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Environmental Permitting Guidance The Mining Waste Directive

For the Environmental Permitting (England and Wales)
Regulations 2010

Updated May 2010

Version 1.1



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Department for Environment
Food and Rural Affairs

Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London SW1P 3JR
Telephone 020 7238 6000
Website: www.defra.gov.uk

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Information about this publication and copies are available from:

Defra, Environmental Permitting Programme
5A Ergon House
Horseferry Road
London SW1P 2AL
Tel: 020 7238 5097

Email: eppadministrator@defra.gsi.gov.uk

This document is available on the Defra website:

www.defra.gov.uk/environment/policy/permits

Published by the Department for Environment, Food and Rural Affairs

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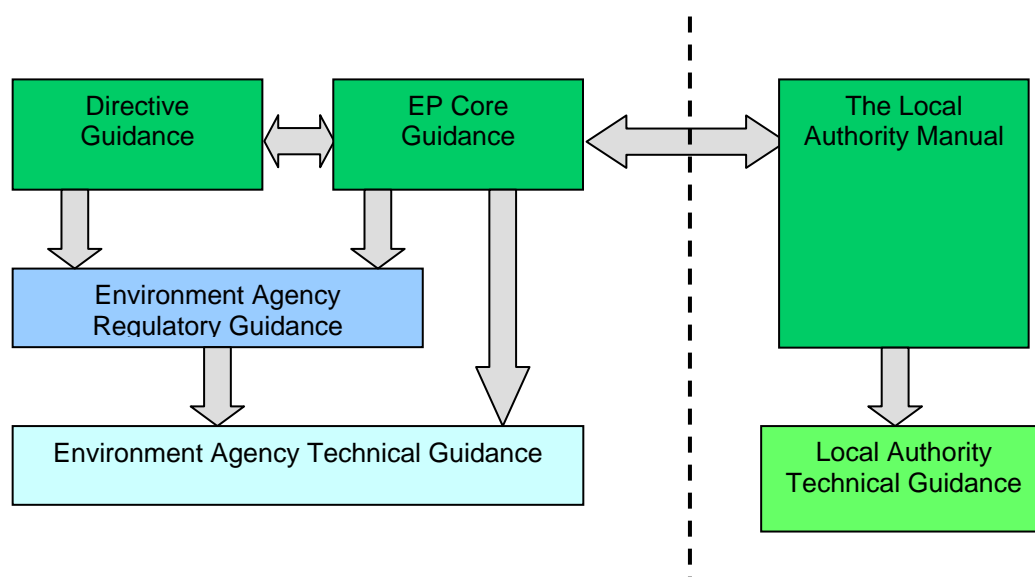
Annex 4 – Transposition Table

1. Summary

About this guidance

- 1.1 This guidance is aimed at helping readers understand Directive 2006/21/EC¹ of the European Parliament and the Council on the management of waste from extractive industries². This is commonly known as the Mining Waste Directive ('the Directive') although the scope of the Directive includes waste from mineral extraction other than mines.
- 1.2 This guidance is being published to help those regulating and managing waste from mines, quarries and other mineral extraction industries. It describes the views of the Secretary of State for Environment, Food and Rural Affairs (Defra), the Secretary of State for Communities and Local Government (CLG) and the Welsh Assembly Government (WAG) on how the Directive should be applied and how particular terms should be interpreted in England and Wales. The guidance explains the legal requirements but only the European Court of Justice or the national Courts can give a definitive interpretation of the legislation.
- 1.3 This guidance is part of a series of guidance documents which accompany the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010 No. 675) ('the Regulations')³.

Figure 1. Illustration of guidance relationships.



¹ 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/EC, OJ No. L 102, 11.4.2006, p15.

² The 'extractive industries' are defined (in Article 3 (6)) of the Directive as 'all establishments and undertakings engaged in surface or underground extraction of mineral resources for commercial purposes, including extraction by drilling boreholes, or treatment of the extracted material'.

³ Available at www.defra.gov.uk/environment/policy/permits/guidance.htm

- 1.4 The series consists of the Environmental Permitting Core Guidance⁴, which describes the general permitting and compliance requirements, and guidance on each of the European Directives transposed through the Environmental Permitting regime⁵. Separate guidance is available for local authority regulation under the regime⁶. This is illustrated in Figure 1.
- 1.5 This guidance should be read in conjunction with the Environmental Permitting Core Guidance. Reference should also be made to the guidance on the Waste Framework Directive⁷.
- 1.6 The Environment Agency has provided more detailed guidance on the requirements of the Directive. This is available on its website www.environment-agency.gov.uk/epr.
- 1.7 To ensure this guidance is current and up to date, from time to time this guidance will be updated. Where made, revisions can be found in the 'Revision of Guidance' section at the front of the document.
- 1.8 This guidance document is compliant with the Code of Practice on Guidance on Regulation⁸. If you feel this guidance breaches the code, or notice any inaccuracies within the guidance, please contact the EPP team at: eppadministrator@defra.gsi.gov.uk

⁴ Available at www.defra.gov.uk/environment/policy/permits/guidance.htm

⁵ *Ibid*

⁶ Available at www.defra.gov.uk/environment/quality/pollution/ppc/localauth/pubs/guidance/manuals.htm

⁷ Available at www.defra.gov.uk/environment/policy/permits/guidance.htm

⁸ See Environmental Permitting Guidance and Glossary Chapter 3: www.defra.gov.uk/environment/policy/permits/guidance.htm

2. Introduction

The Mining Waste Directive

- 2.1 The Directive was published in the Official Journal of the European Union on 11 April 2006 (L102/15).
- 2.2 The Directive's overall objective is to provide for measures to prevent or reduce as far as possible any adverse effects on the environment⁹ as well as any resultant risk to human health from the management of waste from the extractive industries.
- 2.3 Almost all of the Directive is transposed through the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No 675). The exception to this are certain aspects of the Article 6 requirements¹⁰ which apply to Category A mining waste facilities (see paragraph 3.15). These requirements relate to the drawing up of external emergency plans and the provision of information in the event of a major accident and are transposed through separate regulations (SI 2009/1927 The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009), which entered into force on 12 August 2009. Separate guidance will be published for those regulations. Local emergency planners are designated as the competent authority for the purposes of those regulations.
- 2.4 Although the Directive does not require a permit for all of the operations within its scope, requirements such as those for the submission, approval and review of waste management plans fit well within the environmental permitting system. It is through an environmental permit, therefore, that the Directive's requirements for such plans are transposed in England and Wales.
- 2.5 A table setting out how each Article of the Directive has been transposed can be found in Annex 4.
- 2.6 Article 22 of the Directive requires the European Commission to adopt provisions necessary to implement particular elements of the Directive and for priority to be given to the following:
 - the technical requirements for waste characterisation;
 - interpretation of the definition of inert waste (Article 3(3)); and
 - determining the criteria for the classification of waste facilities including the thresholds for a Category A facility.

⁹ In particular, water, air, soil, fauna and flora and landscape.

¹⁰ The requirements include: a) Duty on competent authorities to draw up an external emergency plan, b) requirement for an operator to supply information in the event of a major accident, c) requirement on an operator to make information on safety measures publicly available.

- 2.7 At the time of publication of this version of the guidance the Commission has issued the following Decisions under Article 22 which the Environment Agency must duly take account of:
- Classification of waste facilities: *Commission Decision of 20 April 2009 on the definition of the criteria for the classification of waste facilities in accordance with Annex III of Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries (2009/337/EC)*
 - Financial Guarantees: *Commission Decision of 20 April 2009 on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries (2009/335/EC)*
 - Transmission of information: *Commission Decision of 29 April 2009 on the harmonisation, the regular transmission of the information and the questionnaire referred to in Articles 22(1)(a) and 18 of Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries (2009/358/EC)*
 - Definition of Inert Waste: *Commission Decision of 30 April 2009 completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries (2009/359/EC)*
 - Waste Characterisation: *Commission Decision of 30 April 2009 completing the technical requirements for waste characterisation laid down by Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries (2009/360/EC)*
- 2.8 The relevant requirements from the Directive are set out in Schedule 20 to the Regulations (reproduced in this document as Annex 1).
- 2.9 A summary table (table 1) setting out the requirements for different activities and wastes can be found at the end of this Chapter.
- 2.10 Chapter 3 of this guidance sets out the scope of the Directive. Chapter 4 describes the requirements of the Directive which will be delivered through environmental permits and sets out how the Regulations transpose the relevant parts of the Directive. Chapter 5 describes the other requirements of the Directive relevant to environmental permitting. All references to an 'Article' are to an Article of a European Directive.
- 2.11 A copy of the Directive is provided at Annex 2.

- 2.12 A separate glossary of terms is available¹¹. The glossary briefly explains the meaning of many words, phrases and acronyms used in the Regulations and directives.

Relationship with other legislation

- 2.13 To date the requirements of the Waste Framework Directive¹² have applied in principle to all waste produced by the extractive industries. However, the effect of Article 2(1)(b)(ii) of the Waste Framework Directive is to exclude from its scope 'waste from prospecting, extraction, treatment and storage of mineral resources and the working of quarries' where they are covered by other legislation.
- 2.14 Before the adoption of the Mining Waste Directive there was no specific EU legislation covering waste of this kind. However, the European Court of Justice concluded in the AvestaPolarit case (C-114/01) that national legislation must be regarded as other legislation within the meaning of Article 2(1)(b)(ii) of the Waste Framework Directive where it covers the categories of waste listed in that provision, and if that national legislation results in a level of protection of the environment at least equivalent to that aimed at by the Waste Framework Directive. Prior to the transposition of the Mining Waste Directive, the UK has relied on national legislation to provide an equivalent level of environmental protection to that aimed at by the Waste Framework Directive for the management of mineral waste from mines and quarries (Appendix 3 to Annex 3).
- 2.15 The Mining Waste Directive is 'other legislation' for the purposes of Article 2(1)(b)(ii) of the Waste Framework Directive and Article 2(2). This means that where waste is covered by the Mining Waste Directive it does not fall within the scope of the Waste Framework Directive. However, the Mining Waste Directive reflects the principles and priorities of the Waste Framework Directive and, in particular, the waste hierarchy (Article 3) and the protection of the environment and human health (Article 4)¹³.
- 2.16 Waste which falls within the scope of the Mining Waste Directive is not subject to the Landfill Directive¹⁴ (Article 2(4) of the Mining Waste Directive). This means that there is no overlap between the two directives. If the Mining Waste Directive applies then the Landfill Directive does not. For further consideration on determining what is a waste for application of the directives see in Chapter 3 "What is a waste?" and Annex 3 – The Definition of Waste.
- 2.17 However, Article 10(2) of the Mining Waste Directive explicitly states that the Landfill Directive will apply, where appropriate, to waste other than extractive waste that is used for filling excavation voids.

¹¹ Available at www.defra.gov.uk/environment/policy/permits/guidance.htm

¹² Originally adopted as Directive 75/442/EEC and codified as Directive 2006/12/EC.

¹³ See Recitals (6) and (11) to the Mining Waste Directive in Annex 2.

¹⁴ Directive 1999/31/EC on the landfill of waste

- 2.18 Where waste is generated at a prospecting, extraction or treatment site and then is transported to a location that is not a mining waste facility, it falls outside the scope of the Mining Waste Directive and is subject to the Waste Framework Directive and, where relevant, the Landfill Directive as implemented.
- 2.19 A “waste facility” is defined as an area designated for the accumulation or deposit of extractive waste, whether in solid or liquid state or in solution or suspension, for the time periods specified in that definition (Article 3(15) of the Mining Waste Directive – see paragraph 3.11). In the Regulations and elsewhere in this guidance, these are referred to as “mining waste facilities”. If other wastes are also deposited in the facility this means that:
- (a) the facility is not within the scope of the Mining Waste Directive; and
 - (b) all of the waste deposited there, including the extractive waste, is subject to the Waste Framework Directive and, where relevant, the Landfill Directive.
- 2.20 The Mining Waste Directive does not cover wastes which, although produced by the extractive industries, are not directly linked to mineral prospecting, extraction or treatment operations. These wastes are covered by the Waste Framework Directive (see [What is excluded from the Directive?](#), below).
- 2.21 A number of other European Directives and legislation are also relevant, for example the Habitats and Groundwater Directives¹⁵ and the Control of Major Accident Hazards (COMAH) Regulations¹⁶. Annex 1 to the Environmental Permitting Core Guidance¹⁷ outlines the connections with other legislation.

Relationship with planning controls

- 2.22 A mineral planning authority must not grant planning permission for a mining waste facility that requires a permit under Article 7 of the Directive unless it is satisfied that (a) the operator will meet the requirements of Article 11(2)(a) of the Directive (relating largely to location of the facility with respect to protected areas, geological factors and pollution prevention); and (b) the management of waste at that facility will not conflict directly or otherwise interfere with the implementation of the plan or plans referred to in Article 7(3)(b) of the Directive¹⁸.
- 2.23 The Environment Agency may only grant an environmental permit for a mining waste facility that requires a permit under Article 7 (see [What is a mining waste facility?](#), below) where the necessary planning permission is in

¹⁵ Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora; Directive 2006/118/EC on the protection of groundwater against pollution and deterioration

¹⁶ SI 1999 No 743 as amended

¹⁷ Available at www.defra.gov.uk/environment/policy/permits/guidance.htm

¹⁸ See paragraph 4.18 of the Defra Environmental Permitting guidance on the Waste Framework Directive, available at

www.defra.gov.uk/environment/policy/permits/documents/wfd-guidance.pdf

force (paragraph 13(1) of Schedule 20 to the Regulations). The Regulations also state (in paragraph 13(2)) that the environmental permit conditions prevail where there is inconsistency between the planning conditions and the environmental permit.

