L.N. 93 of 2010

ENVIRONMENT PROTECTION ACT
(CAP. 435)

Certain Fluorinated Greenhouse Gases Regulations, 2010

BY virtue of the powers conferred by articles 9 of the Environment Protection Act, the Prime Minister has made the following regulations:

Citation.

1. The title of these regulations is the Certain Fluorinated Greenhouse Gases Regulations, 2010.

Scope and applicability.

2. (1) These regulations contain provisions for the application of Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006, as amended, on certain Fluorinated Greenhouse Gases, and all its implementing acts, hereinafter referred to as "the EC Regulation".

(2) The provisions of the EC Regulation shall be implemented and enforced under the Act.

Definitions.

3. For the purposes of these regulations and of the EC Regulation, the following definitions shall apply:

"competent authority" means the Malta Environment and Planning Authority as prescribed by the notice entitled Nomination of the Malta Environment and Planning Authority as the competent authority, and such other body or person as the Minister responsible for the Environment may by order in the Gazette prescribe and different bodies or persons may be designated as the competent authority for different provisions and different purposes of these regulations;

"course" means any taught form of instruction approved in writing by the competent authority for the purposes of these regulations;

"implementing Acts" shall refer to the following Commission Regulations:

a) Commission Regulation (EC) 1493/2007 of 17 December 2007 establishing pursuant to Regulation (EC) No 842/2006 of the European Parliament and of

the Council, the format for the report to be submitted by producers, importers and exporters of certain fluorinated greenhouse gases;

b) Commission Regulation (EC) 1516/2007 of 19 December 2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, standard leakage checking requirements for stationary refrigeration, air conditioning and heat pump equipment containing certain fluorinated greenhouse gases;

c) Commission Regulation (EC) 1494/2007 of 17 December 2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, the form of labels and additional labelling requirements as regards products and equipment containing certain fluorinated greenhouse gases;

d) Commission Regulation (EC) 1497/2007 of 18 December 2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, standard leakage checking requirements for stationary fire protection systems containing certain fluorinated greenhouse gases;

e) Commission Regulation (EC) No 303/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of companies and personnel as regards stationary refrigeration, air conditioning and heat pump equipment containing certain fluorinated greenhouse gases;

f) Commission Regulation (EC) No 304/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of companies and personnel as regards stationary fire protection systems and fire extinguishers containing certain fluorinated greenhouse gases;

g) Commission Regulation (EC) No 305/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of personnel recovering certain fluorinated greenhouse gases from high-voltage switchgear;

h) Commission Regulation (EC) No 306/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of personnel recovering certain fluorinated greenhouse gas-based solvents from equipment;

i) Commission Regulation (EC) No 307/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements for training programmes and the conditions for mutual recognition of training attestations for personnel as regards air-conditioning systems in certain motor vehicles containing certain fluorinated greenhouse gases; and

j) Commission Regulation (EC) No 308/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, the format for notification of the training and certification programmes of the Member States.

"logbook" shall refer to a hard bound, consecutively page numbered book containing

(a) on the first page, the name, I.D. number and license or permit number of the personnel involved, and

(b) other details as may be approved from time to time by a notice from the competent authority in the Gazette;

"personnel involved" includes all producers, importers, shippers, exporters, persons who handle fluorinated greenhouse gases in fixed refrigeration and heatpump equipment, stationary fire protection and fire extinguishers,

high voltage switchgear, foam blowing, as a cleaning solvent, as propellants and solvents within aerosols, foam blowing and air conditioning in motor vehicles, technicians, any appropriate bodies and users, including retailers and any persons involved in the destruction, recovery, reclamation and recycling of the substances covered by the EC Regulation;

"registration" means, for the purposes of this regulation, the application by an individual and, or entity with the competent authority to carry out activities in relation to these regulations;

"shipment" means any movement of goods between Malta and the remainder of the European Community, and "shipper" shall be construed accordingly.

Registration of personnel.

4. All personnel involved shall be registered with the competent authority under such conditions as may be determined by the authority.

Qualifications of personnel.

