

I am sorry to have been delayed in replying. On point 1, the bit of the current NERP guidance you highlighted will remain: my answer in September was wrong, for which I apologise.

On point 2, limitation to 1500 hours and compliance with the associated relaxed ELVs is a valid option for operators to take post TNP and I should be surprised if the Commission were to take a different view.

Richard

From:

Sent: 19 October 2011 10:42

To: Vincent, Richard (ERG-ALE);

Cc: Henderson, John; Demain, David (ERG-ALE); Obe, Nicholas (ERG-ALE)

Subject: TNP rules - points of detail

Richard,

We have a couple of further enquiries on the answers provided about the TNP rules, which it would be useful to address in preparing the TNP guidance.

1. The following answer

- Whether, under the TNP, if a part of a plant is closed after 1 January 2016, the original TNP emission ceiling for that plant (based on the original capacity entering the TNP) continues to apply? ***No. The allowance for the remainder of the plants will need to be reduced pro rata.***

appears to be inconsistent with the existing NERP approach to partial closure, set out in Section 9.4 of the current UK NERP document as follows:-

Definition of plant closure

“Closure” of a plant under Article 4(6) will include both permanent and temporary closure.

A plant will be “closed” -

(i) when an operator ceases operations with a view to that cessation being permanent; or alternatively

(ii) when, although it is intended that the plant will at a later stage resume operations, the period of closure will be appreciably longer than would be regarded as normal in an industry in which temporary closure of plants is inevitable e.g. with a view to remedial work, or in some cases reducing capacity to match demand (e.g. on regular or seasonal basis).

In deciding what is a “normal” closure for the purposes of (ii) above, account is to be taken of periods of closure of existing plants during the five year period 1996-2000 (since the initial size of the bubble will have taken into account, and been reduced by, any period of closure during 1996-2000 of plants which were operating at any time during the years in question).

Accordingly, it is necessary to include bubble readjustment mechanisms to cover circumstances where: -

(i) temporary closure is long enough to merit downward adjustment; and

(ii) existing plants temporarily closed for the purposes of Article 4(6) become operational again, requiring readjustment the other way.

The fact that the plant continues to hold a valid permit/authorisation for PPC/IPC purposes and that it continues to meet the requirements of such permit/authorisation whilst being mothballed shall not affect the plant being considered as “closed” for the purposes of Article 4(6).

Finally, the question of what ultimately constitutes a “temporary closure” will need to be decided by the environmental regulator in the light of the facts of a particular case and in accordance with the guidelines provided above.

These are a few examples of temporary closures which would not give rise to an adjustment to the bubble (for the purposes of the definition above): -

(i) Breakdown, malfunction or closing for routine or emergency maintenance;

(ii) Plant not operating because there is no demand for its services (the plant is “mothballed”) for periods that are normal in the industry.

Examples of permanent closures or temporary closures giving rise to an adjustment of the bubble would be the following: -

(i) Mothballing exceeding the average periods, normal to the particular industry;

(ii) Closure of a plant to be dismantled, thus losing its ability to operate.

The closure of a substantial part of a plant would not be regarded as “closure” of that plant (since a plant is to be regarded under the Directive as “operating” when any part of the plant operates).

The AEP operators would like to draw attention to this particular difference between the existing NERP guidance and DEFRA proposed TNP conditions.

We would also like to make the more general point that the operators will need a similar level of detailed guidance for the TNP as set out in the existing NERP guidance, to understand the full implications of taking the TNP option.