2.24 Government guidance on the relationship between planning and pollution control is available in Planning Policy Statement 23¹⁹. This confirms that the regimes are intended to be complementary and should minimise any overlap.

Table 1 Summary of the Directive requirements for different activities and waste types

Key:

Requirement ✓
Not a requirement ✗

Article	Requirements	Category A mining waste facilities (for all types of extractive waste)	Mining waste facilities for hazardous wastes (not Category A)	Other mining waste operations involving hazardous wastes	Mining waste facilities for non-hazardous (but not inert) wastes ¹	Other mining waste operations involving non-hazardous (but not inert) wastes ¹	Mining waste operations (including facilities) for inert waste	The deposit of non-hazardous waste from prospecting, waste from peat extraction and unpolluted soils ¹
4	General requirements	✓	✓	✓	✓	✓	✓	✓
5	Waste Management Plan	✓	✓	✓	✓	✓	✓	✗
6	Major accident prevention and information	✓ ²	✗	✗	✗	✗	✗	✗
7	Directive requirement for a permit	✓	✓	✗ ³	✓	✗ ³	✗ ³	✗ ³
8	Public participation	✓	✓	✗	✓	✗	✗	✗
10	Deposit in excavation voids	✓ ⁴	✓ ⁴	✓	✓ ⁴	✓	✓ ⁴	✗
11(1)	Management, technical development and training	✓	✓	✗	✓	✗	✗	✗
11(2)	Requirements on location, construction, management, maintenance, monitoring, inspection, restoration, aftercare and record keeping	✓	✓	✗	✓	✗	✓ for waste facilities only	✗

¹⁹ Available at www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements/planningpolicystatements/pps23

Article	Requirements	Category A mining waste facilities (for all types of extractive waste)	Mining waste facilities for hazardous wastes (not Category A)	Other mining waste operations involving hazardous wastes	Mining waste facilities for non-hazardous (but not inert) wastes ¹	Other mining waste operations involving non-hazardous (but not inert) wastes ¹	Mining waste operations (including facilities) for inert waste	The deposit of non-hazardous waste from prospecting, waste from peat extraction and unpolluted soils ¹
11(3)	Notification of events and environmental effects, implementation of emergency plans and reporting of monitoring results	✓	✓	✗	✗	✗	✗	✗
12(1) to (4)	Closure and aftercare procedures	✓	✓	✗	✓	✗	Not required ⁵	✗
12(5) to (6)	Following closure, measures to control stability and minimise negative effects. Notification of events and effects, implementation of emergency plans and reporting monitoring results.	✓	✓	✗	✗	✗	✗	✗
13(1) to (5)	Requirements to prevent the deterioration of water status, soil pollution, prevent or reduce dust and gas emissions	✓	✓	✓	✓	✓	✓	✗
13(6)	Reduction of cyanide in ponds	✓	✓	✗	✗	✗	✗	✗
14	Financial guarantees	✓	✓	✗	✗	✗	✗	✗
16	Informing other Member States	✓	✗	✗	✗	✗	✗	✗
17	Inspection prior to waste deposit	✓	✓	✗	✓	✗	✗	✗

Note 1: The deposit of non-hazardous waste generated from prospecting of mineral resources (**except** prospecting for oil and evaporates other than gypsum and anhydrite) as well as the deposit of unpolluted soil and waste resulting from the extraction, treatment and storage of peat have to meet the requirements of Article 4 which are to be delivered by an environmental permit..

Note 2: This does not apply to those Category A waste facilities that are COMAH sites.

Note 3: Where a permit is not required by Article 7 the relevant Directive requirements, for example waste management plans, are to be delivered through an environmental permit.

Note 4: An excavation void into which extractive waste is replaced after extraction of the mineral, for rehabilitation and construction purposes, is not a mining waste facility.

Note 5: The waste management plan is still required to include the proposed arrangements for rehabilitation of the land and closure of the waste facility (Article 11(2)(d)).

3. Scope of the Directive

What does the Directive cover?

- 3.1 The Directive aims to prevent or reduce as far as possible the adverse effects on the environment and any resultant risks to human health from the management of waste from the extractive industries. The Directive sets out how to achieve this aim by providing for measures, procedures and guidance on how extractive waste should be managed.
- 3.2 The Directive covers ‘extractive waste’ as described in Article 2(1) on scope. These wastes are those generated from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries (Article 2 (1)). In the Regulations, extractive waste is defined as waste within the meaning of Article 2(1).
- 3.3 The Directive provides for some exclusions (see [What is excluded from the Directive?](#), below, for the types of wastes from extractive industries not covered by the Directive).
- 3.4 The general requirements for the “measures” mentioned above are laid down in Article 4 which sets out the general requirements of the Directive. Article 4 includes requirements on Member States to take the necessary measures to ensure that extractive waste is managed without endangering human health and without using processes or methods which could harm the environment (see also under Permitting, 4.8). This includes necessary measures to prohibit the abandonment, dumping or uncontrolled depositing of extractive waste. The management of extractive waste includes any waste facility, even after closure, and the prevention of major accidents involving that facility. The measures are to be based on the best available techniques.
- 3.5 Further specific issues on scope that the Directive addresses are described in the following sections.

What is a waste?

- 3.6 Article 1(1)(a) of the Waste Framework Directive²⁰ defines ‘waste’ as:

‘...any substance or object in the categories set out in Annex 1 which the holder discards or intends or is required to discard.’
- 3.7 Reference should be made to the Government guidance on the Waste Framework Directive²¹ and on the definition of waste²².
- 3.8 This definition has been in force in the UK since May 1994 and applies to substances and objects arising from extractive industries in the same way as

²⁰ Council Directive 2006/12/EC on waste

²¹ Available at www.defra.gov.uk/environment/policy/permits/guidance.htm

²² The most recent is available at www.defra.gov.uk/corporate/consult/waste-definition/index.htm

it does to those arising from all other sectors of industry. This means that no substance or object arising from extractive industries has been either classified or declassified as waste as a result of the transposition of the Directive. In other words, transposition of the Directive has no implications for the substances or objects arising from extractive industries that are treated as waste.

What is a mining waste operation?

3.9 A mining waste operation is defined in the Regulations as meaning the management of extractive waste whether or not involving a mining waste facility that falls within the scope of the Directive (see regulation 2 of the Regulations and also [What is excluded from the Directive?](#), below). Under the Regulations all mining waste operations are regulated facilities.

What is a mining waste facility?

3.10 Some of the Directive's requirements only apply to 'waste facilities', referred to in the Regulations and in this guidance as a 'mining waste facility'. In particular, the requirement for a permit under Article 7 only applies to mining waste facilities. A (mining) 'waste facility' is defined in (Article 3(15)) as any area designated for the accumulation or deposit of extractive waste whether in a solid or liquid state²³ or in solution or suspension, for specified time periods. A mining waste facility is deemed to include any heaps, ponds and any associated structures including dams, necessary to contain, retain confine or otherwise support the facility. A mining waste facility does not include an excavation void into which extractive waste is replaced after extraction for the purposes of rehabilitation and construction. It follows that a mining waste facility will normally be an area for the accumulation or deposit of extractive waste that is separate from the actual mine or quarry void.

3.11 An area is only regarded as a mining waste facility where the extractive waste would be kept for certain time periods. The time periods do not apply to 'Category A' mining waste facilities (see paragraph 3.15 below) and facilities for hazardous waste – these are always waste facilities whatever time period is involved. A mining waste facility will be any area designated for the accumulation or deposit of extractive waste for a period of more than:

- six months for facilities for unexpectedly generated hazardous waste;
- a year for facilities for non-hazardous non-inert waste; and
- three years for facilities for inert waste, unpolluted soil, non-hazardous prospecting waste and waste from the peat industry.

²³ for instance behind a dam

- 3.12 Hazardous waste is defined in Article 3(2) of the Directive by making reference to the Hazardous Waste Directive²⁴.
- 3.13 Inert waste is defined in Article 3(3) of the Directive and the European Commission has issued a Decision on the definition of inert waste (see paragraph 2.6 above). In summary, inert waste is waste that will not react and which will not affect other matter in a way likely to give rise to environmental pollution or harm to human health.
- 3.14 Unpolluted soil is defined in Article 3(4) of the Directive as soil removed from the upper layer of the ground which is not polluted. An example of unpolluted soil would be uncontaminated subsoil. Naturally occurring substances in the soil will not make the soil 'polluted', only substances arising from human activity can have 'polluted' the soil.

Category A mining waste facilities

- 3.15 A mining waste facility will be classified as 'Category A' where: a failure or incorrect operation at the mining waste facility has the potential (based on a risk assessment) to cause a major accident; or the mining waste facility contains hazardous waste above a certain threshold; or the mining waste facility contains dangerous substances above a certain threshold. The Commission has issued a Decision on the classification of (mining) waste facilities including a Category A facility (see paragraph 2.6 above).

What is excluded from the Directive?

- 3.16 Article 2(2) of the Directive excludes certain wastes and activities from its scope. These are:
- waste which is generated by the prospecting, extraction and treatment of mineral resources and the working of quarries, but which does not directly result from those operations;
 - waste resulting from the offshore prospecting, extraction and treatment of mineral resources; and
 - injection of water and re-injection of pumped ground-water where this is covered by the Water Framework Directive²⁵.

The second bullet point is interpreted to mean that the extractive activity giving rise to the waste to be controlled must take place onshore. Therefore, any prospecting, extraction or treatment activity taking place offshore which results in waste brought onshore would be outside the scope of the Mining Waste Directive and subject instead to the Waste Framework Directive.

²⁴ Directive 91/689/EEC on hazardous waste. For guidance on hazardous waste see www.defra.gov.uk/environment/waste/topics/hazwaste/index.htm

²⁵ Directive 2000/60/EC establishing a framework for the Community action in the field of water policy, first and second indents of Article 11(3)(j)

- 3.17 Extractive industries will generate wastes other than those from the actual extraction of minerals. Examples of wastes excluded from the scope of the Directive include:
- food waste;
 - waste oil;
 - waste end-of-life vehicles;
 - waste batteries; and
 - waste accumulators.
- 3.18 This means that the wastes excluded from the Directive are subject to the same requirements as wastes generated by any other industry sector. The Waste Framework Directive continues to apply to these wastes and other directives can apply to their disposal – for instance the Landfill Directive or the End-of-life Vehicles Directive²⁶ (see [Relationship with other legislation](#), above).
- 3.19 An environmental permit is not required for those facilities mentioned in Article 24(2) (those that closed by 1 May 2008) and those mentioned in the first paragraph of Article 24(4), that stopped accepting waste before 1 May 2006 as well as those facilities that are completing closure procedures and will be effectively closed by 31 December 2010.

What activities and wastes only have to meet certain requirements of the Directive?

- 3.20 The Directive sets out different requirements for different activities and types of extractive waste. The following paragraphs explain how Article 2(3) of the Directive limits the requirements for some wastes, provided that certain criteria are met. Here, for ease of reference, the different categories of activities, having different types of exclusions or waivers, are referred to as “Types” simply to enable them to be easily distinguished when describing them later in this text. This does not imply any formal designation within the Directive or implementing Regulations.
- 3.21 TYPE 1. Inert waste and unpolluted soil resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries and waste resulting from the extraction, treatment and storage of peat are not subject to the following requirements **unless** the waste is deposited in a Category A mining waste facility (paragraph 9(1) of Schedule 20 to the Regulations):
- requirement for a permit to operate a waste facility – Article 7;
 - public participation – Article 8;

²⁶ Directive 2000/53/EC on end-of-life vehicles

- competent management, technical development and training – Article 11(1);
 - notification of events and environmental effects, implementation of emergency plans and reporting of monitoring results – Article 11(3);
 - closure and aftercare procedures – Article 12;
 - reduction of cyanide in ponds – Article 13(6);
 - financial guarantees – Article 14; and
 - informing other Member States – Article 16.
- 3.22 The Directive does not require a permit under Article 7 to operate a facility for these wastes. However, it is through an environmental permit that the necessary requirements of the Directive (in particular the Article 5 requirement for a Waste Management Plan) are delivered (see Table 1 above).
- 3.23 The Directive (in Article 2.3) does not require the wastes listed in paragraph 3.21 above, to go through the formal closure procedures for waste facilities given in Article 12. However, the waste management plan for these mining waste operations will still be needed to cover closure (see paragraph 4.16 below).
- 3.24 TYPE 2. The Environment Agency will not apply the requirements of the Directive to the deposit of the following types of extractive waste, if it is satisfied that the requirements of Article 4 (see [General Requirements – Article 4](#), below) are met (paragraph 9(2) of Schedule 20 to the Regulations):
- Deposits of non-hazardous waste generated from the prospecting of mineral resources (except oil and evaporates other than gypsum and anhydrite);
 - Deposits of unpolluted soil
 - Deposits of waste resulting from the extraction, treatment and storage of peat.
- 3.25 In relation to the deposit of the waste described in paragraph 3.24 above, the requirements of Article 4 itself will be applied through an environmental permit.
- 3.26 TYPE 3. Where the waste is deposited in a Category A mining waste facility (paragraph 9(3) of Schedule 20 to the Regulations), the Environment Agency will apply the following requirements for non-hazardous non-inert wastes:
- notification of events and environmental effects, implementation of emergency plans and reporting of monitoring results – Article 11(3);

- following closure, measures to control physical and chemical stability and minimise negative environmental effects – Article 12(5);
- following closure, notification of events and environmental effects, implementation of emergency plans and reporting of monitoring results – Article 12(6);
- reduction of cyanide in ponds – Article 13(6);
- financial guarantees – Article 14; and
- informing other Member States – Article 16.

