.</p> <p>2. (1) Subject to sub-paragraph (2), an activity shall not be taken to be a Part B activity if it cannot result in the release into the air of a substance listed in paragraph 12 or there is no likelihood that it will result in the release into the air of any such substance except in a quantity which is so trivial that it is incapable of causing harm or its capacity to cause harm is insignificant.</p> <p>(2) Sub-paragraph (1) does not apply to an activity which may give rise to an offensive smell noticeable outside the site where the activity is carried out.</p>

It is made clear within the Regulations that activities fall outwith Part B control if they cannot emit substances to air, or where emissions are made they are made in a quantity that is so trivial that it is incapable of causing harm. It also applies where the capacity to cause harm is insignificant. It is up to the individual operator to determine if their installation falls under this exemption, and if SEPA disagrees you may still have to fall under regulatory control.

Part B processes will not be allowed to claim exemption under triviality if the activity may give rise to an offensive smell outside the site. This applies to all types of activities and is non-negotiable.

If you have any doubts please contact your local SEPA office.