5. (1) All personnel involved shall:

(a) possess the minimum qualification requirements as defined by the EC Regulation. These minimum qualification requirements will take the form of a course with a duration and curriculum approved by the Competent Authority and European Commission respectively; and

(b) duly fill out a logbook, stating all amounts of fluorinated greenhouse gases recovered, recycled, reclaimed or destroyed during their day to day operations, together with the quantities of Fluorinated Greenhouse Gases charged during the servicing of equipment utilising such substances. These amounts shall be specified by their weight in Kg:

Provided that such amounts may also be subject to random audits by officials of the competent authority.

(2) Only natural or legal persons authorized in writing by the competent authority may conduct courses for the purposes of qualifying personnel in terms of this regulation.

(3) All personnel involved may only handle, use or trade in, whether for profit or otherwise, substances falling within the scope of the EC Regulation or in products containing such

substances if they are in possession of the minimum qualification requirements as defined in sub-regulation (1) of this regulation.

(4) All natural or legal persons involved in the handling, use, trade, recovery, recycling, reclamation or destruction of substances falling within the scope of the EC Regulation shall :

(a) be registered with the competent authority under such conditions as may be determined by the authority from time to time; and

(b) duly fill out a logbook, stating all amounts of controlled substances recovered, recycled, reclaimed or destroyed during their day to day operations:

Provided that they may also be subject to random audits by officials of the competent authority.

Shipments of waste.

6. (1) Should any shipment or export of substances falling within the scope of the EC Regulation to facilities involved in the recovery, recycling, reclamation and destruction of such substances take place, such shipment shall comply with EEC Regulation 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community and with the Environment Protection (Control of Transboundary Movement of Toxic and other Substances) Regulations, 2000. L.N. 205 of 2000.

(2) These regulations shall be without prejudice to the Waste Management (Permit and Control) Regulations, 2001 or to measures adopted following regulation 3 of those regulations. L.N. 337 of 2001.

Persons owning equipment.

7. (1) Existing fixed equipment with more than three kilograms of fluorinated greenhouse gases shall be registered with the competent authority under such conditions as may be determined by the authority within one year from the date of publication of these regulations.

(2) New fixed equipment with more than three kilograms of fluorinated greenhouse gases shall be registered with the competent authority within 15 days of its sale. The retailer shall supply the information as required by regulation 11 (b) for registration purposes.

(3) Any person owning fixed equipment with more than three kilograms of fluorinated greenhouse gases shall:

(a) have this equipment checked for leakages as stipulated by the EC Regulation; and

(b) keep a log of all checks in a duly filled out logbook.

Facilities for storage.

8. For the purposes of these regulations, all facilities used for the storage of substances falling within the scope of the EC Regulation shall be registered with the competent authority under such conditions as may be determined by the authority. Such registration may be reviewed, renewed or cancelled at any time by the authority. Cancellation of registration shall not entail any right of compensation.

Users and shippers.

9. Every year before the 31st January, each user and shipper of substances falling within the scope of the EC Regulation shall communicate to the competent authority data as specified below for each controlled substance in respect of the period from the 1st January to the 31st December of the preceding year. The competent authority shall establish the format of this report in such manner that -

(a) each shipper shall communicate the following:

(i) the name and serial number of the shipper;

(ii) the date of shipment;

(iii) the country of origin;

(iv) the country of destination;

(v) any quantities of controlled substances shipped into and out of Malta;

(vi) the nature of the substances differentiating between virgin, recovered and reclaimed;

(vii) any other details as may be required from time to time by the Competent Authority by a notice in the Gazette; and

(b) each user, including any producer who uses such substances shall communicate the following:

(i) the name and serial number of the user;

(ii) quantities used;

(iii) the nature of the substance, differentiating between virgin, recovered and reclaimed;

(iv) the nature of the use;

(v) the quantities held in stock;

(vi) any quantities recovered recycled, reclaimed or destroyed;

(vii) any other details as may be required from time to time by the Competent Authority by a notice in the Gazette.

Persons handling fluorinated greenhouse gases.

10. (1) Before the 31st January of each year, persons who handle fluorinated greenhouse gases in fixed refrigeration and heatpump equipment, stationary fire protection and fire extinguishers, high voltage switchgear, solvents, air conditioning in motor vehicles, and refrigeration technicians shall communicate to the competent authority the information requested in sub-regulation 9(b) of these regulations, together with the following :

a) the name of suppliers of substances used by them and falling within the scope of the EC Regulation; and

b) the quantity and destination of such substances transferred and, or handed over by whatever means.

