

**DETERMINATION BY THE SECRETARY OF STATE OF THE APPEAL OF  
ALUMASC GROUP PLC**

**And**

**THE ENVIRONMENT AGENCY**

**Under the CRC ENERGY EFFICIENCY SCHEME ORDER 2010**

*Introduction*

1. This is a determination by the Secretary of State for Energy and Climate Change (“the Secretary of State”) of an appeal made under article 111 of the CRC Energy Efficiency Scheme Order 2010 (“the 2010 Order”). The appeal was made by Alumasc Group PLC (“Alumasc”) against a civil penalty notice served by the Environment Agency (“the EA”) on 17 July 2013 for failing to provide an annual report to the CRC Registry by 31 July 2012, contrary to article 47(1) and (2) of the 2010 Order.
2. The Secretary of State appointed David Hart Q.C. under paragraph 14 of Schedule 10 to the 2010 Order to consider the appeal and to make recommendations or reasons for being unable to make recommendations to the Secretary of State.
3. After receiving written submissions, Mr Hart delivered his report, including recommendations, to the Secretary of State on 18 February 2014 (“the Report”).

*Conclusions of the Report*

4. The Report sets out, in paragraphs 48-54, his conclusions on the appeal, followed by his recommendation. These are set out below:

“My Conclusions

48. My task is to consider whether the penalties were appropriate in all the circumstances put before me on this appeal.

49. I have set out my factual conclusions above. <sup>1</sup>I reject the EA’s contentions that Alumasc was negligent. I consider that Alumasc was

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<sup>1</sup>In summary: 2012 was the first year in which participants had to surrender allowances as well as reporting the emissions from which those allowances were to be calculated. To surrender allowances, participants were required to download a digital certificate to enable them to identify themselves and pay for the allowances. In July 2012, there were obvious IT difficulties facing participants in downloading such a certificate. CRC Allowances offered the option of an alternative manual process bypassing the electronic CRC registry. This required Alumasc (and indeed 120 other participants) to fill in a template form which was part of the EA’s email. Alumasc had become confused between the submission of an annual report and a manual “one” – i.e. the return of the “reporting template”. Nobody pointed out that completion of the template (which all agreed was an exceptional measure to cope with the IT problems) did not amount to an annual report.

perfectly entitled to file the template of its emissions, responding to the IT crisis which was nothing to do with Alumasc. It is plain that Alumasc thought that the template return, including allowances reflecting its emissions, was its annual report. The template form was far from clear that Alumasc needed to do more than that to comply with its reporting obligations.

50. I would add that even if Alumasc was mistaken or negligent in not filing its annual report at the same time as its template return (which I do not accept), the EA caused virtually all the delay which followed from 1 August onwards by not responding promptly or constructively to Alumasc's requests. Had someone in the EA said to Alumasc promptly that, yes, the EA had received its template form and its payment for allowances, but that it also needed the annual return to substantiate the emissions for which the allowances had been paid, I am confident that Alumasc would have provided this quickly – as it did on September 3.

51. I have read carefully the EA's recent statement justifying its position, though I note that no such reasons accompanied the Notice of Civil Penalty. I am unconvinced that the EA was anywhere near as helpful as it should have been from 1 August onwards, until [a] conversation on 3 September. I also note that the EA does not engage with the point that none of this confusion would have arisen had there not been IT problems preventing electronic payment for allowances. I can readily understand where Alumasc's confusion came from.

52. In summary, and on the basis of the facts which I have found, I consider that Alumasc intended to comply with the scheme, but were misled unintentionally by the change in procedures which occurred with the manual override. Their mistake would have been corrected quickly, had the EA responded quickly and fully to Alumasc's inquiries on 1 and 2 August.

53. Picking up various of the tests set out in the guidance, there was no intent to breach the rules of the scheme. It was not foreseeable that the delay would occur, given what was a genuine misunderstanding as to what was required. There is no previous history of non-compliance. Alumasc has shown itself cooperative at all times, and responded instantly when it knew what was required of it. But for the IT failure for which the EA's contractor was responsible, it would have submitted its annual report in time. The breach was purely accidental. Alumasc would have promptly supplied the correct information had it understood the EA's requirements. After all, it must have had all this information readily to hand on 24 July when it prepared its template responses.

54. In all the circumstances, I consider it unjust for any civil penalty to be levied in respect of Alumasc not filing its annual report until 3 September 2012.

## **Recommendation**

**I recommend to the Secretary of State that Alumasc's appeal be allowed and the civil penalty notice of 17 July 2013 be set aside entirely."**

5. The Secretary of State agrees with and adopts the conclusions set out in the Report.
6. In determining the appeal the Secretary of State has the power under paragraph 12 of Schedule 10 to the Order to cancel or affirm the civil penalty and where such civil penalty is affirmed, the Secretary of State may do so in its original form, or with such modifications as he sees fit.

## **Determination**

**The Secretary of State therefore determines that:**

- i. **The appeal by Alumasc against the civil penalty notice served by the EA on 17 July 2013 for failing to provide an annual report to the CRC Registry by 31 July 2012, contrary to article 47(1) and (2) of the 2010 Order is allowed on the grounds set out above and in the Report.**
- ii. **The civil penalty notice of 17 July 2013 is accordingly set aside entirely.**

*Signed by:*



Niall Mackenzie

3<sup>rd</sup> April 2014

Head, Industrial Energy Efficiency Programme, Department of Energy and Climate Change