

Guidance: Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009

Mining Waste Directive (MWD): Article 6 Category “A” Waste Facilities

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www.defra.gov.uk/environment/waste/

Any enquiries regarding this document/publication should be sent to us at:

Defra

Waste Regulation and Crime

Area 6D, Ergon House

Horseferry Road

LONDON SW1P 2AL

Email: miningwasteoffsiteguidanceconsultation@defra.gsi.gov.uk

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Introduction

1. The following guidance is drafted with respect to the transposition of Article 6 of the Mining Waste Directive¹ (MWD) into English and Welsh law by the Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009² (“the Regulations”).
2. The guidance is specifically aimed at the elements of the MWD relating to the drawing up of off-site emergency plans for Category A sites and, in particular, at the competent authority that will have to draw up and, in the case of a major emergency, implement such plans. However, the guidance should also provide the operators of Category A sites with an understanding of their obligations under the Regulations.
3. It should be noted that the Regulations and this guidance apply only to Category A mining waste facilities as defined under the MWD and Commission Decision 2009/337/EC. The effect of Article 5(3)(a) of the MWD is to require the operator initially to decide whether a mining waste facility meets the criteria for classification as a Category A site. It is the responsibility of the Environment Agency to confirm the operator’s classification. This means that the Regulations and this guidance apply only where the Environment Agency has decided that a facility is properly classified as a Category A site.
4. It should also be noted that the Regulations do not apply to mining waste facilities covered by Directive 96/82/EC on the control of major accident hazards involving dangerous substances³. These are facilities that involve chemical and thermal processing operations and storage relating to such operations. Directive 96/82/EC is transposed into domestic law by the Control of Major Accident Hazards Regulations 1999⁴ (COMAH Regulations). Facilities which fall within the scope of Directive 96/82/EC are excluded from the requirement to produce off-site emergency plans under the MWD. As a result, the requirement in the COMAH Regulations for off-site emergency plans will continue to apply to facilities within the scope of the COMAH Regulations. Where an operator is required to produce an off-site emergency plan for mining waste activities under the COMAH Regulations in relation to a particular site, there will be no additional requirement for an off-site emergency plan under the Regulations.
5. This guidance is therefore for Category A facilities:-
 - where a failure or incorrect operation could give rise to a major accident; or
 - which contain waste classified as hazardous above a certain threshold; or
 - which contain substances or preparations classified as dangerous above a certain threshold.

¹ Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC – available at <http://ec.europa.eu/environment/waste/mining/legis.htm>.

² S.I. 2009/1927.

³ OJ L010, 14.01.97, p 13 amended by Directive 2003/105/EC, OJ L345, 31.12.2003, p97.

⁴ S.I. 1999/743 as amended by S.I. 2005/1088.

But

- excludes facilities covered by the COMAH Regulations.

Citation, Commencement and Extent

Regulation 1

6. The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009⁵ (“the Regulations”) came into force on 12th August 2009 and apply in England and Wales. Scotland and Northern Ireland have their own arrangements.

Interpretation

Regulation 2

7. A “Category A mining waste facility” is defined as a mining waste facility which is classified as Category A under Article 9 of the Mining Waste Directive⁶ (MWD). Under Article 9, the competent authority, (i.e. the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2010⁷ (“the Permitting Regulations”)), must classify a waste facility as Category A in accordance with the criteria set out in Annex III to the MWD). Annex III to the MWD provides that a waste facility shall be classified as Category A if a failure or incorrect operation of such a facility could give rise to a major accident as defined in paragraph 11 below; it contains waste classified as hazardous under Directive 91/689/EEC⁸ above a certain threshold; or it contains substances or preparations classified as dangerous under Directives 67/548/EEC or 1999/45/EC above a certain threshold. These criteria are further defined in Commission Decision 2009/337/EC which is re-produced in Appendix A.
8. For the purposes of the Regulations, the “competent authority” is defined in regulation 2 and means the emergency planning authority in the various areas of England and Wales. These authorities are:-
 - (a) in London, the London Fire and Emergency Planning Authority;
 - (b) in an area where there is a fire and civil defence authority, that authority;
 - (c) in the Isles of Scilly, the Council of the Isles of Scilly;
 - (d) in an area in the rest of England, the county council for that area, or where there is no county council for that area, the district council for that area;
 - (e) in an area in Wales, the county council or the county borough council for that area.

⁵ S.I. 2009/1927.

⁶ Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC– available at <http://ec.europa.eu/environment/waste/mining/legis.htm> .

⁷ S.I. 2010/675.

⁸ Directive 91/689/EEC was repealed with effect from 12 December 2010. Waste is now classified as hazardous under Directive 2008/98/EC which has been transposed in England and Wales by means of the Waste (England and Wales) Regulations 2011 (S.I. 2011 No. 988); and those Regulations are supplemented in Wales by the Waste (Miscellaneous Provisions) (Wales) Regulations 2011 (S.I. 2011 No. 971 (W.141)).

Unitary Authorities are not referred to in the definition of “competent authority” but they comprise either district or county councils with enhanced functions. Unitary Authorities are considered to be included in the bodies listed above.

9. The “emergency services” are defined in regulation 2 as those police, fire and ambulance services who are liable to be required to respond to a major accident and, where appropriate, Her Majesty’s Coastguard.
10. The “health authority” is defined in regulation 2 for England as a Primary Care Trust established under section 18 of the National Health Service Act 2006 and for Wales as a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006(6).
11. A “major accident” has the same meaning as in the MWD. The term means an occurrence on site in the course of an operation involving the management of extractive waste in any establishment covered by the MWD, leading to a loss of life or serious danger to human health and/or the environment, whether immediately or over time, on-site or off-site. Serious danger to human health relates to people present permanently or for prolonged periods of time in the potentially affected area but excludes workers operating the facility. Injuries leading to disability or prolonged states of ill health shall count as serious dangers to human health. Serious danger to the environment relates to:-
 - a contaminant source strength that does not decrease significantly within a short time;
 - permanent or long lasting environmental damage;
 - the affected environment not being restored through minor clean-up and restoration efforts.
12. The “Mining Waste Directive” is defined as Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive 2004/35/EC⁹.
13. A “mining waste facility” means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension for the respective time periods set out in Article 3(15) of the MWD excluding those that:-
 - closed by 1 May 2008;or
 - stopped accepting waste before 1 May 2006;
 - are completing the closure procedures in accordance with the applicable Community or national legislation or programmes approved by the competent authority, and
 - will be effectively closed by 31 December 2010.
14. The “operator” is:-

⁹ Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC– available at <http://ec.europa.eu/environment/waste/mining/legis.htm> .

- (a) the person who has control over the operation of the facility;
 - (b) if a facility has not been put into operation, the person who will have control over the facility when it is put into operation; or
 - (c) if a facility has ceased to be in operation, the person who holds the environmental permit which authorised the operation of the facility.
15. “the public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;
16. “the public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making under Articles 6 (major-accident prevention and information) and 7 (application and permit) of the MWD. For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirement under national law are deemed¹⁰ to have such an interest (Article 3(23) of the MWD).
17. A “site” is defined as the whole area under the control of the operator where a mining waste facility is present, and for this purpose two or more areas under the control of the same person and separated only by a road, railway or inland waterway are to be treated as one whole area (and on-site and off-site are to be construed accordingly). To expand on this, one site might have more than one facility, although not all the facilities on the site might be classified as Category A facilities. The site will include all areas used for the management of extractive waste arising from a specific mining operation and active since May 2008. Typically this will involve a number of discrete areas, joined by some routinely used linkage such as roads, railways, pipelines or watercourses. For example, the waste may be placed into lagoons to dewater, used to infill voids as they occur, accumulated in spoil heaps, or used in construction of lagoon bunds/dams, or of noise protection earth bunds. Hence, the site plan may have a “leopard spot” appearance and be spread across a wide geographical area. In deciding whether a remote area many miles away is part of the one facility the Environment Agency as the permitting authority will weigh the nature and technical significance of the connections against the distance.