When does the Directive take effect?

3.27 The Directive requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 1 May 2008. However, the amendments to the Regulations transposing the Directive's requirements only came into effect in England and Wales on 7 July 2009. The transitional provisions for existing mining waste operations and facilities (already operating on 1 May 2008) are set out in the section on **Transitional provisions – Article 24(1)**, below.

4. Permitting Requirements

- 4.1 This chapter describes the requirements of the Directive that all environmental permits for mining waste operations must deliver and how the Regulations apply these requirements.
- 4.2 Paragraph 1 of Schedule 20 to the Regulations applies the requirements of the Schedule to every mining waste operation. A 'mining waste operation' is defined as the management of extractive waste²⁷.
- 4.3 All mining waste operations require an environmental permit (regulation 8 and regulation 12). The environmental permit is the means by which the relevant Directive requirements are applied. It should be noted that the requirement for a permit under Article 7 of the Directive only applies to mining waste facilities (and there are some exclusions from this – see paragraphs 3.21 et seq., above). The distinction between those mining waste facilities that require a permit under Article 7 and those mining waste operations that do not, is important in understanding which requirements of the Directive have to be delivered by the environmental permit.
- 4.4 Paragraph 7 of Schedule 20 to the Regulations requires the regulator to exercise its 'relevant functions' so as to comply with certain provisions of the Directive.
- 4.5 A regulator exercises a relevant function when it determines an application for the grant of a permit, when it makes a regulator-initiated variation of permit conditions or when it exercises enforcement powers in relation to a permit (regulation 9 and see chapters 6, 7 and 11 of the Environmental Permitting Core Guidance²⁸).
- 4.6 The Environment Agency is the environmental permitting regulator for mining waste operations.
- 4.7 The following sections deal with each of the requirements of the Directive that the Environment Agency will deliver through its permitting work. The sections are:
- General requirements – Article 4
 - Waste management plans – Article 5;
 - Major accident prevention and information – Article 6;
 - Category of the mining waste facility in the permit - Article 9;
 - Excavation voids – Article 10;
 - Construction and management - Article 13;

²⁷ See definition in paragraph 3.2

²⁸ Available at www.defra.gov.uk/environment/policy/permits/guidance.htm

- Closure of mining waste facilities and aftercare – Article 12;
- Preventing water status deterioration – Article 13;
- Financial guarantees – Article 14;
- Inspections and record keeping– Article 15;
- Transitional provisions – Article 24.

General Requirements – Article 4

The general requirements apply to all mining waste operations and mining waste facilities

- 4.8 The Environment Agency will exercise its relevant functions (see paragraph 4.5) so as to ensure compliance with the general requirements set out in Article 4 of the Directive (paragraph 7(b) of Schedule 20 to the Regulations), in particular:
- a) to ensure that extractive waste is managed without endangering human health or causing pollution (Article 4(1)); and
 - b) to ensure that the operator takes all the necessary measures to prevent or reduce as far as possible any adverse effects on the environment and human health (Article 4(2)). This includes:
 - the management of waste facilities while operational;
 - the management of waste facilities following closure; and
 - the prevention of major accidents and limiting the consequences on the environment and human health.

Best Available Techniques

- 4.9 The measures that the operator must take should be based on Best Available Techniques ('BAT'). Article 21(3) requires the European Commission to arrange an exchange of information on BAT and to publish the results.
- 4.10 There is a European reference document (BREF) on Best Available Techniques for management of tailings and waste-rock in mining activities²⁹. The Environment Agency will take account of relevant BREFs in its Technical Guidance where discussing the application of BAT to the management of mining waste.

²⁹ BREF 25 Reference Document on Best Available Techniques for Management of Tailings and Waste-rock in Mining Activities. Available at <http://eippcb.jrc.es/pub/english.cgi/0/733169>

Waste management plans – Article 5

All mining waste operations require a waste management plan as described in Article 5 of the Mining Waste Directive.

(Excluded operations: TYPE 2)

4.11 The Environment Agency will deliver the requirement for waste management plans through the environmental permit. An operator will need to submit a waste management plan as part of the permit application in respect of any mining waste operation in accordance with Paragraph 3(1) and (2) of Schedule 20 of the Regulations.

4.12 The operator must produce and implement a waste management plan. The plan must take into account the principle of sustainable development and must cover the following issues in relation to the extractive waste:

- minimisation of waste generation;
- treatment;
- recovery; and
- disposal.

Objectives of the waste management plan

4.13 Waste production and the harmfulness of waste should be prevented or reduced (Article 5(2)(a)). The plan should achieve this by considering in particular:

- waste management in the design phase and in the choice of the mineral extraction and treatment method;
- the changes the waste may undergo in relation to an increase in surface area and exposure to conditions above ground;
- the return of extractive waste to the void as far as is technically and economically feasible and environmentally sound in accordance with existing Community environmental standards and the requirements of the Directive where relevant;
- replacing topsoil after closure of the mining waste facility where feasible and where not, reusing the topsoil; and
- where chemicals are used to treat the extracted material, the use of less dangerous substances in the treatment of mineral resources.

4.14 The plan should encourage the recovery of extractive waste wherever this is environmentally sound and in accordance with the Directive's requirements.

4.15 The safe disposal of extractive waste should be ensured in the short and long term. The operator should achieve this by considering in particular, over the whole lifecycle of the mining waste facility, the design which:

- requires the least possible monitoring and control of the closed mining waste facility;
- prevents or minimises any long term environmental effects from the facility; and
- ensures the long term geotechnical stability of any retaining structures (dams) or above ground deposits (heaps).

Content of the waste management plan

4.16 The waste management plan must cover the following elements, where they are relevant:

- the proposed classification of the mining waste facility;
 - where a Category A facility is required, evidence that the major accident prevention policy, safety management system and internal emergency plan will be put into effect (see [Major accident prevention and Information – Article 6](#), below);
 - where an operator considers a Category A facility is not required, information justifying this, including an identification of the potential accident hazards;
- waste characterisation in accordance with Annex II to the Directive, and an estimate of the total quantity of extractive waste to be generated;
- a description of the operation generating the waste;
- a description of any treatment of the generated waste;
- a description of the risks to the environment and human health posed by the deposit of the waste;
- a description of the preventative measures to be taken to minimise environmental impact over the life cycle of the mining waste facility including location, construction, closure and aftercare (see [Construction and management of waste facilities – Article 11](#), below);
- the control and monitoring procedures including for the waste and excavation void where the waste is being returned to the void (see [Excavation voids – Article 10](#), below) and for the mining waste facility (see [Construction and management of waste facilities – Article 11](#), below);
- the proposed plan for closure, after care and monitoring (see [Closure and aftercare of waste facilities – Article 12](#), below);

- measures for the prevention of water status deterioration in accordance with the Water Framework Directive and for the prevention and minimisation of soil and air pollution (see ‘[Preventing water status deterioration, air and soil pollution – Article 13](#)’ below); and
 - a survey of the land to be affected by the mining waste facility.
- 4.17 The waste management plan must provide enough information to allow the Environment Agency to decide whether the operator can meet the obligations under the Directive and can meet the objectives of the waste management plan.
- 4.18 The waste management plan must explain how the operator’s choice of the mineral extraction and treatment method will meet the objective of preventing or reducing waste production and the harmfulness of waste (see paragraph 4.13, above).
- 4.19 The Environment Agency will produce templates and example waste management plans as part of its guidance on applications for permits.

Review of the waste management plan

- 4.20 The operator must review the waste management plan at least every five years and, where necessary, amend the plan where there are substantial changes to the operation of the facility or to the waste deposited.
- 4.21 The operator must notify the Environment Agency of any changes to the waste management plan.

Duplication of information

- 4.22 Where the requirements of the waste management plan set out above can be met by other plans, then the operator can rely on those plans to meet some or all of the requirements of the waste management plan. These other plans may include those produced for the purposes of satisfying Health and Safety legislation (for example the Quarries Regulations 1999) including safety of deposits or planning legislation (see paragraph 3(4) of Schedule 20 to the Regulations). This information must be submitted (or a suitable authoritative up to date reference made to a substantive valid document e.g. an electronic link) as part of the permit application.

Approval and monitoring of the waste management plan

- 4.23 Article 5(6) sets out that Member States have to decide how to approve the waste management plan and that the implementation of the plan shall be monitored. In England and Wales, the procedure for approving the plan is through the grant (or variation) of an environmental permit and the monitoring of its implementation is through ensuring compliance with the permit.
- 4.24 The Environment Agency will assess the operator’s waste management plan. Where the Environment Agency considers that the plan meets the requirements of Article 5, it should approve the plan and grant the environmental permit.

- 4.25 The Environment Agency will monitor the implementation of the waste management plan as part of its compliance work.

Major accident prevention and Information – Article 6(2) and parts of 6(3) and (4)

The requirements relating to major accident prevention and information only apply to Category A mining waste facilities

- 4.26 Article 6 sets out the requirements for major-accident prevention and the associated information requirements. Article 6 only applies to ‘Category A’ mining waste facilities. Not all of the requirements are delivered directly through the environmental permitting regime³⁰.
- 4.27 The requirement for an external emergency plan specifying the measures to be taken off-site in the event of an accident is contained in separate regulations³¹, with the local emergency planners as the competent authority. Additionally, the requirements for an operator to supply information to the emergency planners in the event of a major accident and to the public on safety measures and on action required in the event of an accident, are contained in these separate regulations (see [The Mining Waste Directive](#), above).
- 4.28 Article 6(3) requires the operator to produce a major accident³² prevention policy and put into effect a safety management plan implementing it. As part of this, the operator will have to identify all major accident hazards.
- 4.29 The operator must appoint a safety manager responsible for the implementation, maintenance and supervision of the major accident prevention policy.
- 4.30 The existing controls under the Mines and Quarries (Tips) Act (1969), the Quarries Regulations (1999) and Mines and Quarries (Tipping Plans) Rules (1971) – ‘tipping rules’ required by Health and Safety Executive under that Act, provide all of the necessary safeguards that the Directive requires with regard to stability of waste deposits, including lagoons and retaining dams. The Health and Safety Executive will continue to administer these arrangements. The operator should refer to the tipping rules within the accident plan.
- 4.31 As well as the major accident prevention policy, the operator must also produce an internal emergency plan setting out the actions that will be taken on site in the event of an accident.

³⁰ Defra will produce separate guidance on Article 6

³¹ The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009, SI 2009 No 1927

³² The Directive defines a ‘major accident’ as “an occurrence on site in the course of an operation involving the management of extractive waste in any establishment covered by this Directive, leading to a serious danger to human health and/or the environment, whether immediately or overtime, on-site or off-site;”.

- 4.32 The aims of the emergency plans are to:
- contain and control major incidents to limit their impact, in particular, on human health and the environment;
 - ensure that the necessary measures are taken to protect human health and the environment;
 - ensure that the necessary information is given to the public and the relevant public bodies; and
 - ensure the effects on the environment are remediated.
- 4.33 The operator must submit outlines of the major accident prevention policy and internal emergency plan with the permit application. The internal emergency plan and the major accident prevention policy must be made available to the Environment Agency.

Category of the waste facility in the permit – Article 7 (1)

Where the environmental permit relates to a mining waste facility then the permit will state the category of the facility

- 4.34 The Directive sets out how the competent authority, the Environment Agency, is to decide if a mining waste facility is a 'Category A' facility (in accordance with Article 9 and Annex III to the Directive). The European Commission has adopted provisions to define the criteria for the classification of Category A facilities, including the thresholds for hazardous waste and dangerous substances (see below and the Commission Decision referred to in paragraph 2.7 on the classification of waste facilities, 2009/337/EC).
- 4.35 In general terms the Environment Agency will classify³³ a mining waste facility as 'Category A' where:
- a failure or incorrect operation³⁴ at the mining waste facility has the potential (based on a risk assessment) to cause a major accident; or
 - the mining waste facility contains hazardous waste above a certain threshold; or
 - the mining waste facility contains dangerous substances above a certain threshold.
- 4.36 Article 7(2) makes provision for the information to be supplied in applications. This is covered in more detail in the Core Guidance.

³³ Article 5(3)(a) requires that the waste management plan contain the proposed classification.

³⁴ An incorrect operation involves all possible mechanisms that can give rise to a major accident, including malfunction of environmental protection measures and faulty or insufficient design.

4.37 Article 7(3) determines that a Competent Authority shall only grant a permit where it is satisfied that the operator complies with the relevant requirements of the Directive and the management of the waste does not conflict directly or interferes with the implementation of waste management plans under the Waste Framework Directive.

Excavation voids – Article 10

The requirements for placing extractive waste back into the excavation void³⁵ apply to all mining waste operations where this activity takes place

Excluded operations: TYPE 2

4.38 The operator must satisfy the Environment Agency that measures will be taken to ensure that:

- the replaced mining waste is physically stable;
- pollution of soil and water is prevented; and
- appropriate monitoring of the void and the waste takes place for as long as is necessary.

