

05 April 2017

Digital Crawley 1 SARL

11, Blvd. du Prince Henri,
L-1724 Luxembourg
Grand-Duchy of Luxembourg
L-1724 Luxembourg

pcranfield@digitalrealty.com

Dear Sir / Madam

THE GREENHOUSE GAS EMISSIONS TRADING SCHEME REGULATIONS 2012 (the Regulations)- regulation 50

NOTICE OF A CIVIL PENALTY

Reference: NC13302-P3-1

Operator: Digital Crawley 1 SARL

Installation/ Site: LGW15 -Back up Generators

Permit reference: UK-E-IN-13302

Following the Notice of Intent to impose a civil penalty that we sent to you on 04 January 2017, and your response, we have now considered all aspects of the non-compliance.

The Environment Agency imposes a civil penalty of £3,987.91 on you for the following reason:

You carried out a regulated activity between 14 January 2015 and 26 January 2016 which was not authorised by a permit, contrary to regulation 9 of the Regulations.

The Regulations set out a formula for calculating the penalty, which includes the estimated amount of costs avoided by the operator and the estimated amount of reportable emissions from the installation in the relevant period multiplied by the carbon price. These elements are together referred to as the 'total costs avoided'. The regulator may increase the amount determined in accordance with the formula by a percentage designed to ensure that the penalty exceeds the amount of any economic benefit that the operator has obtained as a result of the non-compliance. This element is referred to as 'the punitive element'. The Secretary of State has directed the regulator in relation to aspects of the penalty calculation.

The maximum penalty to which you are liable under regulation 52 of the Regulations is £12,886.95 (being £12,273.28 for the total costs avoided and £613.66 for the punitive element).

After considering the public interest factors as detailed in our Enforcement & Sanctions

Guidance, we have decided to reduce the penalty to £3,987.91.

The most relevant public interest factors that we have taken into account in reaching this decision are intent, foreseeability, nature of the non-compliance, financial implications, deterrent effect and attitude of the offender. The requirement for an operator to hold a permit where regulated activities are being carried out is a fundamental requirement of the EU ETS. We consider that the breach was foreseeable and that the imposition of a civil penalty will act as a deterrent to prevent you and other operators from such non-compliance in the future.

We consider that you did avoid paying the relevant subsistence fee and the cost of purchasing allowances to cover emissions during the period of non-compliance. We are satisfied that you did not avoid the monitoring, reporting and verification costs and the variation fee. Therefore, the 'total costs avoided' element of the penalty has been reduced by £8,284.93.

We also consider that you did not deliberately intend to avoid compliance or the costs of compliance, notified us voluntarily of the non-compliance, applied for a permit after you became aware of the non-compliance and have been co-operative with us. The punitive element of the penalty has been reduced to take account of this.

We therefore consider a penalty of £3,987.91 to be appropriate.

Payment of £3,987.91 is due on 5 June 2017. Payment details are given in the notes section overleaf.

You may appeal against this notice to the First-tier Tribunal within 28 calendar days of the date of this notice. You should refer to the Regulations and the notes section below for details of the appeal process.

In accordance with our Enforcement and Sanctions Guidance, your name, the legal requirement that you have not complied with and the amount of the penalty will be published on the GOV.UK website.

No information will be published until any appeal has been determined or the time for appealing has passed.

You may wish to seek independent legal advice.

If you wish to discuss this notice with the Environment Agency, please e-mail ethelp@environment-agency.gov.uk.

Yours faithfully



Lesley Worswick
Deputy Director Trading & Regulatory Services

Authorised to sign on behalf of the Environment Agency

c.c. bkennedy@carbon-clear.com, pcranfield@digitalrealty.com, rskinner@carbon-clear.com, slikhtman@carbon-clear.com, slemmon@carbon-clear.com.

Notes:

Appealing this notice

You are entitled to appeal against the Notice of Civil Penalty under regulation 73 of the Regulations to the First-tier Tribunal. Written notice of the appeal must be submitted to the First-tier Tribunal at the address provided below no later than 28 calendar days after the service of this notice. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 sets out the procedural rules relating to these appeals.

Hard copy: General Regulatory Chamber, HMCTS, PO Box 9300, Leicester, LE1 8DJ

or email: GRC@hmcts.gsi.gov.uk

The notice of appeal must include:

- the name and address of the appellant;
- the name and address of the appellant's representative (if any);
- an address where documents for the appellant may be sent or delivered;
- the name and address of any respondent;
- details of the decision to which the appeals relates;
- the result the appellant is seeking;
- the grounds on which the appellant relies; and
- a copy of any written record of that decision, and any statement of reasons for that decision that the appellant has or can reasonably obtain.

You may withdraw an appeal by notifying the First-tier Tribunal at the above address.

Payment

BACS & CHAPS PAYMENTS

All payments by BACS or CHAPS transfers should be made in GBP and should be made to the following account, using the reference codes below.

Royal Bank of Scotland PLC, London Corporate Service Centre, CPB Services 2nd Floor, 280 Bishopsgate, London EC2M 4RB

IBAN: GB17NWBK60708010022279

SWIFTBIC: NWBKGB2L

Company Name: The Environment Agency

Account Name: EA Treasury Funds

Account Number: 10022279

Sort Code: 60-70-80

Your unique payment reference code to be used in your BACS/CHAPS transfer is the Notice of Civil Penalty reference number quoted on the first page of this document.

It is essential you cite this code in your transfer to ensure we can identify the payment as yours when it arrives.

Please send your payment remittance advice to ea_fsc_ar@sscl.gse.gov.uk

CHEQUE PAYMENTS

Environment Agency, North West Region, Richard Fairclough House, Knutsford Road, Warrington, WA4 1HG Tel: 08708 506 506

All cheques should be made payable to 'the Environment Agency' and sent to The Environment Agency, Climate Change Trading and Regulatory Services, Richard Fairclough House, Knutsford Road, Warrington, WA4 1HT.

You should make your payment in GBP and mark your cheque 'account payee only'.

Please quote your Notice of Civil Penalty reference number (on the first page of this document) on the reverse of your cheque.