Application

Regulation 3

18. The Regulations apply solely to Category A mining waste facilities but do not apply to those Category A facilities that come under the COMAH Regulations (Control of Major Accident Hazards (COMAH) Regulations 1999 (S.I. 1999/743 as amended by S.I. 2005/1088)). Therefore any mining waste facility that is not classified as Category A, or that falls within the scope of the COMAH Regulations, is excluded from the scope of the Regulations.

¹⁰ Article 3(23) of the MWD uses the term “shall be deemed”.

Requirement for Off-Site Emergency Plan

Regulation 4 - Interface with the Environmental Permitting (England and Wales) Regulations 2010¹¹ (“the Permitting Regulations”)

19. In order to understand regulation 4, it is necessary to understand the requirements relating to the identification of Category A facilities and the permitting process for these facilities as set out in the Permitting Regulations. Under the Permitting Regulations an operator of a mining waste facility is required to operate under an environmental permit. In applying for an environmental permit for the mining waste facility the operator is required to submit a waste management plan. The waste management plan required under Article 5 of the MWD, which must be submitted as part of an operator's application for an environmental permit, must contain a proposed classification of the waste facility in accordance with the criteria in Annex III to the MWD for Category A facilities. The Category A criteria are set out in Annex III to the MWD and in the associated Commission Decision (see Appendix A). This is further explained in the Environment Agency's technical guidance¹² along with the process of determining whether a mining waste facility is likely to meet the criteria of a Category A facility and therefore to require an off-site emergency plan.
20. The Environment Agency's application procedures for an environmental permit require the operator of a Category A facility to submit, as part of the permit application, the information necessary to enable an off-site emergency plan to be drawn up. When the Environment Agency receives this information from the operator, it must immediately forward the information to the competent authority. Environmental permitting guidance for mining waste operations is available on the Environment Agency's website at <http://www.environment-agency.gov.uk/business/sectors/116582.aspx>.
21. The “necessary information” referred to in regulation 4 is discussed in Appendix B. The information provided by the operator as part of the environmental permit application and forwarded to the competent authority by the Environment Agency is that which should be provided initially by every operator of a Category A facility. In many situations it might be sufficient to constitute the necessary information. However, “specified additional information” might be required in certain circumstances in order to complete the necessary information. This additional information could also be provided at the same time as the permit application if the information requirements were agreed in pre-application discussions with the competent authority.⁶
22. It should be noted that pre-application meetings are recommended in the Environment Agency's guidance in order to help avoid delays in the environmental permitting process. Such pre-application meetings help to define the requirements of

¹¹ S.I. 2010/675.

¹² EPR 6.14 “How to comply with your environmental permit. Additional guidance for: mining waste operations” – available at <http://www.environment-agency.gov.uk/business/sectors/116582.aspx>.

the operator under the application process prior to the permitting timetable's commencing. As a result, where time constraints are present for the Environment Agency and the competent authority in relation to their duties then these constraints can be minimised by this early consultation during the pre-application discussions thus avoiding abortive works for the operator and delays in the permitting of a site. Pre-application meetings are discussed further under paragraph 40 below.

Regulation 4

23. Regulation 4 applies when the competent authority receives the information from the Environment Agency. The date when this occurs is referred to as the "relevant date" (regulation 4(13)). This is an important date as this is the starting point for calculating the deadline for drawing up the off-site emergency plan (see paragraph 29 below). Although not a requirement of the Regulations, the competent authority is advised to inform the operator of the "relevant date". The information provided by the operator to the competent authority can be taken by the authority as being correct and reliable. It is not the duty of the competent authority to verify the information provided or to procure expert services to do so.
24. As soon as the competent authority considers that it has the necessary information to draw up an off-site emergency plan, it must inform the Environment Agency so that a permit can be granted (see paragraphs 32-34 below relating to authorisation notices).
25. If the competent authority considers that it does not have the necessary information to draw up the plan, then it must request additional information in writing from the operator (see paragraphs 35-37 below relating to further information notices).
26. If, following a request for further information, an operator has not provided the necessary information, this may lead to the competent authority's issuing a notice to the Environment Agency resulting in the operator's permit application being refused. However, before issuing such a notice, the competent authority must provide a warning notice to the operator giving the operator a further opportunity to provide the information (see paragraphs 38-41 below relating to warning notices).
27. These requirements for notices are formalised by the notice provisions under regulation 4. These are summarised in the flow diagram in Appendix D and discussed below.
28. Under regulation 4(11), during the drafting process the competent authority must consult the operator, the Environment Agency, the Health and Safety Executive, the emergency services and each health authority for the area in the vicinity of the mining waste facility on the preparation of the off-site emergency plan.
29. The process by and timeframe within which an off-site emergency plan is drawn up is demonstrated by the flow diagram presented in Appendix C. Regulation 4(8) states that the off-site emergency plan must be drawn up by the competent authority no later than six months (or such longer period, not exceeding nine months, as the competent authority may agree with the operator in writing) after the relevant date (see paragraph 23 above).
30. Effectively this means that all emergency plan information will need to be processed and additional information requested and returned as soon as possible, and, in any

event, within three months after the relevant date to ensure that the competent authority has a sufficient time to draft the off-site emergency plan and carry out the necessary consultation and draw up the final plan. In practice, it is considered likely that the competent authority will have to agree the nine month time period with operators in order to have a minimum six months in which to draft an off-site emergency plan. In addition, it should be noted that the timeframes discussed are for drawing up an off-site emergency plan i.e. the plan does not have to be validated and tested within this period. Validation and testing are discussed in paragraphs 47-50 below. Extension of the timeframe from six to nine months is discussed in paragraph 40(b) below.

Notice provisions to meet the requirements of regulation 4

Introduction

31. When the competent authority receives off-site emergency plan information from the Environment Agency, it must assess that information and form a view as to whether it has the information necessary to draw up the off-site emergency plan. This will determine the type of notice that the competent authority must give under regulation 4. There are four types of notices provided for in regulation 4. Each type of notice has particular requirements as to whom it can be given, when it can be given and what it can require.

Regulation 4(6) authorisation notice

32. If the competent authority considers that it has the information necessary to draw up the off-site emergency plan, it must give a notice to the Environment Agency under regulation 4(6) as soon as is practicable (referred to in this guidance as a “Regulation 4(6) authorisation notice”). This should also be copied at the same time to the operator.
33. A Regulation 4(6) authorisation notice must indicate that the competent authority considers that it has the information necessary to draw up the off-site emergency plan. As stated above, a Regulation 4(6) authorisation notice must be given by the competent authority as soon as practicable. The competent authority does not need to wait until after the consultation on the off-site emergency plan has closed before issuing a Regulation 4(6) authorisation notice because the authorisation is solely to state that the necessary information has been provided. Its purpose is not to state that a plan has been drawn up. The consultation under regulation 6 relates to consultation on the off-site emergency plan, which will be drawn up once the necessary information has been received by the emergency planning authority.
34. The Environment Agency is not able to grant a permit for a Category A facility until it has received a Regulation 4(6) authorisation notice from the competent authority (paragraph 14(1) of Schedule 20 to the Permitting Regulations). This applies to both new and existing Category A facilities. An existing Category A facility means a facility that was in operation on 1 May 2008).