Construction and management of waste facilities – Article 11

The requirements relating to competent management, technical development and training (Article 11(1)) apply to all mining waste facilities.

Excluded facilities: TYPE 1 and TYPE 2

4.39 The applicant for an environmental permit must demonstrate to the Environment Agency that the operator is competent to manage the mining waste facility and that the operator's management system will provide the necessary staff training and development (Article 11(1)).

The requirements relating to the construction or modification of the facility (Article 11(2)) apply to all new mining waste facilities and existing facilities being modified

Excluded facilities: TYPE 2

4.40 The Environment Agency will not grant (or vary) an environmental permit unless the applicant has demonstrated that, taking into account the Groundwater, Dangerous Substances and Water Framework Directives, the mining waste facility is suitably located and designed in order to:

- prevent pollution, in particular of Special Areas of Conservation, Special Protection Areas and Sites of Special Scientific Interest;

³⁵ Note that the definition of mining waste facility excludes the backfilling of the extraction void for the purposes of rehabilitation and construction

- where necessary collect contaminated water and leachate; and
 - reduce erosion as far as practicable.
- 4.41 The Environment Agency will not grant (or vary) an environmental permit unless the applicant has demonstrated that the mining waste facility is suitably constructed, managed and maintained in order to:
- ensure physical stability;
 - prevent short or long term pollution or contamination of soil, air or water; and
 - minimise as far as possible damage to the landscape.
- 4.42 The Environment Agency will fulfil the above requirements by reference to the ‘tipping rules’ for physical stability (see paragraph 4.30, above) and, with respect to damage to the landscape, should follow any advice of the Mineral Planning Authority.
- 4.43 The Environment Agency will not grant (or vary) an environmental permit unless the applicant has demonstrated that the operator’s management system will ensure appropriate monitoring of the mining waste facility and that the necessary actions will be triggered where the monitoring indicates instability or contamination of soil or water. The Environment Agency will ensure that the permit requires the operator to keep records relating to monitoring throughout the life of the permit.
- 4.44 The Environment Agency will not grant (or vary) an environmental permit unless the applicant has demonstrated that the operator has made suitable arrangements for:
- the closure of the mining waste facility;
 - the rehabilitation of the land (restoring the land to a satisfactory state - see Article 3(20)); and
 - the aftercare of the mining waste facility.

The requirements relating to the notification of events (Article 11(3)) apply to all Category A mining waste facilities and facilities for hazardous wastes

- 4.45 The Environment Agency will ensure that the environmental permit requires the operator to tell them immediately of any events likely to affect stability or of any significant environmental effects. The permit must ensure that the operator of a Category A facility will implement the internal emergency plan.
- 4.46 For Category A mining waste facilities and facilities for hazardous waste, the Environment Agency will ensure that the environmental permit requires the operator to submit an annual report describing the behaviour of the mining waste facility that includes all the monitoring results (for example in the form

of an appendix to the report). The Environment Agency will consider the report and may decide that the operator should engage an independent expert to validate the report.

Closure and aftercare of waste facilities – Article 12

The requirements of closure and aftercare in Articles 12(1) to 12(4) apply to all mining waste facilities

Excluded facilities: TYPE 1 and TYPE 2

4.47 The closure of a mining waste facility can begin:

- when the conditions specified in the permit are satisfied;
- when the Environment Agency approves the initiation of closure following a request from the operator;
- where there is no longer a requirement for management of the extractive wastes where no permit is in force; or
- by reasoned decision of the Environment Agency.

4.48 There is a right of appeal if the Environment Agency decides not to authorise the closure process following a request from the operator.

4.49 A mining waste facility cannot be considered to be finally closed until the Environment Agency has inspected the site, considered a closure report (including the restoration of the land to a satisfactory state) and informed the operator of its approval.

4.50 Following closure, the operator must continue to comply with the requirements of the environmental permit until the Environment Agency accepts the operator's application to surrender the permit.

The requirements for controlling chemical and physical stability (Article 12(5) and (6) apply to all Category A mining waste facilities and facilities for hazardous waste

4.51 Where the Environment Agency considers it necessary, it will ensure that, following closure of a facility, the permit requires the operator to take the following measures to control the physical and chemical stability of the mining waste facility and minimise any negative environmental effect. In reaching a decision, the Environment Agency will take into account the Groundwater, Dangerous Substances and Water Framework Directives. Where it is necessary, the permit will require the operator to:

- monitor and conserve all relevant structures at the mining waste facility;
- have the control and monitoring equipment ready for use at all times; and

- keep any overflow channels and any spillways clean and free from obstructions.
- 4.52 The Environment Agency will ensure that, following closure, the environmental permit requires the operator to tell them immediately of any events likely to affect stability or of any significant environmental effects. The permit must ensure that the operator of a Category A mining waste facility will implement the internal emergency plan.
- 4.53 The Environment Agency will ensure that the environmental permit requires the operator to submit a report describing the behaviour of the mining waste facility and including all the monitoring results (for example in the form of an appendix to the report). The Environment Agency will specify how often the operator has to make such a report. This should not be more frequent than once a year.

Preventing water status deterioration, air and soil pollution – Article 13

The requirements for preventing water status deterioration, air and soil pollution in Articles 13(1) to 13(4) apply to all mining waste operations

Excluded operations: TYPE 2

- 4.54 The Environment Agency will not grant (or vary) an environmental permit unless the applicant has demonstrated that the operator has taken the measures necessary to meet relevant Community environmental standards, in particular to prevent the deterioration of the water status (in accordance with the Water Framework Directive). The measures shall include:
- a) determining the water balance of the mining waste facility;
 - b) evaluating the potential volume and quality of leachate that could be generated by the waste over the life of the site;
 - c) preventing or minimising leachate generation;
 - d) preventing or minimising the contamination of surface water, groundwater and soil;
 - e) collecting leachate and contaminated water; and
 - f) treating the collected leachate and contaminated water to the standard necessary for discharge.
- 4.55 The Environment Agency will not grant (or vary) an environmental permit unless the applicant has demonstrated that the operator has taken the measures necessary to prevent or reduce emissions of dust or gas.
- 4.56 The Environment Agency can reduce or waive the measures c) to f) in paragraph 4.54, above, where it considers, on the basis of an environmental

risk assessment (taking into account the Dangerous Substances Directive³⁶ and the Groundwater Directive³⁷ or Water Framework Directive as appropriate) that:

- it is not necessary to collect or treat leachate; or
 - the mining waste facility poses no potential hazard to water or soil.
- 4.57 Where it is not necessary to collect leachate the Environment Agency will waive the requirements to prevent leachate generation and to collect and treat leachate and contaminated water (points (b) and (c) of paragraph 1 of Article 13 which are given as measures c) to f) in paragraph 4.54 above).
- 4.58 The meaning of the phrase 'no potential hazard' shall be interpreted by the Environment Agency as follows: where any necessary measures would only provide a negligible contribution to meeting relevant environmental standards and preventing the deterioration of the water status, then the mining waste facility would pose no potential hazard to water or soil. The Environment Agency may then waive such measures. The necessary measures may be reduced where the mining waste facility poses an acceptably low environmental risk.
- 4.59 The Environment Agency will not permit the disposal of any mining waste into a water body unless the operator can demonstrate compliance with the Groundwater, Dangerous Substances and Water Framework Directives. This does not apply to a water body specifically created for the purposes of disposing of the waste.

Waste in flooded excavation voids

The requirements for preventing water status deterioration, air and soil pollution apply to all mining waste operations where extractive waste will be placed back in a void which will be flooded (Article 13(5)).

Excluded operations: TYPE 2

- 4.60 The Environment Agency will not permit extractive waste to be placed back into a void which will be allowed to flood unless the applicant has demonstrated that the operator has taken the measures necessary to prevent or minimise water status deterioration and soil pollution. In the case of placing inert extractive waste back into such a void, this operation should be permitted provided that the relevant criteria of Articles 13.1 and 13.3 of the Directive are met. The Environment Agency will ensure that the permit requires the operator to provide the information necessary to demonstrate compliance with Community obligations, in particular the Water Framework Directive.

³⁶ 76/464/EEC

³⁷ Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances and Directive 2006/118/EEC on the protection of groundwater against pollution and deterioration

Cyanide in ponds

The requirement for cyanide reduction in ponds applies to all relevant Category A mining waste facilities and facilities for hazardous waste (Article 13(6))

- 4.61 Article 13(6) of the Directive sets out specific provisions relating to the concentrations of cyanide in ponds.
- 4.62 For sites operational after 1 May 2008, the Environment Agency will not grant a permit unless the applicant has demonstrated that the operator will use best available techniques to reduce the concentration of weak acid dissociable cyanide to the lowest possible level. In all permits granted for these sites after 1 May 2008 the Environment Agency will set a limit for weak acid dissociable cyanide of no greater than 10 parts per million.
- 4.63 For existing sites (those operational on 1 May 2008), the Environment Agency will include permit conditions requiring the operator to reduce the concentration of weak acid dissociable cyanide to no more than:
- 50 parts per million from 1 May 2008;
 - 25 parts per million from 1 May 2013; and
 - 10 parts per million from 1 May 2018.
- 4.64 The concentrations given above relate to the point where the processing plant discharges the tailings into the pond. The European Commission will adopt provisions for implementing Article 13(6), including the technical requirements (see Article 22(1)(b)).
- 4.65 The Environment Agency can require the operator to submit a site specific risk assessment which must demonstrate why it is not necessary for the Environment Agency to impose a lower limit than those set out above.

Financial guarantees – Article 14(1) to (3)

The requirement for a financial guarantee (or equivalent) applies to all Category A mining waste facilities (and mining waste facilities involving hazardous waste).

- 4.66 The Environment Agency will produce guidance on the acceptable mechanisms for providing the financial guarantee. The Environment Agency guidance will also provide a way of calculating the necessary value of the guarantee (see paragraph 4.69 below).
- 4.67 The Environment Agency must require the operator to have a financial guarantee (or equivalent) in place before commencing any mining operation involving the deposit (or accumulation) of extractive waste in the mining waste facility. As a transitional provision existing sites (not due to close by December 2010) will need to establish financial guarantees by 1 May 2014

- 4.68 The financial guarantee (or equivalent) must:
- be adequate to ensure that the permit conditions, including those that apply following closure, can be complied with;
 - provide funds at any time for the purposes of restoring the land to a satisfactory state as described in the waste management plan.
- 4.69 The operator shall calculate the value of the financial guarantee on the basis:
- of the likely environmental impact, taking into account in particular the characteristics of the waste and the future land use; and
 - that an appropriate third party will assess and carry out the necessary rehabilitation work.
- 4.70 The system for financial guarantees provided by the Environment Agency will ensure that the operator has to review the value of the financial guarantee, in particular to take into account any changes in the waste management plan and the restoration requirements of the mining waste facility.
- 4.71 When the Environment Agency approves the closure of the Category A mining waste facility (see the section on **Closure and aftercare of waste facilities – Article 12** above) it will issue a notice releasing the operator from the financial guarantee which relates to the operation of the mining waste facility. The provisions of Article 12(3), when a mining waste facility is considered to have been finally closed, the Environment Agency has inspected and assessed submitted reports and the land rehabilitated, will have to have been met. The financial guarantee for the aftercare of the mining waste facility remains in place until the environmental permit is surrendered.

Records of waste management operations – Article 17(2)

The requirements for making and keeping records apply to all operators of mining waste operations

Excluded operations: TYPE 2

- 4.72 General provisions on inspections being derived from this Article are covered in the Environmental Permitting Core Guidance Chapter 11, Compliance Assessment.
- 4.73 The records of waste operations must be available for inspection by the Environment Agency. The records must be kept in such a way that, in the event of a transfer of the permit, up-to-date information will be available for any new operator.

Transitional provisions – Article 24(1)

- 4.74 The Regulations set out transitional provisions for existing mining waste operations and facilities (regulation 105).

Mining waste facilities

- 4.75 A mining waste facility that was operational on 1 May 2008 is an 'existing mining waste facility'.
- 4.76 The Regulations require that operators of an existing mining waste facility must apply for an environmental permit on or before 1 May 2011. If there is already an environmental permit on the site, for which the Environment Agency is the regulator, the operator can apply to vary the permit to include the mining waste operation.
- 4.77 This permitting timetable means that these operators should meet the relevant requirements of the Directive by 1 May 2012 (Article 24). The requirement for a financial guarantee (where relevant) must be met by 1 May 2014.
- 4.78 A separate timetable applies to the concentrations of cyanide in a pond (see Article 13(6) and paragraph 4.63 above).
- 4.79 A change in the operation of an existing mining waste facility will not trigger an earlier date for obtaining a permit.

Mining waste operations

- 4.80 A mining waste operation that does not involve an existing mining waste facility that was being carried out on 1 May 2008 is an 'existing mining waste operation'.
- 4.81 The Regulations will require that operators of existing mining waste operation facilities must apply for (or vary – see paragraph 4.79, above) an environmental permit by 30 December 2010.
- 4.82 A change in the operation of an existing mining waste operation will not trigger an earlier date for obtaining a permit.
- 4.83 Paragraph 3.19 also identifies cases where permits will not be required.