2. Is the answer to the question:-

Whether a plant can take the Annex V 1500 hour derogation upon completion of the TNP on 30 June 2020 (either in part or whole)? In whole, yes. In part will depend on how that part is delineated.

consistent with the requirements of IED Article 32(4):

4. The transitional national plan shall also contain provisions on monitoring and reporting that comply with the implementing rules established in accordance with Article 41(b), as well as the measures foreseen for each of the plants in order to ensure timely compliance with the emission limit values that will apply from 1 July 2020.

and the restatement in section 4 of the TNP Guidance Working Document:

MEASURES TO ENSURE COMPLIANCE AFTER TRANSITIONAL PERIOD

The TNP shall also include the measures envisaged for each plant in order to ensure timely compliance with the emission limit values that will apply under Chapter III of Directive 2010/75/EU from 1 July 2020 on.

In particular, it shall set out when abatement measures will be installed for those plants that are not foreseen to be complying with those limit values by 1 January 2016.

The concern is that, if there were to be a difference in view, is there a risk that the UK TNP would not pass the Commission approval stage in 2013-14?

Many thanks.

From:

Sent: 26 September 2011 11:45

To: 'Vincent, Richard (ERG-ALE)';

Cc: 'Henderson, John'; 'David Demain'; 'Obe, Nicholas (AQIP)'

Subject: RE: To LCP stakeholders group

Richard,

One further thought - could you confirm that the conclusions of the Q&A below will be incorporated into the TNP proposals that are scheduled for circulation this October, under the DEFRA action from the last LCP Stakeholders meeting highlighted below?

- *The EDF representative said that at first scan he agreed with Richard Vincent's assessment. There was some useful wording on the wider decision pathways. The hope would be that with the guidance in developed draft form it would be possible to move towards some final clarifications on the detailed choreography of coming in and out of the TNP. He asked Richard Vincent for his thoughts on how we would be taking forward the important minutia of doing this: he emphasised the importance of this minutia in the decision making for operators. Richard Vincent responded that there were several such issues, but he had needed sight of this guidance before it had been possible to move ahead. He proposed that Government should draw up proposals which should then be put to this group for discussion at a further meeting to be provisionally held in October/November.*

If the TNP proposals document could include the rules that apply to decisions for the IED limited life derogation option, that would bring together everything that operators need to consider in making decisions on IED compliance routes. Alternatively, the limited life (and default ELV compliance?) might be better placed in a parallel document, to allow clarity and focus on the TNP arrangements. Either way, operators are anxious to have formally documented guidance from DEFRA as a reference underpinning their decisions.

The DEFRA TNP/LLD guidance documents could be usefully incorporated as annexes to the EA regulatory framework for IED implementation, to set out the rules for operator IED decisions.

Many thanks.

From:

Sent: 22 September 2011 10:15

To: Vincent, Richard (ERG-ALE);

Cc: Henderson, John; David Demain; Obe, Nicholas (AQIP)

Subject: RE: To LCP stakeholders group

Richard,

Many thanks for these answers.

We have just one immediate query - for those questions where the comment is made that

“...In part will depend on how that part is delineated...”

could you expand a little on what alternatives for delineation DEFRA would envisage as affecting the answer?

From an operator perspective, in practice, parts of plant would have to be formed by one or more complete boiler units, so the options for delineation in terms of “what is in which part”

are simply different combinations of units in each part. Is there any way this would affect the qualification to move to a 1500 hour derogation?

Or, is there an issue over the timing of when a part of plant is delineated?

In other words, in order to be treated as a separate part of plant at a later decision point, that part would have had to be delineated at an earlier decision stage?

Many thanks.

From: Vincent, Richard (ERG-ALE) [mailto:Richard.Vincent@defra.gsi.gov.uk]

Sent: 21 September 2011 16:46

To:

Cc: Henderson, John; David Demain; Obe, Nicholas (AQIP)

Subject: FW: To LCP stakeholders group

I'm sorry to have been so long in responding to these straightforward questions. Please see my interpolations below.

Best wishes

Richard

From:

Sent: 20 July 2011 14:29

To: Demain, David (ERG-ALE)

Cc: Vincent, Richard (ERG-ALE); Obe, Nicholas (ERG-ALE);---; Henderson, John

Subject: RE: To LCP stakeholders group

David, Richard,

I'm writing on behalf of the AEP Environmental Regulation Working Group, as-----.