Regulation 4(3) further information notice

35. If, at any time, the competent authority considers that it does not have the information necessary to draw up the off-site emergency plan, it must give a notice to the operator under regulation 4(3) (referred to in this guidance as a “Regulation 4(3) further information notice”). However, such information requested should be limited to information that the operator can be reasonably expected to hold and it should not cover information held by third parties unless reasonably obtainable well within the 30 day response period.
36. A Regulation 4(3) further information notice is a notice given by the competent authority to the operator requiring that further information be provided by the operator to the competent authority. A Regulation 4(3) further information notice must comply with the following requirements:
- It must be given as soon as practicable;
 - It must be given at least 9 weeks before the deadline for drawing up the off-site emergency plan (see paragraph 29 above); and
 - It must specify the information required and the date by which the information is required. The date must be at least 30 calendar days after the notice is given.
37. Competent authorities are free to make information requests of operators at any time during the process, including in the pre-application phase. Of course, any such informal requests would not be subject to the notice provisions set out in the Regulations. The minimum 30 days response time will not apply in the case of such an informal request and a warning notice, and potentially a Regulation 4(8) non-compliance notice (see paragraphs 42-46 below), would still need to be submitted on their respective dates unless sufficient information were submitted prior to those dates. Competent authorities should consider the timescales carefully when considering the appropriate time to make an informal request. For example, it may not be appropriate to make an informal request once a warning notice had been issued.

Regulation 4(7) warning notice

38. If, one month before the deadline for drawing up the off-site emergency plan (see paragraph 29 above), the competent authority considers that the operator has not provided information pursuant to a Regulation 4(3) further information notice, it must give a notice to the operator under regulation 4(7) (referred to in this guidance as a “Regulation 4(7) warning notice”).
39. A Regulation 4(7) warning notice must comply with the following requirements:-
- It must state that the competent authority intends to give a Regulation 4(8) non-compliance notice (see paragraphs 42-46 below) to the Environment Agency.

- It must indicate the date on which the competent authority intends to give a Regulation 4(8) non-compliance notice to the Environment Agency. That date (referred to in the Regulations and in this guidance as the “intended date”) must be at least 15 calendar days after the date the Regulation 4(7) warning notice is given.
 - It must indicate that if the operator provides the necessary information before the intended date, the competent authority will not give a non-compliance notice to the Environment Agency.
40. It is recognised that the competent authority could have as little as 15 days to produce an off-site emergency plan should the necessary information be provided within the 15 day period prior to the intended date. To avoid this happening, the following is recommended:-
- (a) Pre-application discussions should be held between the operator, the Environment Agency as the permitting authority, and the competent authority, in connection with applications for any sites identified as potentially containing Category A mining waste facilities. During these discussions the key risks and mitigation measures should be discussed and a definitive list of necessary information identified, (notwithstanding the necessary information as laid out in Appendix B of this guidance).

By having such pre-application discussions, which are considered best practice for this and similar environmental permitting procedures, the uncertainty of the application process is mitigated prior to the relevant date and the associated time constraints thereafter.
 - (b) On receipt of the necessary information the competent authority issues a standard request to extend the period of drawing up the off-site emergency plan from six to nine months in order that the maximum period for requesting information, obtaining information, consultation and drafting of the plan is obtained. The request shall be worded such that the extension is deemed acceptable to the operator unless the operator responds to the contrary.
 - (c) The competent authority uses guidance prepared for reservoirs¹³, to prepare template off-site emergency plans related to mining waste facilities, to enable plans for Category A facilities to be drafted in the minimum amount of time.
41. A Regulation 4(7) warning notice should refer to the Regulation 4(3) further information notice that remains outstanding.

Regulation 4(8) Non-compliance notice

42. If, on the intended date, the competent authority considers that the operator has not provided the necessary information, the competent authority must issue a notice to the Environment Agency under regulation 4(8) (referred to in this guidance as a “Regulation 4(8) non-compliance notice”). This must also be copied at the same time to the operator.

¹³ Reservoir Emergency Plan Off-Site Plans, Guidance and Checklist, Civil Contingencies Secretariat, Cabinet Office – available at <http://www.cabinetoffice.gov.uk/resource-library/reservoir-site-plans-documents>.

43. A Regulation 4(8) non-compliance notice should only be given after a Regulation 4(7) warning notice has been given and where the competent authority considers that the operator has not provided the necessary information as set out in the Regulation 4(7) warning notice.
44. On receipt of a Regulation 4(8) non-compliance notice, the Environment Agency must refuse the operator's environmental permit application for an existing Category A mining facility (paragraph 14(2) of Schedule 20 to the Permitting Regulations). In the case of applications for new facilities the Environment Agency can decide either to put the application into abeyance until the off-site emergency plan issues are resolved or to refuse the application.
45. For new sites where a permit application is put into abeyance after a Regulation 4(8) non-compliance notice is issued by the competent authority the timeframe for resolution stops, the competent authority having carried out their duties under the Regulations. However, in such a case should an operator provide further information to the Environment Agency, then the six month time period for drafting an off-site emergency plan recommences, the date at which the competent authority is supplied the new information becoming the new "relevant date" (see paragraph 23 above).
46. A summary of the notice provision process is provided on the flow diagram in Appendix D.

Drafting, Validation and Testing

47. An off-site emergency plan is considered to be "drawn up" for the purposes of the Regulations once there is a plan which could be implemented should a major accident occur.
48. The off-site emergency plan must be tested by the competent authority to the extent necessary to ensure that it is adequate to secure the objectives listed in regulation 5 (see paragraphs 55-57 below). In order to meet these requirements, it is recommended that validation and testing of the off-site emergency plan should be carried out once in each period of 3 years from the anniversary of the date of issue. If a major accident occurs within the period and the plan has been implemented or if the waste facility is declassified from being a Category A facility to being a less hazardous facility then this shall be considered appropriate testing of the plan.
49. Validation and testing of the off-site emergency plan should not be required during the three year period if a major accident occurs within the period and the plan has been implemented or if the waste facility is declassified from being a Category A facility to being a less hazardous facility. This major accident shall be considered appropriate testing of the plan.
50. Should a major accident or the validation and testing process identify an urgent amendment due to an omission or error in the off-site emergency plan then the off-site emergency plan should be immediately altered to rectify such an issue. For more minor issues a note should be made and a revised draft prepared for updating once a review has been undertaken by the operator and the findings of this review submitted to the competent authority. Any changes identified by the operator to the internal

emergency plans must be notified to the competent authority as soon as possible, and the consequences for the off-site plan assessed.

51. The general drafting procedures, including consultation and external input, are summarised in Appendix C (Figure C1). The general validation and testing procedures are summarised in Appendix E and mirror as much as practicable those requirements under the COMAH Regulations and for reservoirs (see paragraph 40(c) above and associated footnote 13).

Declassification

52. Article 10 of Commission Decision 2009/337/EC (as re-produced in Appendix A) states:-

A review of the classification shall be carried out by the competent authority within the meaning of Directive 2006/21/EC where the permit is substantially modified or the operational conditions have changed significantly.