5. Other requirements

Application forms

- 5.1 The Environment Agency will ensure that the form it provides for environmental permit applications for mining waste operations involving a mining waste facility to which Article 7 applies, requires the applicant to provide the information specified in Article 7(2) of the Directive (paragraph 3(1)(a) of Schedule 20 to the Regulations). This comprises:
- (a) the identity of the operator;
 - (b) the proposed location of the waste facility, including any possible alternative locations;
 - (c) the waste management plan pursuant to Article 5;
 - (d) adequate arrangements by way of a financial guarantee or equivalent, as required under Article 14;
 - (e) the information provided by the operator in accordance with Article 5 of Directive 85/337/EEC if an environmental impact assessment is required under that Directive.
- 5.2 For Category A mining waste facilities, the Environment Agency will ensure that the applicant provides, as part of the application for a permit, the information necessary for the local authority emergency planner to be able to draw up the external emergency plan (paragraph 3(1)(b) of Schedule 20 to the Regulations). The Environment Agency is required to forward the information to the local authority emergency planner immediately (see paragraph 3(2) of Schedule 20 to the Regulations).
- 5.3 The Environment Agency will ensure that the form it provides for environmental permit applications for all other mining waste operations requires the applicant to provide a waste management plan (paragraph 3(3) of Schedule 20 to the Regulations).
- 5.4 The Environment Agency may accept a waste management plan produced for other legislation (for example one produced for planning purposes) so long as it meets the requirements of Articles 5(1) to (4). Such a plan must have been suitably reviewed and amended as required by Article 5(4) to ensure that it is up to date (paragraph 3(4) of 20 to the Regulations).

Granting a permit

- 5.5 The Environment Agency cannot grant a permit relating to a 'Category A' facility until it has been notified by the external emergency planner that it has received necessary information to draw up an external emergency plan. The

Environment Agency must refuse an application for a Category A facility if they have received a notice from the emergency planners stating that the operator has not provided the information necessary (paragraphs 14(1) and (2) of Schedule 20 to the Regulations).

- 5.6 The Environment Agency must not grant a permit for a mining waste facility that requires a permit under Article 7 (see [What is a mining waste facility?](#), below) unless the necessary planning permission is in force (paragraph 13(1) of Schedule 20 to the Regulations). The necessary planning permission may be satisfied by permission for the extraction operation which includes conditions that relate to waste that would be considered to be extractive waste.

Inspections

- 5.7 The Environment Agency will inspect every mining waste facility to which Article 7 of the Directive applies (so all mining waste facilities other than those for inert waste, unpolluted soil and those for waste from peat extraction and some prospecting – see paragraphs 3.21 and 3.24 above) before waste deposits begin to ensure that it complies with the relevant conditions of the permit. For waste facilities already in operation covered by the transitional provisions of Article 24 the Environment Agency should inspect the mining waste facility at least by the date of issue of the permit. The Environment Agency will inspect every relevant mining waste facility periodically throughout the life of the facility, including in the aftercare phase (paragraph 6 of Schedule 20 to the Regulations).

Permit review

- 5.8 The Environment Agency will periodically review permits for mining waste facilities to which Article 7 applies (i.e. other than for those just for inert waste and unpolluted soil) (paragraph 4 of Schedule 20 to the Regulations). The Environment Agency will do this:
- where there are substantial changes to the waste types or operations;
 - on the basis of inspections or monitoring results; or
 - in the light of significant changes in Best Available Techniques.

Classification of waste facilities

- 5.9 For all mining waste facilities the Environment Agency will ensure that the environmental permit includes the classification of the facility. This includes those mining waste facilities not covered by Article 7 (so it includes waste facilities for inert waste, unpolluted soil and those for waste from peat extraction and some prospecting – see paragraphs 3.21 and 3.24 above - paragraph 5 of Schedule 20 to the Regulations).

Public participation

- 5.10 The Environment Agency will ensure public participation in the permitting decisions for all mining waste facilities to which Article 7 of the Directive applies (so all mining waste facilities other than those for inert waste unpolluted soil and those for waste from peat extraction and some prospecting – see paragraphs 3.21 and 3.24 above).
- 5.11 The Environment Agency will ensure that its public participation statement ('Working together: your role in our environmental permitting decision making')³⁸ meets the requirements of Article 8 of the Directive. This will allow the public to prepare and participate effectively in the decision making process (Article 8(7)).
- 5.12 The requirements for the Environment Agency's public register are set out in Schedule 24 to the Regulations.

Closure

- 5.13 The Environment Agency will explain why any closure notice under Article 12(2)(c) is being served (see paragraph 4.47 above) and the notice will specify what steps must be taken and by when (paragraph 10 of Schedule 20 to the Regulations). The Environment Agency can withdraw a closure notice at any time. There is a right of appeal against a closure notice.
- 5.14 Following closure, the Environment Agency will write to the operator releasing them from the financial guarantee obligations relating to operating the mining waste facility. The operator must continue to comply with the conditions of the environmental permit and the financial guarantee relating to the aftercare provisions must remain in place (paragraph 10(4) and (5) of Schedule 20 to the Regulations).

Inventory of closed mining waste facilities

- 5.15 The Environment Agency will prepare and maintain a list of closed mining waste facilities (including those that have been abandoned) which are causing serious pollution or have the potential (in the medium or short term) to be a serious threat to human health or the environment (see paragraph 11 of Schedule 20 to the Regulations). The European Commission will develop methodologies relating to the implementation of these requirements (Article 21(1)(b)).
- 5.16 The Environment Agency will produce the list by no later than 1 May 2012 and must then keep the list up to date.
- 5.17 The Environment Agency will place the list of these closed facilities on its public register.

³⁸ Available at www.environment-agency.gov.uk/static/documents/Research/workingtogether1_1838486.pdf

Developments in best available techniques

- 5.18 The Environment Agency will ensure that it is informed of developments in best available techniques (paragraph 12 of Schedule 20 to the Regulations) through its normal practices of stakeholder engagement, research and information gathering. Best available techniques have the same meaning as in the IPPC Directive³⁹.

³⁹ Directive 2008/1/EC on Integrated Pollution Prevention and Control

Annex 1 – Schedule 20 of the Regulations (SI 2010 No. 675)

SCHEDULE 20

Regulation 35(2)(n)

Mining waste operations

Application

1. This Schedule applies in relation to every mining waste operation.

Interpretation

- 2.—(1) In this Schedule—

“mining waste facility” means a “waste facility” as defined in Article 3(15) of the Mining Waste Directive but excludes those facilities mentioned in Article 24(2) or in the first paragraph of Article 24(4) of that Directive;

“mining waste operation” means the management of extractive waste, whether or not involving a mining waste facility, but does not include the activities in Article 2(2)(c) of the Mining Waste Directive;

“relevant emergency planner” means, in relation to an application for a mining waste facility that is located in—

- (a) London, the London Fire and Emergency Planning Authority,
- (b) an area where there is a fire and civil defence authority, that authority,
- (c) the Isles of Scilly, the Council of the Isles of Scilly,
- (d) 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) an area in Wales, the county council or county borough council for that area; and

“waste management plan” means a plan of the type described in Article 5(1) of the Mining Waste Directive which has the objectives in Article 5(2) and contains the elements and information set out in Article 5(3) of that Directive.

- (2) When interpreting the Mining Waste Directive for the purposes of this Schedule—

- (a) except where otherwise defined in this paragraph, an expression that is defined in Part 1 of these Regulations has the meaning given in that Part;
- (b) “permit” means an environmental permit; and
- (c) the competent authority is the regulator.

Applications for grant or variation of an environmental permit

- 3.—(1) The regulator must require that every application for the grant or variation of an environmental permit in relation to a mining waste operation involving a mining waste facility to which Article 7 of the Mining Waste Directive applies includes—

- (a) the information specified in Article 7(2) of that Directive; and
- (b) where Article 6 of the Directive applies, the information mentioned in the second sentence of the third paragraph of Article 6(3).

(2) Where the regulator receives an application for the grant or variation of an environmental permit and that application includes the information required under sub-paragraph (1)(b), the regulator must immediately forward the information to the relevant emergency planner.

(3) The regulator must require that every application for the grant or variation of an environmental permit in relation to any other mining waste operation includes a waste management plan.

(4) For the purposes of this paragraph, the regulator may accept a waste management plan produced pursuant to other legislation which complies with Article 5(1) to (4) of the Mining Waste Directive if it has been reviewed and amended in accordance with Article 5(4) of that Directive.

Review of environmental permits

4. The regulator must periodically review an environmental permit relating to a mining waste facility if Article 7 of the Mining Waste Directive applies in respect of that facility and any of the circumstances in Article 7(4) of the Directive apply in relation to it.

Classification of mining waste facilities

5. The regulator must exercise its functions so as to ensure compliance with Article 9 of the Mining Waste Directive in respect of any mining waste facility to which Article 7 of that Directive does not apply.

Inspections

6. The regulator must inspect every mining waste facility to which Article 7 of the Mining Waste Directive applies so as to comply with the requirements of Article 17(1) of that Directive.

Exercise of relevant functions

7. The regulator must exercise its relevant functions so as to ensure compliance with the following requirements of the Mining Waste Directive—

- (a) Article 2(4);
- (b) Article 4;
- (c) Article 5(4) and (6);
- (d) Article 6(2), the first and second paragraphs of Article 6(3), the first paragraph of Article 6(4) to the extent that it relates to plans prepared under the first paragraph of Article 6(3) and the second paragraph of Article 6(4) to the extent that it relates to the regulator's functions;
- (e) Article 7(1) and (3)(a);
- (f) Article 10;
- (g) Article 11;
- (h) Article 12;
- (i) Article 13;
- (j) Article 14 (1) to (3);

- (k) Article 17(2);
- (l) Article 24(1).

Public participation

8. The regulator must exercise its functions under the public participation provisions in relation to mining waste facilities to which Article 7 of the Mining Waste Directive applies so as to meet the requirements of Article 8 of that Directive.

Derogation from requirements

9.—(1) The regulator must exercise its functions to ensure that the requirements mentioned in the first paragraph of Article 2(3) of the Mining Waste Directive do not apply to the substances mentioned in that paragraph where they result from an operation mentioned in that paragraph, to the extent allowed by that paragraph.

(2) The regulator must waive the requirements of the Mining Waste Directive in relation to the deposit of the substances mentioned in the second paragraph of Article 2(3) of that Directive if the regulator is satisfied that the requirements of Article 4 of that Directive are met.

(3) The regulator must waive the requirements mentioned in the third paragraph of Article 2(3) of the Mining Waste Directive in relation to the waste mentioned in that paragraph to the extent allowed by that paragraph.

Closure of a mining waste facility

10.—(1) The regulator must set out any reasoned decision under Article 12(2)(c) of the Mining Waste Directive in a closure notice served on the operator.

(2) A closure notice must, in addition to stating the regulator's reasons for requiring initiation of the closure procedure, specify—

- (a) the steps the operator is required to take to initiate the procedure; and
- (b) the period within which they must be taken.

(3) The regulator may withdraw a closure notice at any time by further notice served on the operator.

(4) Closure of a mining waste facility does not relieve the operator of liability under the environmental permit conditions that relate to the facility.

(5) The regulator must exercise its functions so as to ensure compliance with Article 14(4) of the Mining Waste Directive.

Inventory of closed mining waste facilities

11. The regulator must maintain and make available to the public an inventory of closed mining waste facilities so as to ensure compliance with Article 20 of the Mining Waste Directive.

Developments in best available techniques

12.—(1) The regulator must ensure that it is informed of developments in best available techniques.

(2) In this paragraph, "best available techniques" has the meaning given in Article 2(12) of the IPPC Directive.

Planning permission requirements and conditions

13.—(1) Following an application under regulation 13(1), the regulator must not grant an environmental permit in relation to a mining waste facility to which Article 7 of the Mining Waste Directive applies if use of the site as a mining waste facility requires planning permission and no such permission is in force.

(2) Where—

- (a) a mining waste operation is the subject of an environmental permit;
- (b) that operation has been granted planning permission subject to conditions (“planning conditions”); and
- (c) there is an inconsistency between the environmental permit conditions and the planning conditions,

the environmental permit conditions prevail.

(3) In this paragraph, “planning permission” means planning permission under the Town and Country Planning Act 1990(a) and includes—

- (a) a certificate under section 191 of that Act; and
- (b) an established use certificate under section 192 of that Act, as originally enacted, which continues to have effect for the purposes of subsection (4) of that section.

Applications for grant or variation of an environmental permit for a Category A mining waste facility

14.—(1) The regulator must not grant an application for the grant or variation of an environmental permit relating to a Category A mining waste facility until it has been notified by the relevant emergency planner that it has the information necessary to enable it to draw up an external emergency plan.

(2) The regulator must refuse an application relating to a Category A mining waste facility that is an existing mining waste facility upon receipt of a notice by the relevant emergency planner stating that the operator has not provided the information necessary to enable the relevant emergency planner to draw up an external emergency plan.

(3) In this paragraph, “external emergency plan” means a plan as required under the third paragraph of Article 6(3) of the Mining Waste Directive that has the objectives specified in the first paragraph of Article 6(4) of that Directive.

Annex 2 – Mining Waste Directive

**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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾, in the light of the joint text approved by the Conciliation Committee on 8 December 2005,

Whereas:

(1) The Communication of the Commission entitled 'Safe operation of mining activities: a follow-up to recent mining accidents' sets out as one of its priority actions an initiative to regulate the management of waste from the extractive industries. This action is designed to complement initiatives pursuant to Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances ⁽⁴⁾ as well as the production of a best available technique document covering the management of waste rock and tailings from mining activities under the auspices of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ⁽⁵⁾.