(2) Upon request by the competent authority, persons who handle fluorinated greenhouse gases in fixed refrigeration and heatpump equipment, stationary fire protection and fire extinguishers, high voltage switchgear, solvents, air conditioning in motor vehicles, and refrigeration technicians shall send copies of their logbooks to the competent authority for review. These copies must be signed off by the official person in whose name the logbook was issued as a true copy of the original logbook in their possession.

Retailers.

11. Before the 31st January of each year, retailers handling substances falling within the scope of the EC Regulation or products containing such substances shall send copies of their

official logbooks to the competent authority for review. Such copies shall be signed off by the official person in whose name the logbook was issued as a true copy of the original logbook in their possession and shall contain the following information:

(a) for substances falling within the scope of the EC Regulation:

(i) the name and serial number of retailer,

(ii) the name and serial number of shipper,

(iii) the date of purchase from shipper,

(iv) the nature of the substance (differentiating between virgin, recovered and reclaimed stock),

(v) the nature of the use,

(vi) the quantity,

(vii) the date of sale by type and quantity,

(viii) the name and registration number of the buyer,

(ix) any other details as may be required from time to time by the competent authority by notice in the Gazette; and

(b) for fixed equipment with a refrigerating fluid charge of more than three kg:

(i) the name and serial number of retailer,

(ii) the date of sale,

(iii) the charge in Kg,

(iv) the nature of the substance,

(v) the nature of the equipment,

(vi) the place of installation,

(vii) the details of the new owner,

(viii) the registration reference number of the equipment,

(ix) any other details as may be required from time to time by the competent authority by notice in the Gazette.

Equipment with more than three kg of fluorinated greenhouse gas.

12. (1) All owners of fixed equipment with more than three kilograms of fluorinated greenhouse gases shall before the 31st January of each year report the following for each specifically identified piece of equipment, for the period from the 1st January to the 31st December of the previous year:

(a) all amounts of leakages detected,

(b) actions taken to eliminate such leakages,

(c) quantity and nature of the substances involved,

(d) serial number of personnel involved in terms of the first two indents of this sub-regulation as well as dates and results of these checks,

(e) any quantities added and any quantities recovered during servicing and maintenance and final disposal,

(f) any other details as may be required from time to time by the competent authority by notice in the Gazette.

(2) Upon request by the competent authority, all owners of fixed equipment with more than three kilograms of fluorinated greenhouse gases must send copies of their official logbooks to the competent authority for review. These copies must be signed off by the official person in whose name the logbook was issued as a true copy of the original logbook in their possession.

Entities involved in recovery, recycling, reclamation and destruction of substances.

13. Every year before the 31st January, all entities involved in the recovery, recycling, reclamation and destruction of fluorinated greenhouse gases shall communicate to the competent authority data as specified below for each controlled substance in respect of the period from the 1st January to the 31st December of the preceding year. These entities shall send copies of their logbooks to the competent authority for review. These copies must

be signed off by the official person in whose name the logbook was issued as a true copy of the original logbook in their possession. The log book must contain:

(a) name and serial number of the entity,

(b) serial number of the personnel involved in the consignment of controlled substances for recovery, recycling, reclamation and destruction,

(c) quantities and nature of controlled substances consigned by each of the personnel involved differentiating between substances consigned for recovery, recycling, reclamation, and destruction,

(d) details of destination of controlled substances consigned, differentiating between substances consigned for recovery, recycling, reclamation and destruction,

(e) any remaining stock as at 31st December of each reporting year,

(f) any other details as may be required from time to time by the competent authority by notice in the Gazette.

Instruction bodies.

14. All natural or legal persons authorized in writing by the competent Authority to provide the course for the minimum qualification requirements defined by the authority, as required by sub-regulation 5(2), shall, after the termination of each course cycle, provide, within five working days, all the information related to the course as may be required by the Authority. This information is to include:

(a) name and authorization number of the instruction body running the course,

(b) commencement and termination dates of course,

(c) names, surnames and I.D. numbers of the successful candidates,

(d) nature of employment of the successful candidates,

(e) registered business address of the successful candidates.