53. It should be noted that the “competent authority” referred to in Article 10 of Commission Decision 2009/337/EC is the Environment Agency and NOT the emergency planning authority.
54. It is possible that circumstances may change such that Category A facilities no longer meet the Category A criteria. In the event that this happens, the Environment Agency will amend the environmental permit to reflect any change in the classification of a facility.
55. In the event of a declassification of a Category A facility, the Environment Agency should notify the competent authority stating why the risks have changed and confirming that the waste facility no longer meets the criteria for a Category A facility. In such a case, the requirements of the Regulations no longer apply to that facility and the competent authority no longer has duties with respect to that facility - primarily drafting, validation and testing of the off-site emergency plan.

Objectives for Off-Site Emergency Plan

Regulation 5

56. The objectives for the off-site emergency plan provided in regulation 5 are:-
 - a) To contain and control major accidents and other incidents so as to minimise their effects, and in particular to limit damage to human health and the environment;
 - b) To implement the measures necessary to protect human health and the environment from the effects of major accidents and other incidents;
 - c) To communicate the necessary information to the public and to the relevant services or authorities in the area; and

- d) To provide for the rehabilitation, restoration and clean-up of the environment following a major accident.
- 57. These mirror the objectives as laid out in Article 6(4) of the MWD.
- 58. These are also the objectives for the internal emergency plans which must be drawn up by the operator. As such, the off-site emergency plan should relate to and complement the operator's internal emergency plan. If not, then the competent authority should liaise with the operator and the Environment Agency to ensure that the internal and off-site plans are consistent with and reflect one another.

Public Participation in Preparation and Review of Off-Site Emergency Plan

Regulation 6

- 59. The competent authority must ensure that the public concerned (see paragraph 16 above) are given early and effective opportunities to participate in the preparation or review of the off-site emergency plan.
- 60. The competent authority must inform the public concerned about any proposed off-site emergency plan, and relevant information must be made available including, but not limited to, information about the right to participate in the decision-making process and details of the competent authority to which comments and questions may be submitted.
- 61. The competent authority must allow a reasonable time frame for the public concerned to express comments, and must take due account of these comments in reaching a decision on the contents of the plan.
- 62. It should be noted that the timeframe for drafting the off-site emergency plan is limited to six months (with potential extension to nine months) (see paragraph 29 above). Therefore this is a limiting factor for public consultation and early consultation is necessary with the public concerned.
- 63. It is envisaged that consultation with the public concerned would not occur until the competent authority has developed a workable off-site emergency plan in the timeframe discussed in paragraph 29 above. However, particular public stakeholders in the 'public concerned', should be consulted during the drafting of the off-site emergency plan, as well as statutory consultees under regulation 4(11), comprising the operator, the Environment Agency, the Health and Safety Executive, the emergency services and each health authority for the area.
- 64. As stated in regulation 6(1) of the Regulations, the competent authority must ensure that the public concerned are given early and effective opportunities to participate in the preparation or review of the off-site emergency plan. Therefore, depending on the risks and associated receptors, this would generally be best carried out as a review of an initial draft plan rather than during preparation of the aforementioned draft plan. However, specific members of the public concerned could be consulted by the competent authority, as well as the statutory consultees under regulation 4(11), as

part of the drafting of the plan should it be considered appropriate by the competent authority.

65. As discussed in paragraph 62 above, it would be unreasonable for the emergency planning authority to consult all the public concerned before it had reasonable time to formulate a strategy for the off-site emergency plan. Therefore the following public consultation cycle is proposed:-
1. The competent authority receives the off-site emergency plan information on the relevant date and, once all the necessary information has been received from the operator, prepares an initial draft off-site emergency plan in consultation with the statutory consultees under regulation 4(11) and any of the public concerned that the competent authority sees fit to include at that stage.
 2. Within three months of the relevant date, i.e. 3 months from the date at which the competent authority receives the information from the Environment Agency, the competent authority informs all the public concerned by letter of:-
 - their intention to formulate of an off-site emergency plan;
 - where information relating to the plan can be obtained;
 - where comments relating to the plan can be made; and
 - the closing date before which comments should be made.
 3. The closing date should be no later than one month prior to the plan needing to be drafted and the duration of the consultation period should be no less than six weeks.
66. How this consultation fits in the overall process and associated timing is shown in Appendix C (Figure C1).
67. It should be noted that the public participation under Article 8 of the MWD is related to applications for permits under Article 7 of the MWD and not the drafting of the off-site emergency plan.

Provision and Review of information to the Public

Regulation 7

68. The information on safety measures and on the action required in the event of an accident which must be provided by the operator to the public concerned free of charge are listed in regulation 7. It will be necessary for the operator to keep such information on site, which should be made freely available either through hard copy, by reasonable appointment or electronically over the internet.
69. This information comprises:-
- (a) name of the operator and address of the mining waste facility;

- (b) identification, by position held, of the person providing the information; confirmation that the mining waste facility is subject to the Regulations and, when applicable, that the information relevant to the elements referred to in Article 6(2) of the MWD has been submitted to the competent authority;
 - (c) an explanation in clear and simple terms of the activity or activities undertaken at the site;
 - (d) the common names or the generic names or the general danger classification of the substances and preparations involved at the mining waste facility as well as waste which could give rise to a major accident, with an indication of their principal dangerous characteristics;
 - (e) general information relating to the nature of the major-accident hazards, including their potential effects on the surrounding population and environment;
 - (f) adequate information on how the surrounding population concerned are to be warned and kept informed in the event of a major accident;
 - (g) adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident;
 - (h) confirmation that the operator is required to make adequate arrangements on-site, in particular liaison with the emergency services, to deal with major accidents and to minimise their effects;
 - (i) a reference to the off-site emergency plan drawn up to cope with any off-site effects from an accident, which should include advice to co-operate with any instructions or requests from the emergency services at the time of an accident;
 - (j) details of where further relevant information can be obtained, subject to any duty of confidentiality which prohibits disclosure.
70. In preparing the information required to be supplied, the operator must consult the competent authority in whose area the mining waste facility is situated but the operator remains responsible for the accuracy, completeness and form of the information so supplied. Therefore the information provided by the operator to the competent authority, including the Waste Management Plan, can be taken by the authority as being correct and reliable. It is not the duty of the competent authority to verify the information provided or procure expert services to do so.
71. The operator must review and where necessary update this information at least every three years.

Provision of information in the Event of a Major Accident

Regulation 8

72. In the event of a major accident, the operator must immediately provide the competent authority with all the information required to help minimise the consequences for human health and to assess and minimise the extent, actual or potential, of the environmental damage under regulation 8. The off-site emergency plan drawn up by the competent authority should provide the necessary contact details to enable the operator to provide this information.
73. In the event of a major accident, the operator of the waste facility should activate their internal emergency plan and provide the competent authority with as much information as possible relative to operation of the off-site emergency plan. Operators should prepare, review and maintain written procedures for staff to follow in the event of a major accident in order that effective and optimum use can be made of the off-site emergency plan. Information should be up-dated as the incident proceeds but the following details comprise the minimum initial information to be provided:-
- The location and nature of the incident. Location should be defined by reference to features marked on the topographical survey contained in the emergency plan(s) or by national grid reference.
 - An assessment of the hazards arising from the major accident.
 - An assessment of the dynamics of the failure and/or its potential to continue.
 - An assessment of the volume of materials released or likely to be released beyond the designated site boundary of the waste facility.
 - An assessment of the physical and chemical characteristics of materials released or likely to be released by the failure.
 - A statement that the internal emergency plan has been activated and the extent to which it is working properly as this may affect the off-site response.
 - A description of arrangements put in place by the operator for mitigating risks to people and the environment.
 - The name and contact details of individuals co-ordinating mitigating action.
 - The name and contact details of individuals responsible for liaison with the emergency planning authority.
74. Should the major accident have the potential to affect other European Economic Area¹⁴ (EEA) States then under regulation 8(3) the competent authority must forward the information to the affected EEA State.

