

EU Emissions Trading Scheme

Guidance to Operators on the application of Civil Penalties

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Introduction

By 30 April each year, operators are required to surrender sufficient allowances to cover their reportable emissions made in the previous year. Any operator who fails to comply with this requirement shall be liable to a civil penalty which will be imposed by the appropriate UK Regulator.

It is essential that operators understand exactly when civil penalties will be imposed under the EU ETS.

Civil penalties

1. The Greenhouse Gas Emissions Trading Scheme Regulations 2005 provide for civil penalties to be imposed:
 - (a) where an operator fails to comply with its permit condition requiring the surrender of sufficient allowances by 30 April each year to cover its annual reportable emissions made in the previous year (Regulation 39); and
 - (b) subject to certain exceptions, where a report required to be submitted in accordance with the requirements of a surrender or revocation notice understates the reportable emissions (Regulation 40).

Failure to surrender sufficient allowances by 30 April

2. In these cases, the penalty is calculated as the amount in tonnes of carbon dioxide equivalent by which the annual reportable emissions exceeded the number of allowances surrendered multiplied by €100.
3. The penalty is mandatory and is set in the EU ETS Directive, which has been implemented in every Member State in the European Union. There is therefore no discretion whatsoever given to the regulator as to whether or not to impose the penalty.
4. Operators shall be liable to a civil penalty in all cases where the operator has failed to surrender sufficient allowances by 30 April each year to cover its annual reportable emissions made in the previous year.
5. There is a requirement to surrender allowances to cover “annual reportable emissions” and this means all carbon dioxide emissions arising from the Schedule 1 activities carried out at the installation. So, the circumstances that will lead to the imposition of a civil penalty include situations where:
 - (a) an error (e.g. a calculation error) is discovered in a verified report of annual reportable emissions after the report has been submitted and the

error means that the annual reportable emissions have been understated;
or

- (b) an emissions source has been omitted from an operator's permit resulting in emissions from this source not being reported;

and the operator did not surrender sufficient allowances by the 30 April deadline to cover the understatement in either of the above examples.

- 6. Civil penalties will be imposed in the above situations even if the failure to surrender sufficient allowances has arisen because of an inadvertent error by the operator or a mistake by the verifier over which the operator had no control or influence.
- 7. Operators will also be liable to a civil penalty where the operator has failed to surrender sufficient allowances by the deadline and in accordance with the requirement set out in a surrender or revocation notice. This is because the requirement to surrender allowances in a surrender or revocation notice is treated as if it were a permit condition.

Understatement in a report submitted in accordance with a surrender or revocation notice

- 8. Civil penalties may also be imposed where a report required to be submitted in accordance with the requirements of a surrender or revocation notice, understates the reportable emissions from an installation.
- 9. The penalty in these cases is calculated as the amount of the understatement multiplied by €100.
- 10. An operator may avoid a civil penalty in these cases if he (a) surrenders allowances equal to the understatement; and (b) satisfies the regulator that he did not knowingly or recklessly make the understatement.