

## **UK and EU Environmental Legislative Calendar for 2010/11**

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### **Carbon Reduction Commitment Energy Efficiency Scheme Regulations**

Pursuant to enabling powers introduced under the Climate Change Act 2008, a new system of carbon dioxide emissions trading is set to be introduced into the UK as from 2010. The Carbon Reduction Commitment Energy Efficiency Scheme (CRC) will apply to large non-energy intensive private and public organisations including companies that own and occupy large property portfolios such as hotels, retailers, banks and property companies.

The scheme is one limb of the UK government's policy to cut carbon emissions by 80 percent by 2050 against the 1990 baseline. On March 12, 2009, the Department of Energy and Climate Change launched a consultation on the Draft Order to Implement the CRC which closed on June 4, 2009. Government released its response to the consultation in October 2009 and has now finalised the policy for the CRC to be implemented in April 2010. A revised draft Order is expected by the end of 2009.

Full trading participation will be required if (a) an organisation has at least one meter settled on the half hourly market; and (b) the total of their half hourly metered electricity consumption is greater than 6,000 megawatt hours ("MWh") per year during 2008 (about £500,000 per annum). Such organisations will be obliged to purchase allowances to cover their emissions. The Government will publish an annual "league table" ranking CRC participants based on their performance for the year. Revenue from the sale of allowances will then be recycled back to the participants, incorporating a bonus/penalty adjustment of between +10 percent and -10 percent in Year 1, widening annually to reach +50 percent to -50 percent by the fifth year of the CRC, depending on their position in the CRC league table.

### **IPPC Directive**

The IPPC Directive has recently been codified by Directive 2008/1/EC. The codified act includes all the previous amendments to the Directive 96/61/EC, however, its substance has not been changed. Changes may be afoot in the future, with the proposed draft Directive on Industrial Emissions (Integrated Pollution Prevention Control), which aims to integrate the current IPPC and sectoral directives (Large Combustion Plants Directive, the Waste Incineration Directive, the Solvents Emissions Directive and 3 Directives on Titanium Dioxide) to simplify the existing regime. One of the aims of this Directive is to impose effective limits on emissions through the employment of best available techniques which will require more stringent rules on their use. Another aim is to reduce the administrative burden of the regime, by focusing on installations which require closer scrutiny from an environmental safety point of view.

### **Phase 2 of the Environmental Permitting Regime**

The Government, on 30 September 2009, published its response to the consultation on the proposal to bring water discharge consents, groundwater authorisations and radioactive substances authorisations within the scope of the Environmental Permitting Regime. The proposal is part of the Government's phase 2 expansion plan in respect of environmental permitting.

The draft Environmental Permitting (England and Wales) Regulations 2010 (which will implement this proposal), are expected to come into force at some point in 2010. The Government's response indicates (amongst other points) that when the Regulations come into force any existing consents/authorisations

will automatically become environmental permits (although outstanding applications will be dealt with under the current systems) and any existing offences under the water discharge, groundwater and radioactive substance regimes will be covered by the 2010 Regulations as far as possible. The Government has intimated that further guidance will be made available as to how each of these three regimes will be treated under the Environmental Permitting system.

The Government is also currently reviewing proposals to extend the regime further to cover water abstraction and impoundment and also certain waste carriers and brokers not already included in the existing regime.

### **Draft Soil Framework Directive**

The European Council failed to reach a common position on the draft Directive in December 2007, but now may be back on the agenda during the Spanish Presidency of the EU. The proposal includes measures to address soil erosion, organic matter decline, compaction, salinisation and landslides. Contamination will also be addressed by the Directive with measures including a contaminated-sites inventory, the production of soil status report, identification of sites on which potentially polluting activities are taking place or have taken place, and the production of a remediation strategy for sites.

In a speech given by Huw Irranca-Davies (Minister for Marine and Natural Environment) in September 2009, he stated that "the UK has been one of the countries unable to support the Directive proposals". He gave several reasons, including the fact that the Directive seeks to "introduce a prescriptive "one size fits all" approach" and since the UK "already has a wide range of national measures in place" to deal with soil issues. It will be interesting to see whether agreement can be reached by the Member States over the course of next year.

### **Transposition of the Waste Framework Directive 2008**

The UK is obliged to transpose this Directive by 12 December 2010. Please refer to our attached Major Environmental Legislative Developments in the UK and EU 2008-2009 for further details.

### **Environmental Civil Sanctions Order and Environmental Sanctions (Miscellaneous Amendments) (England & Wales) Regulations**

The Government is set to introduce civil sanctions for environmental offences via the Environmental Civil Sanctions Order and Environmental Sanctions (Miscellaneous Amendments) (England & Wales) Regulations, using the enabling powers in the Regulatory Enforcement and Sanctions Act 2008.

The Countryside Council for Wales, Environment Agency and Natural England will be given the power to impose civil sanctions including restoration notices, fixed monetary penalties, enforcement undertakings, variable monetary penalties and stop notices when it is appropriate and proportionate to do so for environmental offences. The Government proposes to introduce these measures to provide an alternative to criminal sanctions for those with a more responsible approach to compliance and to provide a better graduated enforcement system. Existing mechanisms may be used by Regulators where it is more appropriate and proportionate to do so. The Government consultation on these sanctions closed on 14 October 2009 and we await the Government's analysis of the responses. The Order is likely to come into force next year.

Published in The EIC Guide to the UK Environmental Industry 2010.