EXPLANATORY MEMORANDUM TO

THE POLLUTION PREVENTION AND CONTROL (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2011

SR 2011 No. 212

Introduction

This Explanatory Memorandum has been prepared by the Department of the Environment to accompany S.R. 2011 No. 212 which is laid before the Northern Ireland Assembly.

The Statutory Rule is made under Article 4 of the Environment (Northern Ireland) Order 2002 and is subject to negative resolution procedure before the Assembly.

The rule is due to come into operation on 25th June 2011.

Purpose

The Regulations will transpose Article 37 of Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide, commonly known as the Carbon Capture and Storage (CCS) Directive.
The Regulations will also make some minor amendments to the Pollution Prevention and Control Regulations (Northern Ireland) 2003 (the 2003 Regulations).

Background

Directive 2009/31/EC entered into force on 5 June 2009 and must be transposed into national legislation no later than 25 June 2011.

A legal framework for carbon dioxide storage in the UK was established in the Energy Act 2008. Whilst it has been proposed that the CCS Directive is largely implemented at a UK-wide level by the amendment of this Act, the CCS Directive also amends a number of other European Directives which are already implemented through local legislation.

In particular Article 37 of the CCS Directive amends the Integrated Pollution Prevention and Control (IPPC) Directive 2008/1/EC by adding a new point 6.9 to Annex I.

Detail

Article 37 of the CCS Directive amends the IPPC Directive by requiring the capture of carbon dioxide for the purposes of storage to be regulated by the IPPC Directive as an Annex I activity in its own right.

The IPPC Directive applies to industrial activities listed in its Annex I and those activities are incorporated in Part 1 of Schedule 1 to the 2003 Regulations. The IPPC Directive requires any installation where one or more

of the listed activities is carried out to have a permit containing emission limit values and other conditions based upon the application of best available techniques (BAT). However, it also applies to any other activity, whether listed in Annex I or not, which is directly associated with a listed activity and which could have an effect on emissions and pollution. Such activities are often referred to as "directly associated activities" (DAAs).

In practice, it would be expected that nearly all CCS activities would be directly associated with combustion plants which are already subject to IPPC, with the result that the carbon capture activity would itself be subject to IPPC as a DAA. However, Article 37 of the CCS Directive requires the carbon capture activity to be added to Annex I of the IPPC Directive.

An amendment has been made to the 2003 Regulations to insert a new section 6.10 'Carbon capture and storage' into Part 1 of Schedule 1.

The Department is also taking this opportunity to make some minor amendments to the 2003 Regulations as follows:

- amending the Interpretation note to section 1.1 of Schedule 1 to reduce the burden of regulation on waste-derived fuel where it has ceased to be waste before being burned as a fuel;
- deregulating the manufacture of powder coating materials, except for those using lead chromate and triglycidyl isocyanurate (TGIC), to be excluded from section 6.5 of Schedule 1 as a result of the better regulation review process carried out by Defra, in consultation with the devolved administrations;
- deregulating the drying of green crops (grass, alfalfa, hay, straw, perennial ryegrass and tall fescue) which would place these in the list of exempted activities in section 6.8 of Schedule 1. This is also as a result of the better regulation and review process; and
- in Part 2 of Schedule 4, the replacement of the Health and Social Services Board by the Regional Agency for Public Health and Social Well-being, to reflect the name of the new body.

Consultation
A public consultation exercise took place between February 2010 and April 2011. A total of 4 responses were received. The overall response to the consultation was positive.

Equality Impact
The Department carried out an equality screening exercise on the draft legislation. No adverse impacts for any of the nine section 75 categories were identified. A full Equality Impact Assessment was therefore not required.

Regulatory Impact Assessment
A Regulatory Impact Assessment was not carried in Northern Ireland as we are currently not aware of any individual or organisation planning to undertake carbon capture storage in Northern Ireland, therefore there is no immediate

impact on businesses or the voluntary sector. An Impact Assessment was conducted on a UK-wide basis and it concluded a cost neutral outcome for implementing Article 37 of the CCS Directive.

In relation to the deregulation of powder coating materials, there is one operator in Northern Ireland currently permitted under the 2003 Regulations. Operators however can make savings by substituting the two regulated substances to other less toxic materials. In addition the two toxic substances that are currently regulated will be phased out under Registration Evaluation Authorisation and restriction of Chemicals (REACH) from 2015.

Financial Implications
There are no financial implications associated with these Regulations.

Section 24 of the Northern Ireland Act 1998
The Statutory Rule complies with the provisions set out in Section 24.

EU Implications
Not applicable.

Parity or Replicatory Measures
The other Devolved Administrations will transpose their legislation by 25 June 2010.

Additional Information
Not applicable**.**