(2) In its Resolution ⁽⁶⁾ of 5 July 2001 concerning that Communication, the European Parliament strongly supported the need for a Directive on waste from the extractive industries.

(3) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽⁷⁾ sets as the objective for wastes that are still generated that the level of their hazardousness should be reduced and that they should present as little risk as possible, that preference should be given to recovery and especially to recycling, that the quantity of waste for disposal should be minimised and should be safely disposed of, and that waste intended for disposal should be treated as closely as possible to the place of its generation to the extent that this does not lead to a decrease in the efficiency of waste treatment operations. Decision No 1600/2002/EC also prescribes as a priority action, with reference to accidents and disasters, the development of measures to help prevent major accident hazards, with special regard to those arising from mining, and the development of measures on mining waste. Decision No 1600/2002/EC also sets as a priority action the promotion of sustainable management of extractive industries with a view to reducing their environmental impact.

(4) In accordance with the objectives of Community policy on the environment, it is necessary to lay down minimum requirements in order to prevent or reduce as far as possible any adverse effects on the environment or on human health which are brought about as a result of the management of waste from the extractive industries, such as tailings (i.e. the waste solids or slurries that remain after the treatment of minerals by a number of techniques), waste rock and overburden (i.e. the material that extractive operations move during the process of accessing an ore or mineral body, including during the pre-production development stage), and topsoil (i.e. the upper layer of the ground) provided that they constitute waste as defined in Council Directive 75/442/EEC of 15 July 1975 on waste ⁽⁸⁾.

(5) In accordance with paragraph 24 of the Johannesburg Plan of Implementation on Sustainable Development

⁽¹⁾ OJ C 80, 30.3.2004, p. 35.

⁽²⁾ OJ C 109, 30.4.2004, p. 33.

⁽³⁾ Opinion of the European Parliament of 31 March 2004 (OJ C 103 E, 29.4.2004, p. 451), Council Common Position of 12 April 2005 (OJ C 172 E, 12.7.2005, p. 1) and Position of the European Parliament of 6 September 2005 (not yet published in the Official Journal). European Parliament Legislative Resolution of 18 January 2006 and Council Decision of 30 January 2006.

⁽⁴⁾ OJ L 345, 31.12.2003, p. 97.

⁽⁵⁾ OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p.1).

⁽⁶⁾ OJ C 65 E, 14.3.2002, p. 382.

⁽⁷⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁸⁾ OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

adopted within the framework of the United Nations at the 2002 World Summit on Sustainable Development, it is necessary to protect the natural resource base of economic and social development and reverse the current trend in natural resource degradation by managing the natural resource base in a sustainable and integrated manner.

- (6) Accordingly, this Directive should cover the management of waste from land-based extractive industries, that is to say, the waste arising from the prospecting, extraction (including the pre-production development stage), treatment and storage of mineral resources and from the working of quarries. However, such management should reflect the principles and priorities identified in Directive 75/442/EEC, which, in accordance with Article 2(1)(b)(ii) thereof, continues to apply to any aspects of the management of waste from the extractive industries which are not covered by this Directive.
- (7) In order to avoid duplication and disproportionate administrative requirements, the scope of this Directive should be limited to those particular operations considered to be a priority for the purposes of meeting its objectives.
- (8) Accordingly, the provisions of this Directive should not apply to those waste streams which, albeit generated in the course of mineral extraction or treatment operations, are not directly linked to the extraction or treatment process, e.g. food waste, waste oil, end-of-life vehicles, spent batteries and accumulators. The management of such waste should be subject to the provisions of Directive 75/442/EEC or of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste ⁽¹⁾ or any other relevant Community legislation, as is the case for waste generated at a prospecting, extraction or treatment site and transported to a location that is not a waste facility according to this Directive.
- (9) Nor should this Directive apply to waste resulting from the offshore prospecting, extraction and treatment of mineral resources or to the injection of water and re-injection of pumped groundwater, while inert waste, non-hazardous prospecting waste, unpolluted soil and waste resulting from the extraction, treatment and storage of peat should be covered only by a limited set of requirements due to their lower environmental risks. For non-hazardous non-inert waste, Member States may reduce or waive certain requirements. However, these exemptions should not apply to Category A waste facilities.
- (10) Moreover, while covering the management of waste from the extractive industries which may be radioactive, this Directive should not cover such aspects as are specific to radioactivity, which are a matter dealt with under the Treaty establishing the European Atomic Energy Community (Euratom).
- (11) In order to remain true to the principles and priorities identified in Directive 75/442/EEC and, in particular, Articles 3 and 4 thereof, Member States should ensure that operators engaged in the extractive industry take all necessary measures to prevent or reduce as far as possible any negative effects, actual or potential, on the environment or on human health which are brought about as a result of the management of waste from the extractive industries.
- (12) These measures should be based, *inter alia*, on the concept of best available techniques as defined in Directive 96/61/EC and, when such techniques are applied, it is for the Member States to determine how the technical characteristics of the waste facility, its geographical location and local environmental conditions can, where appropriate, be taken into consideration.
- (13) Member States should ensure that operators in the extractive industry draw up appropriate waste management plans for the prevention or minimisation, treatment, recovery and disposal of extractive waste. Such plans should be structured in such a way as to ensure appropriate planning of waste management options with a view to minimising waste generation and its harmfulness, and encouraging waste recovery. Moreover, waste from the extractive industries should be characterised with respect to its composition in order to ensure that, as far as possible, such waste reacts only in predictable ways.
- (14) In order to minimise the risk of accidents and to guarantee a high level of protection for the environment and human health, Member States should ensure that each operator of a Category A waste facility adopts and applies a major-accident prevention policy for waste. In terms of preventive measures, this should entail the delivery of a safety management system, emergency plans to be used in the event of accidents and the dissemination of safety information to persons likely to be affected by a major accident. In the event of an accident, operators should be required to provide the competent authorities with all the relevant information necessary to mitigate actual or potential environmental damage. These particular requirements should not apply to those waste facilities from the extractive industries falling within the scope of Directive 96/82/EC.

⁽¹⁾ OJ L 182, 16.7.1999, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

- (15) A waste facility should not be classified in Category A solely on the basis of risks to the safety and health protection of workers in the extractive industries covered by other Community legislation, in particular Directives 92/91/EEC ⁽¹⁾ and 92/104/EEC ⁽²⁾.
- (16) Because of the special nature of the management of waste from the extractive industries, it is necessary to introduce specific application and permit procedures in respect of waste facilities used to receive such waste. In addition, Member States should take the necessary measures to ensure that the competent authorities periodically reconsider and, where necessary, update permit conditions.
- (17) Member States should be required to ensure that, in accordance with the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (Aarhus Convention), the public are informed of the application for a waste management permit and the public concerned are consulted prior to the granting of a waste management permit.
- (18) It is necessary to indicate clearly the requirements with which waste facilities servicing the extractive industries should comply as regards location, management, control, closure and preventive and protective measures to be taken against any threat to the environment in the short and long-term perspectives, and more especially against the pollution of groundwater by leachate infiltration into the soil.
- (19) It is necessary to define clearly Category A waste facilities used to service waste from the extractive industries, taking into account the likely effects of any pollution resulting from the operation of such a facility or from an accident in which waste escapes from such a facility.
- (20) Waste placed back into the excavation voids either for their rehabilitation or for construction purposes related to the mineral extraction process, such as the building or maintenance within voids of means of access for machinery, haulage ramps, bulkheads, safety barricades or berms, needs also to be subject to certain requirements in order to protect surface water and/or groundwater, secure the stability of such waste, and ensure appropriate monitoring upon cessation of such activities.
- Accordingly, such waste should not be subject to the requirements of this Directive which relate exclusively to 'waste facilities', except for the requirements mentioned in the specific provision on excavation voids.
- (21) With a view to ensuring the proper construction and maintenance of waste facilities servicing waste from the extractive industries, Member States should take appropriate measures to ensure that the design, location and management of such facilities is carried out by technically competent persons. It is necessary to ensure that the training and knowledge acquired by operators and staff afford them the necessary skills. In addition, competent authorities should satisfy themselves that operators ensure suitable arrangements with respect to the construction and maintenance of a new waste facility or to any extension or modification of an existing waste facility, including in the after-closure phase.
- (22) It is necessary to establish monitoring procedures during the operation and after-closure of waste facilities. An after-closure period for monitoring and control of Category A waste facilities should be laid down proportionate to the risk posed by the individual waste facility, in a way similar to that required by Directive 1999/31/EC.
- (23) It is necessary to define when and how a waste facility servicing the extractive industries should be closed and to set out the obligations and responsibilities to be met by the operator during the after-closure period.
- (24) Member States should require operators of the extractive industries to apply monitoring and management controls in order to prevent water and soil pollution and to identify any adverse effect that their waste facilities may have on the environment or on human health. In addition, for the purposes of minimising water pollution, the discharge of waste into any receiving body of water should comply with Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽³⁾. Furthermore, concentrations in tailings ponds of cyanide and cyanide compounds from certain extractive industries should, in view of their harmful and toxic effects, be reduced to the lowest possible levels, using best available techniques. Maximum concentration thresholds should be set accordingly and, in any case, in line with the specific requirements of this Directive to prevent such effects.
- (25) The operator of a waste facility servicing the extractive industries should be required to lodge a financial guarantee or equivalent in accordance with procedures to be decided by the Member States ensuring that all the obligations flowing from the permit will be fulfilled, including those relating to the closure and after-closure of the waste facility. The financial guarantee should be sufficient to cover the cost of rehabilitation of the land
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- ⁽¹⁾ Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (eleventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 9).
- ⁽²⁾ Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 404, 31.12.1992, p. 10).
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- ⁽³⁾ OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

- affected by the waste facility, which includes the waste facility itself, as described in the waste management plan prepared pursuant to Article 5 and required by the Article 7 permit, by a suitably qualified and independent third party. It is also necessary for such a guarantee to be provided prior to the commencement of deposition operations in the waste facility and to be periodically adjusted. In addition, in accordance with the polluter pays principle and with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage⁽¹⁾, it is important to clarify that an operator of a waste facility servicing the extractive industries is subject to appropriate liability in respect of environmental damage caused by its operations or the imminent threat of such damage.
- (26) In the case of the operation of waste facilities servicing the extractive industries that are likely to have significant adverse transboundary effects on the environment and any resultant risks to human health, in the territory of another Member State, there should be a common procedure in place to facilitate consultation among neighbouring countries. This should be done with a view to ensuring that there is an adequate exchange of information between authorities and that the public are duly informed of any such waste facilities that could have adverse effects for the environment of that other Member State.
- (27) It is necessary for Member States to ensure that competent authorities organise an effective system of inspections or equivalent control measures in respect of waste facilities servicing the extractive industries. Without prejudice to the obligations of the operator under the permit, prior to the commencement of deposition operations there should be an inspection to check that the permit conditions have been complied with. In addition, Member States should ensure that operators and their successors maintain up-to-date records relating to such waste facilities and that operators transfer to their successors information concerning the state of the waste facility and its operations.
- (28) Member States should send regular reports to the Commission on the implementation of this Directive, including information on accidents or near-accidents. On the basis of those reports, the Commission should report to the European Parliament and the Council.
- (29) Member States should lay down rules on penalties for infringement of this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (30) It is necessary for Member States to ensure that an inventory of closed, including abandoned, waste facilities located on their territory is drawn up in order to identify those which cause serious negative environmental impacts or have the potential of becoming in the medium or short term a serious threat to human health or the environment. These inventories should provide a basis for an appropriate programme of measures.
- (31) The Commission should ensure an appropriate exchange of scientific and technical information on how to carry out an inventory of closed waste facilities at Member State level and on the development of methodologies to assist Member States in complying with this Directive when rehabilitating closed waste facilities. Moreover, an exchange of information should be ensured within and between Member States on the best available techniques.
- (32) With a view to the consistent application of Article 6 of the Treaty, environmental protection requirements must be integrated into the implementation of Community policies and activities with a view to promoting sustainable development.
- (33) This Directive could be a useful instrument to be taken into account when verifying that projects receiving Community funding in the context of development aid include the necessary measures to prevent or reduce as far as possible negative effects on the environment. Such an approach is consistent with Article 6 of the Treaty, particularly with regard to integrating environmental protection requirements into the Community's policy in the sphere of development cooperation.
- (34) The objective of this Directive, that is to say, improving the management of waste from the extractive industries, cannot be sufficiently achieved by the Member States acting alone because the mismanagement of such waste may cause pollution of a transboundary nature. Under the polluter pays principle it is necessary, *inter alia*, to take into account any damage to the environment caused by waste from the extractive industries, and different national applications of that principle may lead to substantial disparities in the financial burden on economic operators. Moreover, the existence of different national policies on the management of waste from the extractive industries hampers the aim of ensuring a minimum level of safe and responsible management of such waste and maximising its recovery throughout the Community. Therefore, since by reason of the scale and effects of this Directive, its objective can be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

(1) OJ L 143, 30.4.2004, p. 56.

- (35) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (36) The operation of waste facilities existing at the moment of transposition of this Directive should be regulated in order to take the necessary measures, within a specified period of time, for their adaptation to the requirements of this Directive.
- (37) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making ⁽²⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public,

- (c) injection of water and re-injection of pumped groundwater as defined in the first and second indents of Article 11(3)(j) of Directive 2000/60/EC, to the extent authorised by that Article.