¹⁴ The 32 EEA States are the 27 [EU Member States](#) together with Iceland, Liechtenstein, Norway, Switzerland and Turkey.

Enforcement

Regulation 9

75. The Regulations are made under powers in the Health and Safety Act and Safety at Work Act 1974 ("the 1974 Act"). Therefore, the enforcement provisions in the Regulations rely on certain enforcement provisions in the 1974 Act, in particular sections 33 to 42 of the 1974 Act (provisions as to offences). This means that breaches of any duties by operators are to be dealt with by reference to sections 33 to 42 of the 1974 Act. However, those sections are not applied in relation to duties placed on the competent authority (see paragraph 79 below for further explanation of enforcement of the competent authority's duties).
76. Therefore, regulation 9(1) provides that sections 33 to 42 of the 1974 Act are the relevant enforcement provisions for the purposes of dealing with breaches under the Regulations, subject to regulation 9(2) to (4).
77. It is an offence to contravene the Regulations or any requirement or prohibition imposed under the Regulations (section 33 of the 1974 Act). The provisions relating to the conduct of court proceedings for such offences are set out in sections 34 to 42 of the 1974 Act. The text of sections 33 to 42 of the 1974 Act is available at <http://www.legislation.gov.uk/ukpga/1974/37/part/II/crossheading/provisions-as-to-offences>.
78. Regulation 9(2) and (3) provide that the competent authority is responsible for enforcing operators' duties under the Regulations. The competent authority is not responsible for enforcing the duty under regulation 8(1) to provide information where this can be enforced by the Environment Agency through a permit condition (see paragraphs 71-73 above for explanation of the duties under regulation 8). This means that where a permit condition requires the provision of specific information in the event of a major accident, it is for the Environment Agency to enforce that duty via the permit condition.
79. Regulation 9(4) sets out the maximum penalties for offences for the purposes of the Regulations. The maximum penalty for an offence on summary conviction is a term of imprisonment not exceeding 3 months or a fine not exceeding £5,000. The maximum penalty for a conviction on indictment is a term of imprisonment not exceeding 2 years or an unlimited fine or both.
80. The Regulations do not provide for offences or penalties in relation to the competent authority's duties. As public bodies, competent authorities are required to comply with their statutory duties and to act reasonably when exercising statutory functions. If a competent authority fails to comply with a statutory duty or to act reasonably when exercising statutory functions, this may give rise to a complaint to the Ombudsman and in serious cases, to judicial review.

Charges and Fees Payable by Operator

Regulation 10

81. A permit application fee and annual subsistence fee are payable by the operator to the Environment Agency. This is provided for in the Regulations.
82. Regulation 10 sets out the provisions relating to the fees to be paid by the operator to the competent authority for the performance by the competent authority (or on its behalf by any of the other bodies listed in regulation 10(1)) of its functions under the Regulations. This is intended to cover the drawing up of the off-site emergency plan and the testing of the plan, but it can cover any of the authority's functions under the Regulations, whether carried out by the authority or on its behalf by the other bodies.
83. The fee must not exceed the costs reasonably incurred by the competent authority or the other bodies including but not restricted to the emergency services, the Environment Agency, the Highways Agency and other members of the Local Resilience Forum (see paragraph 83 below) who might be involved. The competent authority must provide the operator for agreement in advance of the works a scope of works to be carried out and budget for these works. However, should consensus not be reached, the final decision as to the degree of works necessary in order to ensure the risks to the public and environment are managed appropriately and the cost of such works shall rest with the competent authority. After completion of agreed works the competent authority must provide the operator with a detailed statement of the work done and costs incurred including the dates of any visits to the facility and the period to which the statement relates.
84. The off-site emergency plan will need to be tested. The testing regime is based on a risk basis and should be governed by the Local Resilience Forums, with testing incorporated into their programme of exercises. The testing process is presented in Appendix E. Information about "UK Resilience" is available at <http://www.cabinetoffice.gov.uk/ukresilience>. This explains that the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (S.I. 2005 No. 2042) require Category 1 and 2 organisations to come together to form Local Resilience Forums (based on police areas) to help co-ordination and co-operation between responders at the local level. Category 1 responders are those organisations at the core of emergency response (e.g. emergency services, local authorities). Category 2 organisations (e.g. Health and Safety Executive, transport and utility companies) are "co-operating bodies" who, while less likely to be involved in the heart of planning work, will be heavily involved in incidents that affect their sector.
85. The nature of the scenario tested; to what degree of testing would be carried out; and who would be present at the testing would be dependent on the risks identified as associated with the mining waste facility. The testing will be discussed with the operator prior to being carried out in order to provide consensus as to the requirements. However, should consensus not be reached, the final decision as to the degree of testing necessary in order to ensure the risks to the public and environment are managed appropriately shall rest with the competent authority.

Testing of the off-site emergency plan will be arranged by the competent authority in association with the operator. However, the costs for such an event will be the responsibility of the operator, as indicated above.

Appendix A

A.1 Commission Decision 2009/337/EC

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:102:0007:0011:EN:PDF>

Appendix B

“Necessary Information” and “specified additional information”

- B.1.1 “Necessary information” is required to be provided by the operator to the competent authority in order for the authority to draw up the off-site emergency plan. When providing this information the operator should have regard to:-
- (i) the objectives of Article 6(4)(a)-(d) of the MWD as transposed; and
 - (ii) The risks/hazards associated with Category A sites having regard to the criteria for the classification of such sites set out in Annex III to the MWD and Commission Decision 2009/337/EC.
- B.1.2 The effect of Article 5(3)(a) of the MWD is to require the operator initially to decide whether or not mining waste facility meets the criteria for classification as a Category A site. It is the responsibility of the Environment Agency to confirm the operator's classification. However, where the operator has decided that a facility meets the criteria for classification as a Category A site, it is unlikely in practice that the Environment Agency will take a view to the contrary.
- B.1.3 The Permitting Regulations provide that, where the Environment Agency receives an application for an environmental permit for a Category A site, and the application includes the information necessary to enable the competent authority to draw up the off-site emergency plan, the Agency must immediately forward the information to the competent authority. In defining that the mining waste facility is Category A site the operator will identify the risks/hazards that bring the facility into this categorisation and the necessary information is directly related to these risks/hazards.
- B.1.4 The type of information that is necessary for the operator to provide will vary according to the risks/hazards to be managed at each Category A facility. The

framework for the information is set out in Table B1, with the types of information required. The risk types can be divided into four:-

- (a) Risks associated with hazardous or dangerous substances;
- (b) Human health risks associated with waste heap slides;
- (c) Risks from flooding as a result of loss of structural integrity for tailings dams or waste heap slides; and
- (d) Risks to sensitive environmental receptors.

- B.1.5 A Category A facility might be classified as such owing to potential for a major accident with consequences resulting in one or more of these risk types being realised.
- B.1.6 For some of these risks basic readily available information might be appropriate, whereas for others a tiered approach might be appropriate with basic information initially but more detailed information subsequently depending on the interrogation of the basic information.
- B.1.7 It is envisaged that the waste management plan, together with the major accident-prevention policy, the safety management system implementing it, and the internal emergency plan, submitted by the operator as part of the permit application will include sufficient information for the drafting of the off-site emergency plan. Where a tiered approach is considered necessary, subsequent information requests may be necessary.