Inspection.

15. (1) Without prejudice to the provisions of article 25 of the Act and of the Environment Protection (Preventive and Remedial Measures) Regulations, 1994, the competent authority may, in carrying out the tasks assigned to it by these regulations, request all relevant information from the personnel involved and from undertakings concerned.

L.N. 1 of 1994.

(2) The competent authority may carry out any investigations necessary under these regulations, and may also conduct random checks and audits on imports, exports, shipments, storage facilities, users and disposal facilities of substances within the scope of the EC Regulation, as well as on all personnel involved.

(3) Subject to regulations 9 to 13, all shipments, imports and exports shall be subject to random checks by the competent authority. All shippers, importers and exporters must inform the competent authority about any upcoming shipment, import or export at least fifteen working days in advance of the actual import, export or shipment is carried out. All details shall be submitted according to the requirements of the format established for this purpose by the competent authority.

(4) Containers, including cylinders, filled with substances falling within the scope of the EC Regulation, shall be labelled by officials of the competent authority prior to their release from Customs and the shipper, exporter or importer shall be responsible as stipulated in regulation 9 for keeping and reporting information related to any sales and, or transfer by whatever means of these substances until the point of sale, when this responsibility will devolve to the new natural or legal persons involved.

Guidance documents.

16. The competent authority may develop as appropriate and ensure the dissemination of guidance notes and documents for the purpose of ensuring the proper implementation of these regulations and of the EC Regulation.

Reporting.

17. Reporting requirements by various entities are to be carried out as prescribed by the EC Regulation unless further instructed in these regulations.

Offences.

18. A person shall be guilty of an offence under these regulations if:

(a) he fails to comply with any provision of the EC Regulation or of these regulations, or fails to comply with conditions of registration with any order lawfully given in terms of any provision of these regulations, or

(b) he contravenes any restriction, prohibition or requirement imposed by or under the EC Regulation or these regulations, or

(c) he acts in contravention of any of the provisions of the EC Regulation or of these regulations, or

(d) he conspires or attempts, or aids, or abets, any other person by whatever means, including advertising, counselling or procurement, to contravene the provisions of the EC Regulation or of these regulations, or to fail to comply with any such provisions, including any order lawfully given in terms of any of the provisions of the EC Regulation or of these regulations, or to contravene any restriction, prohibition or requirement imposed by or under the said regulations.

Penalties.

19. Any person who commits an offence against the EC Regulation or against these regulations shall, on conviction, be liable

(a) on a first conviction to a fine (*multa*) of not less than one thousand, one hundred sixty-four euro and sixty-nine cents (€1,164.69) but not exceeding two thousand, three hundred twenty-nine euro and thirty-seven cents (€2,329.37) and where applicable, the revocation of his, her registration and confiscation of vehicle or equipment used to perform the offence;

(b) on a second or subsequent conviction, to a fine (*multa*) of not less than two thousand, three hundred twenty-nine euro and thirty-seven cents (€2,329.37), but not exceeding four thousand, six hundred fifty-eight euro and seventy-five cents (€4,658.75) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and where applicable, the revocation of such person's licence and confiscation of vehicle or equipment used to perform the offence.

Provided that the Court shall order any person who has been found guilty of committing an offence against the

EC Regulation or against these regulations to pay for the expenses incurred by the competent authority as a result of the said offence, the revocation of the permit issued by the competent authority and the confiscation of the *corpus delicti*.

Provided further that the court may also order any person who commits an offence against these regulations or the EC Regulation to bear all or part of the costs incurred due to any relevant infringement action brought against Malta by the European Commission under the provisions of the EC Regulation or of the Treaty establishing the European Community.

Applicability of Cap. 9.

20. (1) The provisions of articles 23 and 30 of the Criminal Code shall, *mutatis mutandis*, apply to proceedings in respect of offences against the EC Regulation or against these regulations, so however that the disqualification from holding or obtaining a licence, permit or authority shall in no case be for less than one year.

(2) Notwithstanding the provisions of article 370 of the Criminal Code, proceedings for an offence against the EC Regulation or against these regulations shall be held before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts as courts of criminal judicature.

(3) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) in respect of proceedings for any offence against the EC Regulation or these regulations.

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