3. Inert waste and unpolluted soil resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries and waste resulting from the extraction, treatment and storage of peat shall not be subject to Articles 7, 8, 11(1) and (3), 12, 13(6), 14 and 16, unless deposited in a Category A waste facility.

The competent authority may reduce or waive the requirements for the deposit of non-hazardous waste generated from the prospecting of mineral resources, except oil and evaporites other than gypsum and anhydrite, as well as for the deposit of unpolluted soil and of waste resulting from the extraction, treatment and storage of peat as long as it is satisfied that the requirements of Article 4 are met.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive provides for measures, procedures and guidance to prevent or reduce as far as possible any adverse effects on the environment, in particular water, air, soil, fauna and flora and landscape, and any resultant risks to human health, brought about as a result of the management of waste from the extractive industries.

Article 2

Scope

1. Subject to paragraphs 2 and 3, this Directive covers the management of waste resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries, hereinafter 'extractive waste'.
2. The following shall be excluded from the scope of this Directive:
 - (a) waste which is generated by the prospecting, extraction and treatment of mineral resources and the working of quarries, but which does not directly result from those operations;
 - (b) waste resulting from the offshore prospecting, extraction and treatment of mineral resources;

Member States may reduce or waive the requirements of Articles 11(3), 12(5) and (6), 13(6), 14 and 16 for non-hazardous non-inert waste, unless deposited in a Category A waste facility.

4. Without prejudice to other Community legislation, waste which falls within the scope of this Directive shall not be subject to Directive 1999/31/EC.

Article 3

Definitions

For the purposes of this Directive:

- (1) 'waste' is as defined in Article 1(a) of Directive 75/442/EEC;
- (2) 'hazardous waste' is as defined in Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ⁽³⁾;
- (3) 'inert waste' means waste that does not undergo any significant physical, chemical or biological transformations. Inert waste will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health. The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular not endanger the quality of surface water and/or groundwater;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ C 321, 31.12.2003, p. 1.

⁽³⁾ OJ L 377, 31.12.1991, p. 20. Directive as amended by Regulation (EC) No 166/2006.

- (4) 'unpolluted soil' means soil that is removed from the upper layer of the ground during extractive activities and that is not deemed to be polluted under the national law of the Member State where the site is located or under Community law;
- (5) 'mineral resource' or 'mineral' means a naturally occurring deposit in the earth's crust of an organic or inorganic substance, such as energy fuels, metal ores, industrial minerals and construction minerals, but excluding water;
- (6) 'extractive industries' means all establishments and undertakings engaged in surface or underground extraction of mineral resources for commercial purposes, including extraction by drilling boreholes, or treatment of the extracted material;
- (7) 'off-shore' means that area of the sea and seabed extending from the low water mark of ordinary or medium tides outwards;
- (8) 'treatment' means the mechanical, physical, biological, thermal or chemical process or combination of processes carried out on mineral resources, including from the working of quarries, with a view to extracting the mineral, including size change, classification, separation and leaching, and the re-processing of previously discarded waste, but excluding smelting, thermal manufacturing processes (other than the burning of limestone) and metallurgical processes;
- (9) 'tailings' means the waste solids or slurries that remain after the treatment of minerals by separation processes (e.g. crushing, grinding, size-sorting, flotation and other physico-chemical techniques) to remove the valuable minerals from the less valuable rock;
- (10) 'heap' means an engineered facility for the deposit of solid waste on the surface;
- (11) 'dam' means an engineered structure designed to retain or confine water and/or waste within a pond;
- (12) 'pond' means a natural or engineered facility for disposing of fine-grained waste, normally tailings, along with varying amounts of free water, resulting from the treatment of mineral resources and from the clearing and recycling of process water;
- (13) 'weak acid dissociable cyanide' means cyanide and cyanide compounds that are dissociated with a weak acid at a defined pH;
- (14) 'leachate' means any liquid percolating through the deposited waste and emitted from or contained within a waste facility, including polluted drainage, which may adversely affect the environment if not appropriately treated;
- (15) '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 following time-periods:
- no time-period for Category A waste facilities and facilities for waste characterised as hazardous in the waste management plan;
 - a period of more than six months for facilities for hazardous waste generated unexpectedly;
 - a period of more than one year for facilities for non-hazardous non-inert waste;
 - a period of more than three years for facilities for unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste.
- Such facilities are deemed to include any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and also to include, but not be limited to, heaps and ponds, but excluding excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes;
- (16) 'major accident' means an occurrence on site in the course of an operation involving the management of extractive waste in any establishment covered by this Directive, leading to a serious danger to human health and/or the environment, whether immediately or over time, on-site or off-site;
- (17) 'dangerous substance' means a substance, mixture or preparation which is dangerous within the meaning of Directive 67/548/EEC⁽¹⁾ or Directive 1999/45/EC⁽²⁾;
- (18) 'best available techniques' is as defined in Article 2(11) of Directive 96/61/EC;

(1) Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ L 196, 16.8.1967, p. 1). Directive as last amended by Commission Directive 2004/73/EC (OJ L 152, 30.4.2004, p. 1).

(2) Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ L 200, 30.7.1999, p. 1). Directive as last amended by Commission Directive 2006/8/EC (OJ L 19, 24.1.2006, p. 12).

- (19) 'receiving body of water' means surface waters, ground-water, transitional waters and coastal water as defined in Article 2(1), (2), (6) and (7) of Directive 2000/60/EC, respectively;
- (20) 'rehabilitation' means the treatment of the land affected by a waste facility in such a way as to restore the land to a satisfactory state, with particular regard to soil quality, wild life, natural habitats, freshwater systems, landscape and appropriate beneficial uses;
- (21) 'prospecting' means the search for mineral deposits of economic value, including sampling, bulk sampling, drilling and trenching, but excluding any works required for the development of such deposits, and any activities directly associated with an existing extractive operation;
- (22) 'the public' means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;
- (23) '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 and 7 of this Directive; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirement under national law shall be deemed to have such an interest;
- (24) 'operator' means the natural or legal person responsible for the management of extractive waste, in accordance with the national law of the Member State in which waste management takes place, including in respect of temporary storage of extractive waste as well as the operational and the after-closure phases;
- (25) 'waste holder' means the producer of the extractive waste or the natural or legal person who is in possession of it;
- (26) 'competent person' means a natural person who has the technical knowledge and experience, as defined by the national law of the Member State in which the person operates, to perform the duties arising from this Directive;
- (27) 'competent authority' means the authority or authorities which a Member State designates as responsible for performing the duties arising from this Directive;
- (28) 'site' means all land at a distinct geographic location under the management control of an operator;
- (29) 'substantial change' means a change in the structure or operation of a waste facility that, in the opinion of the competent authority, may have significant negative effects on human health or the environment.

Article 4

General requirements

1. Member States shall take the necessary measures to ensure that extractive waste is managed without endangering human health and without using processes or methods which could harm the environment, and in particular without risk to water, air, soil and fauna and flora, without causing a nuisance through noise or odours and without adversely affecting the landscape or places of special interest. Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled depositing of extractive waste.
2. Member States shall ensure that the operator takes all measures necessary to prevent or reduce as far as possible any adverse effects on the environment and human health brought about as a result of the management of extractive waste. This includes the management of any waste facility, also after its closure, and the prevention of major accidents involving that facility and the limiting of their consequences for the environment and human health.
3. The measures referred to in paragraph 2 shall be based, *inter alia*, on the best available techniques, without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the waste facility, its geographical location and the local environmental conditions.

Article 5

Waste management plan

1. Member States shall ensure that the operator draws up a waste management plan for the minimisation, treatment, recovery and disposal of extractive waste, taking account of the principle of sustainable development.
2. The objectives of the waste management plan shall be:
 - (a) to prevent or reduce waste production and its harmfulness, in particular by considering:
 - (i) waste management in the design phase and in the choice of the method used for mineral extraction and treatment;
 - (ii) the changes that the extractive waste may undergo in relation to an increase in surface area and exposure to conditions above ground;
 - (iii) placing extractive waste back into the excavation void after extraction of the mineral, as far as is technically and economically feasible and environmentally sound in accordance with existing environmental standards at Community level and with the requirements of this Directive where relevant;

- (iv) putting topsoil back in place after the closure of the waste facility or, if this is not practically feasible, reusing topsoil elsewhere;
- (v) using less dangerous substances for the treatment of mineral resources;
- (b) to encourage the recovery of extractive waste by means of recycling, reusing or reclaiming such waste, where this is environmentally sound in accordance with existing environmental standards at Community level and with the requirements of this Directive where relevant;
- (c) to ensure short and long-term safe disposal of the extractive waste, in particular by considering, during the design phase, management during the operation and after-closure of a waste facility and by choosing a design which:
- (i) requires minimal and, if possible, ultimately no monitoring, control and management of the closed waste facility;
- (ii) prevents or at least minimises any long-term negative effects, for example attributable to migration of airborne or aquatic pollutants from the waste facility; and
- (iii) ensures the long-term geotechnical stability of any dams or heaps rising above the pre-existing ground surface.
3. The waste management plan shall contain at least the following elements:
- (a) where applicable, the proposed classification for the waste facility in accordance with the criteria laid down in Annex III:
- where a Category A waste facility is required, a document demonstrating that a major-accident prevention policy, a safety management system for implementing it and an internal emergency plan will be put into effect in accordance with Article 6 (3);
- when the operator considers that a Category A waste facility is not required, sufficient information justifying this, including an identification of possible accident hazards;
- (b) waste characterisation in accordance with Annex II and a statement of the estimated total quantities of extractive waste to be produced during the operational phase;
- (c) a description of the operation generating such waste and of any subsequent treatment to which it is subject;
- (d) a description of how the environment and human health may be adversely affected by the deposit of such waste
- and the preventive measures to be taken in order to minimise environmental impact during operation and after closure, including the aspects referred to in Article 11(2) (a), (b), (d) and (e);
- (e) the proposed control and monitoring procedures pursuant to Articles 10, when applicable, and 11(2)(c);
- (f) the proposed plan for closure, including rehabilitation, after-closure procedures and monitoring as provided for in Article 12;
- (g) measures for the prevention of water status deterioration in accordance with Directive 2000/60/EC and for the prevention or minimisation of air and soil pollution pursuant to Article 13;
- (h) a survey of the condition of the land to be affected by the waste facility.
- The waste management plan shall provide sufficient information to enable the competent authority to evaluate the operator's ability to meet the objectives of the waste management plan as set out in paragraph 2 and his obligations under this Directive. The plan shall explain, in particular, how the option and method chosen as mentioned in paragraph 2(a)(i) will fulfil the objectives of the waste management plan as laid down in paragraph 2(a).
4. The waste management plan shall be reviewed every five years and/or amended, as appropriate, in the event of substantial changes to the operation of the waste facility or to the waste deposited. Any amendments shall be notified to the competent authority.
5. Plans produced pursuant to other national or Community legislation and containing the information specified in paragraph 3 may be used where this obviates the unnecessary duplication of information and the repetition of work by the operator, on condition that all requirements under paragraphs 1 to 4 are met.
6. The competent authority shall approve the waste management plan on the basis of procedures to be decided by the Member States and shall monitor its implementation.

Article 6

Major-accident prevention and information

1. This Article shall apply to Category A waste facilities, save for those waste facilities falling within the scope of Directive 96/82/EC.

2. Without prejudice to other Community legislation, and in particular Directives 92/91/EEC and 92/104/EEC, Member States shall ensure that major-accident hazards are identified and that the necessary features are incorporated into the design, construction, operation and maintenance, closure and after-closure of the waste facility in order to prevent such accidents and to limit their adverse consequences for human health and/or the environment, including any transboundary impacts.

3. For the purposes of the requirements under paragraph 2, each operator shall, before the start of operations, draw up a major-accident prevention policy for the management of extractive waste and put into effect a safety management system implementing it, in accordance with the elements set out in Section 1 of Annex I, and shall also put into effect an internal emergency plan specifying the measures to be taken on site in the event of an accident.

As part of that policy, the operator shall appoint a safety manager responsible for the implementation and periodic supervision of the major-accident prevention policy.

The competent authority shall draw up an external emergency plan specifying the measures to be taken off-site in the event of an accident. As part of the application for a permit the operator shall provide the competent authority with the information necessary to enable the latter to draw up that plan.

4. The emergency plans referred to in paragraph 3 shall have the following objectives:

- (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;
- (d) to provide for the rehabilitation, restoration and clean-up of the environment following a major accident.

Member States shall ensure that, in the event of a major accident, the operator immediately provides the competent authority with all the information required to help minimise its consequences for human health and to assess and minimise the extent, actual or potential, of the environmental damage.

5. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the preparation or review of the external emergency plan to be drawn up in accordance with paragraph 3. To that end, the public concerned shall be informed about any such proposal and relevant information shall be made available, including, inter alia, information about the right to participate in the decision-making process and about the competent authority to which comments and questions may be submitted.

Member States shall ensure that the public concerned is entitled to express comments within reasonable time frames and that, in the decision on the external emergency plan, due account is taken of these comments.

6. Member States shall ensure that information on safety measures and on the action required in the event of an accident, containing at least the elements listed in Section 2 of Annex I, is provided, free of charge and as a matter of course, to the public concerned.

That information shall be reviewed every three years and, where necessary, updated.