Thank you for circulating the draft guidance from the Commission on the preparation of Transitional National Plans.

We have some serious concerns about the Start-up & Shut-down guidance and will provide a detailed assessment separately.

From an initial scan, the TNP rules appear to be in line with existing UK protocols and precedent.

However, operators will need to examine these in detail and we may have some comments to raise following this, in time for the deadline of 15th August.

Now that the draft TNP guidance is issued, operators hope that a final UK conclusion can be reached, in the near future, on queries raised by operators on the possible combinations and timings of the various compliance options available under the IED.

The pending questions from operators include:-

- Whether a plant can leave the TNP to take the 17,500 hours Limited Life Derogation (LLD) by the LLD declaration deadline? **Yes.**
- Whether a plant can leave the TNP before 1 January 2016 to be subject to Annex V ELVs from 1 January 2016? **Yes.**
- Whether a plant can leave the TNP at any time between 1 January 2016 and 30 June 2020 to be subject to Annex V ELVs? **Yes.**
- Whether a plant can leave the TNP at any time between 1 January 2016 and 30 June 2020 to be subject to Annex V 1500 hour derogations (either in part or whole)? ***In whole, yes. In part will depend on how that part is delineated.***
- Whether a plant can close upon completion of the TNP on 30 June 2020 (either in part or whole)? **Yes.**

- Whether a plant can take the Annex V 1500 hour derogation upon completion of the TNP on 30 June 2020 (either in part or whole)? ***In whole, yes. In part will depend on how that part is delineated.***
- Whether, under the TNP, if a part of a plant is closed after 1 January 2016, the original TNP emission ceiling for that plant (based on the original capacity entering the TNP) continues to apply? ***No. The allowance for the remainder of the plants will need to be reduced pro rata.***
- Whether, before 1 January 2016, a plant can reverse a decision to take the LLD? ***No. The undertaking has to be made by 1 January 2014 and is binding thereafter.***
-
- For those plants in the TNP, would formal permit conditions for compliance with the IED after the transitional period be required and, if so, when? ***It will be for the regulator to consider in each case, but in general I would expect the plant's permit to be varied to reflect its passage into the TNP (which for many will be a quite smooth transition from NERP) and then varied again from the expiry of TNP.***

For completeness, operators' understanding is that:-

- A plant cannot enter the TNP or take the LLD once the IED deadlines for these options have passed.
- The whole of a plant must be subject to the TNP, so only a whole plant can leave.
- The whole of a plant must be subject to an LLD.
- A part of a plant can be subject to the 1500 hour derogation under Annex V with the remainder of the plant being subject to the standard ELVs.

Concerning the latest IED programme, we note that there are entries for the issue of the TNP regulations (and prior consultation), but no specific entries for the other environmental regulations that we presume will be necessary to implement the ELV and LLD requirements.

We have no immediate comments on the latest regulator versions of the IED interpretation issues note and the mixed techniques note.

Best regards.

From: Demain, David (ERG-ALE) [mailto:david.demain@DEFRA.GSI.GOV.UK]
Sent: 14 July 2011 15:55
To: Demain, David (ERG-ALE)
Cc: Vincent, Richard (ERG-ALE); Obe, Nicholas (ERG-ALE)
Subject: To LCP stakeholders group

To the LCP Stakeholders Group

Dear Colleagues,

Please find attached 2 self explanatory documents. Richard Vincent would be grateful for comments on the documents to reach him, copied to Nicholas Obe, by close on Monday 15 August, but sooner if at all possible. The papers will form part of the discussion at the meeting of this group next week on 21 July.

<<Article 41 SUSD working document 1 Jul 2011 (final).doc>> <<Article 41 TNP working document 1 Jul 2011 (final).doc>>

Kind regards

David

David Demain
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