Risks associated with hazardous substances

- B.1.8 In order to deal with risks associated with hazardous substances it is important that the competent authority is aware of what the hazardous substances are, in what quantities and what the associated hazards are. The basic information in order for the competent authority to draw up an off-site emergency plan would be:-
- the waste quantities and storage proposals; and
 - waste categorisation in the form of waste list codes, COSHH assessments, CHIP codes and material safety data sheets is appropriate.
- B.1.9 All of this information which should be readily available to the operator and provided in the waste management plan submitted as part of the permit application.

Human health risks associated with waste heap slides

- B.1.10 Mine and quarry operators have duties under the Mines and Quarries (Tips) Regulations 1971(S.I. 1971 No. 1377), as amended in part by the Quarries Regulations 1999 (S.I. 1999 No. 2024), to undertake risk assessments of tips and settlement lagoons with respect to failure and hazard control. Reports prepared under the Mines and Quarries (Tips) Regulations 1971 or the Quarries Regulations 1999 should be comprehensive reports prepared by competent

persons in accordance with those Regulations containing much of the information required for preparation of off-site emergency plans and should also be adequate for the purposes of review at intervals not exceeding three years (see paragraphs B.1.17-B.1.18 below). These should provide most, if not all, of the information required to draw up an emergency plan related to human health risks associated with waste heap slides, and part of the information required to draw up an emergency plan related to risks from flooding as a result of water release or waterway blockage (see paragraphs B.1.11-B.1.15 below).

Risks from flooding as a result of loss of structural integrity for tailings dams or waste heap slides

B.1.11 The initial questions to be answered with respect to risks from flooding are:-

- Could failure result in a significant waterway/floodplain blockage?; and
- Could failure resulting in a flow of liquid waste resulting in significant flooding?

B.1.12 By significant it is meant that for which the facility would be classified as Category A under the MWD and the associated Commission Decision.

B.1.13 The information needed to answer these questions would be that provided with respect to human health risks associated with waste heap slides together with the location of local watercourses and floodplains relative to the tips.

B.1.14 If this initial information identifies potential for one or both the initial questions to be answered 'yes', then more detailed flood risk assessment would need to be provided to quantify the risk. It is reasonable to expect this information to have been provided in support of the application for the environmental permit, and forwarded to the competent authority by the Environment Agency.

B.1.15 As a specialist agency it is envisaged that evaluation of such an assessment would be carried out by the Environment Agency under the management of the competent authority.

Risks to sensitive environmental receptors

B.1.16 The Environment Agency's permitting guidance for mining waste operations provides an explanation of how the Environment Agency will interpret "serious danger to the environment". The guidance is available on the Environment Agency's website at <http://www.environment-agency.gov.uk/business/sectors/116582.aspx>. The information used by the operator to justify his decision to classify a site as Category A will be included as part of his waste management plan.

Table B1 – Example of Conceptual Site Model Table

Linkage Number	Source	Pathway	Receptor
1	Waste Facility (number or letter if more than one facility at site and annotate each accordingly on plan) Provide nature of hazard posed for each linkage, e.g. Hazardous substances (list) above (quantify) threshold;	The nature of the failure of the waste facility should be included together with the pathway to which the material could reach the receptor.	The receptors associated with the source and pathway should be identified and where appropriate referenced on the plan.
Examples			
1	Waste Facility A Cyanide above ##mg/kg	Failure of containment bund and gravitational slurry migration down slope into River Sensitive.	River Sensitive SAC
2	Waste Facility A Cyanide above ##mg/kg	Failure of containment bund and gravitational slurry migration down slope into River Sensitive.	River Sensitive public water supply and residents of Sensitive Town
3	Waste Facility B Waste Heap Slide potential to block River Hiflow causing flooding	Failure of Waste Heap B structural integrity such that it gravitates into River Hiflow	Wettown, 5km upstream of site on River Hiflow. Flooding of 300 properties marked in area X on plan.
4	Waste Facility B Waste Heap Slide potential to block River Hiflow causing flooding	Failure of Waste Heap B structural integrity such that it gravitates into River Hiflow	Wettown, 5km upstream of site on River Hiflow. Flooding of 300 properties marked in area X on the plan.
5	Waste Facility B Waste Heap Slide potential to block River Hiflow causing flooding	Failure of Waste Heap B structural integrity such that it gravitates into River Hiflow	The A555 trunk road and M37 motorway at the locations marked Y on the plan.
6	Waste Facility B Waste Heap Slide potential to engulf properties	Failure of Waste Heap B structural integrity such that it gravitates towards and engulfs Quarry Cottages and Local Industrial Estate to west of site.	Quarry Cottages and Local Industrial Estate to west of site and associated residents, workers and visitors.

Table B2 – Risk Specific Necessary Information

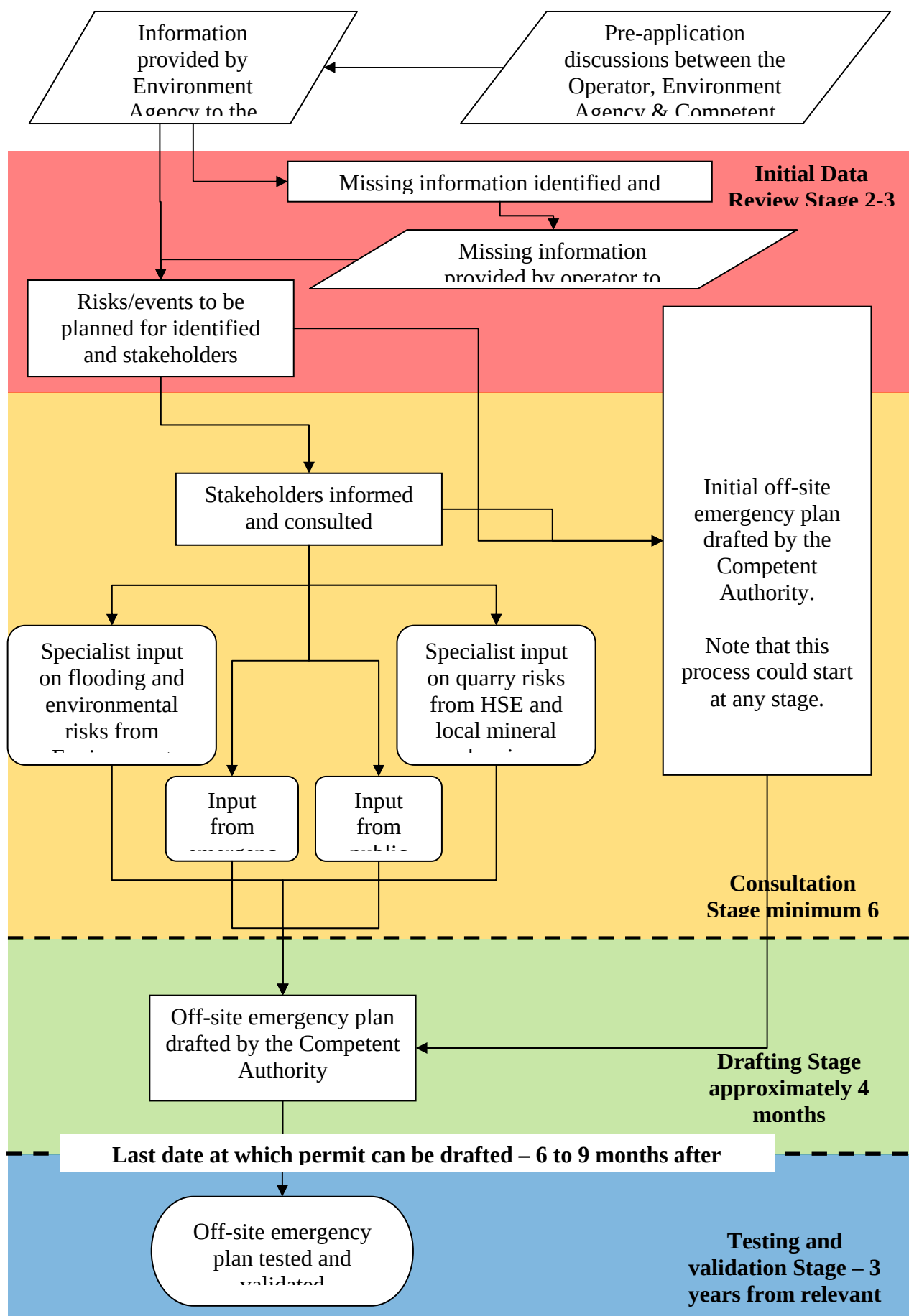
Question	Necessary Information if answer is ‘yes’*
1. Does your mining waste facility contain hazardous waste above the thresholds set in Article 7 of the Decision? The European Waste Catalogue (EWC) details which wastes are hazardous and the following extract is the important part as regards to extractive waste: “<i>Absolute Entries</i>” – Hazardous waste regardless of any threshold concentrations: A 01 03 04* acid-generating tailings from processing of sulphide ore A “<i>Mirror Entries</i>” - Hazardous waste only if dangerous substances are present above threshold concentrations: M 01 03 05* other tailings containing dangerous substances M 01 03 07* other wastes containing dangerous substances from physical and chemical processing of metalliferous minerals M 01 04 07* Wastes containing dangerous substances from physical and chemical processing of non-metalliferous minerals M 01 05 05* oil-containing drilling muds and wastes M 01 05 06* drilling muds and other drilling wastes containing dangerous substances M Where extractive waste appears to meet the description(s) given for <i>Mirror Entries</i>, further assessment against Article 7 of the Directive will be necessary. Further information to help you decide if your extractive waste meets the definition of hazardous is contained in Appendix 6 of this guidance note and also the following Agency documents: “What is Hazardous Waste – A guide to the Hazardous Waste Regulations and List of Waste Regulations in	Waste categorisation including: - Full list of relevant EWC codes - COSHH assessments where present and appropriate - CHIP assessments where present and appropriate - Waste characterisation through solid and leachate analysis, including leaching test results in accordance with EN12457. - Volume of hazardous or dangerous substance and relative concentrations in waste. - Risks to the environment and human health of hazardous or dangerous materials.

Question	Necessary Information if answer is ‘yes’*
England and Wales”. (Environment Agency 2008e); and “Hazardous Waste – Interpretation of the definition and classification of hazardous waste”. (Environment Agency 2008f)	
Does your mining waste facility contain substances or preparations classified as dangerous using the assessment in Article 8 of the Decision ? Notes: - a dangerous substance refers to: a mixture or preparation which is dangerous with the meaning of Directive 67/548/EEC (the Dangerous Substances Directive) or 1999/45/EC (the Dangerous Preparation Directive). - the Control Of Substances Hazardous to Health (COSHH) and Chemicals (Hazard Information & Packaging for supply) or CHIP regulations may also be relevant to facilities using dangerous substances.	Waste categorisation including: - Full list of relevant EWC codes - COSHH assessments where present and appropriate - CHIP assessments where present and appropriate - Waste characterisation through solid and leachate analysis, including leaching test results in accordance with EN12457. - Volume of hazardous or dangerous substance and relative concentrations in waste. - Risks to the environment and human health of hazardous or dangerous materials.
Are people (other than workers operating the facility that might be affected) expected to be present permanently or for prolonged periods in any area potentially affected by a loss of structural integrity (see Article 2(1) of the Decision) or incorrect operation (see Article 3(1) of the Decision) of the mining waste facility?	The location of the people (including properties, major transport routes, business premises and recreational facilities) that might be affected by either direct impact by mining waste facility failure or flooding as a result of mining waste facility failure blocking a watercourse. An assessment of the quantities and qualities of waste either solid or liquid or both that might be released off-site in the event of failure. An assessment of the potential for loss of life and danger to human health as a result of failure of the waste facility. This assessment must look at direct effects within the path of waste moving off-site from a failure and also at potential secondary effects such as flooding due to blocking of watercourses and potential downstream damage due to sudden release of short term impoundment of water. An assessment of the potential for damage to essential infrastructure and utilities arising from failure of the waste facility. Note that an exception is where such infrastructure or utilities is not readily available owing to confidentiality issues, e.g. MOD or Nuclear installation details. This shall NOT be considered necessary information in these cases for the purpose of issuing and authorisation notice, but will be in the remit of the competent authority to deal with obtaining such information when drafting the emergency plan. An assessment of the potential for environmental damage arising from failure of the facility including potential impact on controlled waters and environmentally sensitive areas. The area to which the mining waste and/or resultant flooding from the mining waste facility failure would spread. The travel time of a potential flood-wave to areas where people are present. The propagation velocity of the flood-wave (where greater than 0.5 m/s). The predicted water or slurry level (where greater than 0.7 m). The rising rate of water or slurry levels. Any relevant site specific factors that may influence the potential for loss of life or for danger to human health.

Question	Necessary Information if answer is ‘yes’*
	The topography of the site and surrounding area and flow paths for the waste, slurry and/or flood wave.
Is there potential for the consequence of a loss of structural integrity (see Article 2(1) of the Decision) or incorrect operation (see Article 3(1) of the Decision) of the mining waste facility to result in serious danger to the environment ?	The following sites need to be considered; International sites - includes Special Protection Areas (SPA) designated under <u>Council Directive 79/409/EEC on the conservation of wild birds</u> (the 'Birds Directive'). Special Areas of Conservation (SAC) under the Habitats Directive, candidate cSACs and Wetlands of International Importance (Ramsar sites), and world heritage sites. National sites - statutory sites protected by law and which have national importance to nature conservation. Include Sites of Special Scientific Interest (SSSI) and Scheduled Ancient Monuments. The initial information to be provided should comprise the location, designation and reasoning behind the designation (citation). Detailed assessments might be necessary following consultation with the appropriate authority. These more detailed assessments should be identified and carried out ideally at pre-application stage. If the site is an SPA or Ramsar site you may need details of <u>bird roosting sites which occur outside of the designated boundary</u> (an effect on the population using the designated site whilst outside of the boundary may still lead to a significant effect on the population for which the site was designated). The effects to consider on each site include: • Disrupting those factors that help to maintain the favourable conditions of the site; and • Interfering with the balance, distribution and density of key species that are the indicators of the favourable condition of the site. Physical Damage • Siltation (e.g. outfalls); • Changes in surface and groundwater flows (e.g. changes to flow, water table, water temperature and quality); and, • Abrasion Toxic contamination • Introduction of synthetic compounds (e.g. TBT, PCBs); and • Introduction of non-synthetic compounds (e.g. effluent outfalls); Non-toxic contamination • Changes in nutrient loading (e.g. agricultural run-off, effluent outfalls); • Changes in organic loading (e.g. effluent outfalls); and • Changes in turbidity (e.g. effluent outfalls, dredging, depositing dredged spoil).

*Note that if answer is ‘no’ then off-site emergency plan does not need to take into account risks related to this question and no ‘necessary information’ is required.

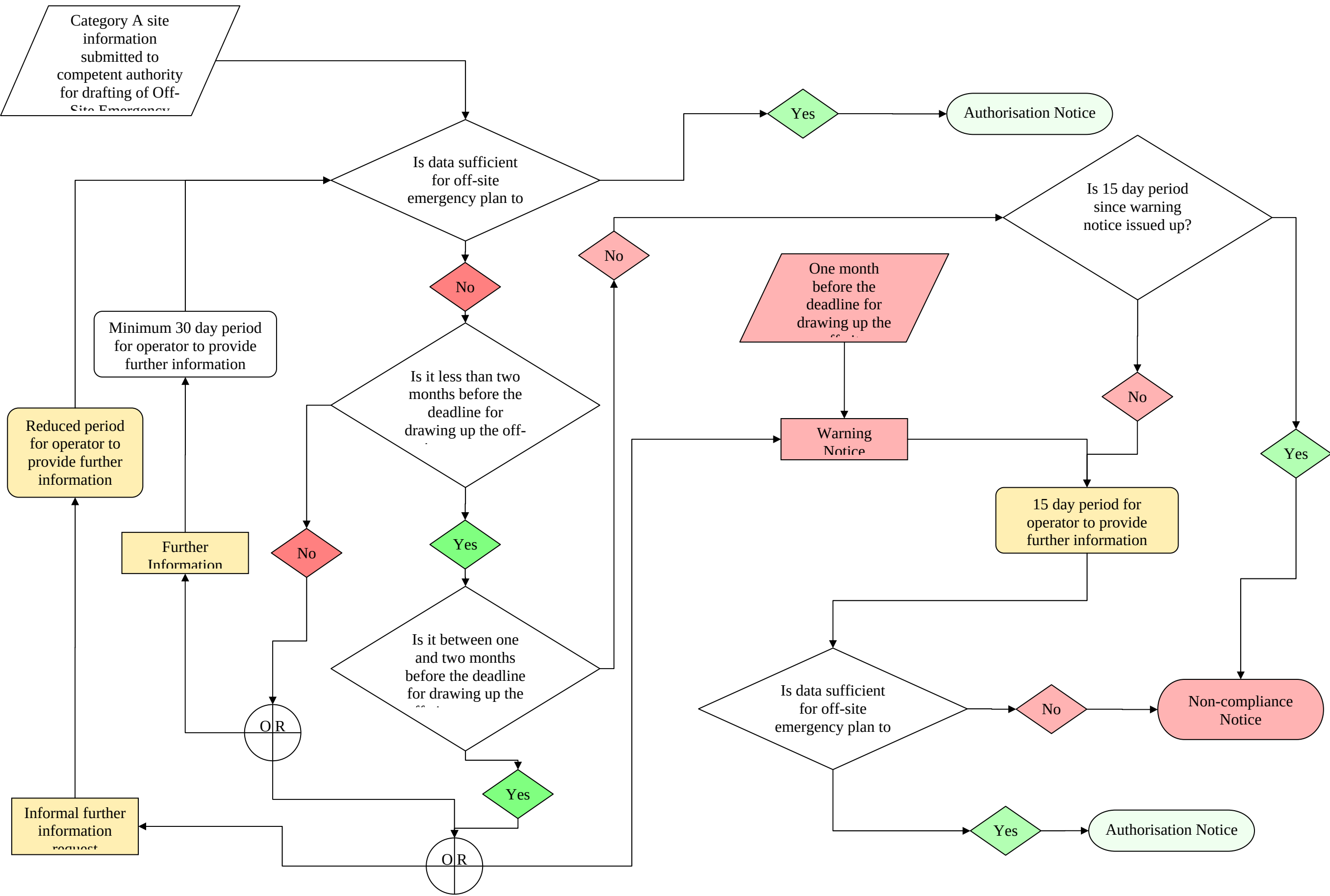
Appendix C



Appendix D

D.1 Procedure for Notice Provisions under Regulation 4

Figure D1 – Procedure for Notice Provisions under Regulation 4



Testing and Validation Process for Off-site Emergency Plans

Models for Plan Maintenance, Validation, Review and Exercise

Reviewing the Plan

The table below sets out options for review of the off-site plans and links these in with the proposed on-site planning round and other on-site activities, e.g. a review tied into the statutory inspection and safety process under the Mines and Quarries (Tips) Regulations 1971 (S.I. 1971 No. 1377) and Quarries Regulations 1999 (S.I. 1999 No. 2024). The latter, for example may trigger a revision of the risk characterisation. Another trigger for review might be significant changes to the Environmental Permit.

Options	Activities	Periodicity
1.	Review of contact details and alert and response interfaces within all on-site and off-site responders	Annual
2.	Complete review of off site plan	Every three years (this parallels the COMAH model)
3.	Review of links to on-site plan	After completion of any works highlighted in statutory inspections by competent persons, i.e. <i>'Items in the interests of safety'</i>
4.	Complete review of off-site plan, incorporating lessons from the exercise	After an exercise

Exercising the Plan

Only Category A mining waste facilities with site specific off site plans are covered in this document.

It is suggested that each of the key elements of management of a Category A mining waste facility incident should be exercised. These are:-

- Assessment of the risk of failure / type of failure (if one has occurred)
- Deployment of emergency response equipment
- Communication between responders

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- d) Communications with public and external stakeholders
- e) Management of an evacuation process
- f) Recovery

However, much of the above might be covered in generic exercising, independent of many of the structural specifics of a mining waste facility, but not independent of the organisational specifics of the mining waste facility operator.

Local Resilience Forums (LRF) have a significant programme of exercising across many areas and Category A mining waste facility emergency exercising needs to be prioritised relative to these other risks.

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Two models for exercising the off-site is set out below.

Model 1:

Frequency	No. of specific off-site plans in LRF	Type and frequency
i.	1 - 10	One exercise every three years, rotating between Operators in the first instance then between Category A mining waste facilities.
ii.	Greater than 10	One exercise every three years per ten Category A mining waste facilities, rotating between Operators in the first instance then between Category A mining waste facilities. • If there are 11-20 Category A mining waste facilities there will be an exercise in year 1 and 2 but not in year 3. • If there are 21-30 Category A mining waste facilities there will be an exercise every year. • If there 31-40 Category A mining waste facilities there will be four exercises across the three years.

Example 1



Year	Organisation	Category A Mining Waste Facility
1	Operator 1	1
2	Operator 2	1
3	No exercise	
4	Operator 3	1
5	Operator 1	2
6	No exercise	
7	Operator 2	1
8	Operator 3	2

Example 2:



Year	Organisation	Category A Mining Waste Facility
1	Operator 1	1
2	Operator 2	1
3	Operator 3	1
4	Operator 1	2
5	Operator 2	1
6	Operator 3	2
7	Operator 1	3
8	Operator 2	1

Model 2: Another proportionate approach could be to have one exercise *per Operator* every three years.

Whichever model is chosen would be down to the competent authority to decide in consultation with the operators and local resilience forum and be dependent on the number of and risks from Category A mining waste facilities in the area