Article 7

Application and permit

1. No waste facility shall be allowed to operate without a permit granted by the competent authority. The permit shall contain the elements specified in paragraph 2 of this Article and shall clearly indicate the category of the waste facility in accordance with the criteria referred to in Article 9.

Subject to compliance with all requirements under this Article, any permit produced pursuant to other national or Community legislation may be combined to form a single permit, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or competent authority. The details specified in paragraph 2 can be covered by one single permit or several permits, provided that all requirements under this Article are complied with.

2. The application for a permit shall contain at least the following details:

- (a) the identity of the operator;
- (b) the proposed location of the waste facility, including any possible alternative locations;
- (c) the waste management plan pursuant to Article 5;
- (d) adequate arrangements by way of a financial guarantee or equivalent, as required under Article 14;
- (e) the information provided by the operator in accordance with Article 5 of Directive 85/337/EEC⁽¹⁾ if an environmental impact assessment is required under that Directive.

⁽¹⁾ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40). Directive as last amended by Directive 2003/35/EC of the European Parliament and of the Council (OJ L 156, 25.6.2003, p. 17).

3. The competent authority shall only grant a permit if it is satisfied that:

- (a) the operator complies with the relevant requirements under this Directive;
- (b) the management of waste does not conflict directly or otherwise interfere with the implementation of the relevant waste management plan or plans referred to in Article 7 of Directive 75/442/EEC.

4. Member States shall take the necessary measures to ensure that competent authorities periodically reconsider and, where necessary, update permit conditions:

- where there are substantial changes in the operation of the waste facility or the waste deposited;
- on the basis of monitoring results reported by the operator pursuant to Article 11(3) or inspections carried out pursuant to Article 17;
- in the light of information exchange on substantial changes in best available techniques under Article 21(3).

5. The information contained in a permit granted under this Article shall be made available to the competent national and Community statistical authorities where requested for statistical purposes. Sensitive information of a purely commercial nature, such as information concerning business relations and cost components and the volume of economic mineral reserves, shall not be made public.

Article 8

Public participation

1. The public shall be informed, by public notices or other appropriate means, such as electronic media where available, of the following matters early in the procedure for granting a permit or, at the latest, as soon as the information can reasonably be provided:

- (a) the application for a permit;
- (b) where applicable, the fact that a decision concerning an application for a permit is subject to consultation between the Member States in accordance with Article 16;
- (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions;

(e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;

(f) an indication of the times and places where, or the means by which, the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to paragraph 7.

2. Member States shall ensure that, within appropriate time frames, the following are made available to the public concerned:

(a) in accordance with national legislation, the main reports and advice transmitted to the competent authority at the time when the public were informed in accordance with paragraph 1;

(b) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ⁽¹⁾, any information in addition to that referred to in paragraph 1 of this Article which is relevant for the decision in accordance with Article 7 of this Directive and which only becomes available after the time the public have been informed in accordance with paragraph 1 of this Article.

3. Member States shall take appropriate measures to ensure that the public are informed, in accordance with paragraph 1 of this Article, of an update of permit conditions in accordance with Article 7(4).

4. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.

5. The results of the consultations held pursuant to this Article shall be duly taken into account in the taking of a decision.

6. When a decision has been taken the competent authority shall, in accordance with the appropriate procedures, inform the public concerned and shall make the following information available to the public concerned:

(a) the content of the decision, including a copy of the permit;

(b) the reasons and considerations on which the decision is based.

⁽¹⁾ OJ L 41, 14.2.2003, p. 26.

7. The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public concerned to prepare and participate effectively.

Article 9

Classification system for waste facilities

For the purposes of this Directive, the competent authorities shall classify a waste facility as Category A in accordance with the criteria set out in Annex III.

Article 10

Excavation voids

1. Member States shall ensure that the operator, when placing extractive waste back into the excavation voids for rehabilitation and construction purposes, whether created through surface or underground extraction, takes appropriate measures in order to:

- (1) secure the stability of the extractive waste in accordance, *mutatis mutandis*, with Article 11(2);
- (2) prevent the pollution of soil, surface water and groundwater in accordance, *mutatis mutandis*, with Article 13(1), (3) and (5);
- (3) ensure the monitoring of the extractive waste and the excavation void in accordance, *mutatis mutandis*, with Article 12(4) and (5).

2. Directive 1999/31/EC shall continue to apply to the waste other than extractive waste used for filling in excavation voids as appropriate.

Article 11

Construction and management of waste facilities

1. Member States shall take appropriate measures to ensure that the management of a waste facility is in the hands of a competent person and that technical development and training of staff are provided.

2. The competent authority shall satisfy itself that, in constructing a new waste facility or modifying an existing waste facility, the operator ensures that:

- (a) the waste facility is suitably located, taking into account in particular Community or national obligations relating to protected areas, and geological, hydrological, hydrogeological, seismic and geotechnical factors, and is

designed so as to meet the necessary conditions for, in the short and long-term perspectives, preventing pollution of the soil, air, groundwater or surface water, taking into account especially Directives 76/464/EEC ⁽¹⁾, 80/68/EEC ⁽²⁾ and 2000/60/EC, and ensuring efficient collection of contaminated water and leachate as and when required under the permit, and reducing erosion caused by water or wind as far as it is technically possible and economically viable;

- (b) the waste facility is suitably constructed, managed and maintained to ensure its physical stability and to prevent pollution or contamination of soil, air, surface water or groundwater in the short and long-term perspectives as well as to minimise as far as possible damage to landscape;
- (c) there are suitable plans and arrangements for regular monitoring and inspection of the waste facility by competent persons and for taking action in the event of results indicating instability or water or soil contamination;
- (d) suitable arrangements are made for the rehabilitation of the land and the closure of the waste facility;
- (e) suitable arrangements are made for the after-closure phase of the waste facility.

Records of the monitoring and inspections referred to in point (c) shall be kept, together with permit documentation, in order to ensure the appropriate hand-over of information, particularly in the event of a change of operator.

3. The operator shall, without undue delay and in any event not later than 48 hours thereafter, notify the competent authority of any events likely to affect the stability of the waste facility and any significant adverse environmental effects revealed by the control and monitoring procedures of the waste facility. The operator shall implement the internal emergency plan, where applicable, and follow any other instruction from the competent authority as to the corrective measures to be taken.

⁽¹⁾ Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ L 129, 18.5.1976, p. 23). Directive as last amended by Directive 2000/60/EC.

⁽²⁾ Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ L 20, 26.1.1980, p. 43). Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

The operator shall bear the costs of the measures to be undertaken.

At a frequency to be determined by the competent authority, and in any event at least once a year, the operator shall report, on the basis of aggregated data, all monitoring results to the competent authorities for the purposes of demonstrating compliance with permit conditions and increasing knowledge of waste and waste facility behaviour. On the basis of this report the competent authority may decide that validation by an independent expert is necessary.

Article 12

Closure and after-closure procedures for waste facilities

1. Member States shall take measures to ensure compliance with paragraphs 2 to 5.
2. A waste facility shall only start the closure procedure if one of the following conditions is satisfied:
 - (a) the relevant conditions stated in the permit are met;
 - (b) authorisation is granted by the competent authority, at the request of the operator;
 - (c) the competent authority issues a reasoned decision to that effect.
3. A waste facility may be considered as finally closed only after the competent authority has, without undue delay, carried out a final on-site inspection, assessed all the reports submitted by the operator, certified that the land affected by a waste facility has been rehabilitated and communicated to the operator its approval of the closure.

That approval shall not in any way reduce the operator's obligations under the conditions of the permit or otherwise in law.

4. The operator shall be responsible for the maintenance, monitoring, control and corrective measures in the after-closure phase for as long as may be required by the competent authority, taking into account the nature and duration of the hazard, save where the competent authority decides to take over such tasks from the operator, after a waste facility has been finally closed and without prejudice to any national or Community legislation governing the liability of the waste holder.

5. When considered necessary by the competent authority, in order to fulfil relevant environmental requirements set out in Community legislation, in particular those in Directives 76/464/EEC, 80/68/EEC and 2000/60/EC, following closure of a waste facility, the operator shall, *inter alia*, control the physical and chemical stability of the facility and minimise any negative environmental effect, in particular with respect to surface and groundwater, by ensuring that:

- (a) all the structures pertaining to the facility are monitored and conserved, with control and measuring apparatus always ready for use;
- (b) where applicable, overflow channels and spillways are kept clean and free.

6. Following closure of a waste facility, the operator shall, without delay, notify the competent authority of any events or developments likely to affect the stability of the waste facility, and any significant adverse environmental effects revealed by the relevant control and monitoring procedures. The operator shall implement the internal emergency plan, where applicable, and follow any other instruction from the competent authority as to the corrective measures to be taken.

The operator shall bear the costs of the measures to be undertaken.

In cases and at a frequency to be determined by the competent authority, the operator shall report, on the basis of aggregated data, all monitoring results to the competent authorities for the purposes of demonstrating compliance with permit conditions and increasing knowledge of waste and waste facility behaviour.

Article 13

Prevention of water status deterioration, air and soil pollution

1. The competent authority shall satisfy itself that the operator has taken the necessary measures in order to meet Community environmental standards, in particular to prevent, in accordance with Directive 2000/60/EC, the deterioration of current water status, *inter alia*, by:
 - (a) evaluating the leachate generation potential, including contaminant content of the leachate, of the deposited waste during both the operational and after-closure phase of the waste facility, and determining the water balance of the waste facility;
 - (b) preventing or minimising leachate generation and surface water or groundwater and soil from being contaminated by the waste;

(c) collecting and treating contaminated water and leachate from the waste facility to the appropriate standard required for their discharge.

2. The competent authority shall ensure that the operator has taken adequate measures to prevent or reduce dust and gas emissions.

3. Where, on the basis of an assessment of environmental risks, taking into account, in particular, Directives 76/464/EEC, 80/68/EEC or 2000/60/EC, as applicable, the competent authority has decided that collection and treatment of leachate is not necessary or it has been established that the waste facility poses no potential hazard to soil, groundwater or surface water, the requirements set out in points (b) and (c) of paragraph 1 may be reduced or waived accordingly.

4. Member States shall make the disposal of extractive waste, whether in solid, slurry or liquid form, into any receiving body of water other than one constructed for the purpose of disposing of extractive waste conditional upon compliance by the operator with the relevant requirements of Directives 76/464/EEC, 80/68/EEC and 2000/60/EC.

5. When placing extractive waste back into excavation voids, whether created through surface or underground extraction, which will be allowed to flood after closure, the operator shall take the necessary measures to prevent or minimise water status deterioration and soil pollution in accordance, *mutatis mutandis*, with paragraphs (1) and (3). The operator shall provide the competent authority with the information necessary to ensure compliance with Community obligations, in particular those in Directive 2000/60/EC.

6. In the case of a pond involving the presence of cyanide, the operator shall ensure that the concentration of weak acid dissociable cyanide in the pond is reduced to the lowest possible level using best available techniques and, in any case, at waste facilities which have previously been granted a permit or have already been in operation on 1 May 2008 that the concentration of weak acid dissociable cyanide at the point of discharge of the tailings from the processing plant into the pond does not exceed 50 ppm as from 1 May 2008, 25 ppm as from 1 May 2013, 10 ppm as from 1 May 2018 and 10 ppm at waste facilities which are granted a permit after 1 May 2008.

If the competent authority so requests, the operator shall demonstrate, through a risk assessment that takes site-specific conditions into account, that those concentration limits need not be further lowered.

Article 14

Financial guarantee

1. The competent authority shall, prior to the commencement of any operations involving the accumulation or deposit of extractive waste in a waste facility, require a financial guarantee (e.g. in the form of a financial deposit, including industry-sponsored mutual guarantee funds) or equivalent, in

accordance with procedures to be decided by the Member States, so that:

(a) all obligations under the permit issued pursuant to this Directive, including after-closure provisions, are discharged;

(b) there are funds readily available at any given time for the rehabilitation of the land affected by the waste facility, as described in the waste management plan prepared pursuant to Article 5 and required by the Article 7 permit.

2. The calculation of the guarantee referred to in paragraph 1 shall be made on the basis of:

(a) the likely environmental impact of the waste facility, taking into account in particular the category of the waste facility, the characteristics of the waste and the future use of the rehabilitated land;

(b) the assumption that independent and suitably qualified third parties will assess and perform any rehabilitation work needed.

3. The size of the guarantee shall be periodically adjusted in accordance with any rehabilitation work needed to be carried out on the land affected by the waste facility, as described in the waste management plan prepared pursuant to Article 5 and required by the Article 7 permit.

4. Where the competent authority approves closure in accordance with Article 12(3), it shall provide the operator with a written statement releasing him from the guarantee obligation referred to in paragraph 1 of this Article with the exception of after-closure obligations as referred to in Article 12(4).

Article 15

Environmental liability

The following point shall be added to Annex III of Directive 2004/35/EC as follows:

'13. The management of extractive waste pursuant to Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries (*).

(*) OJ L 102, 11.4.2006, p. 15'

*Article 16***Transboundary effects**

1. Where a Member State in which a waste facility is situated is aware that the operation of a Category A waste facility is likely to have significant adverse effects on the environment of, and any resultant risks to human health in, another Member State, or where a Member State likely to be thus affected so requests, the Member State in whose territory the application for a permit pursuant to Article 7 was submitted shall forward the information provided pursuant to that Article to the other Member State at the same time as it makes it available to its own nationals.

Such information shall serve as a basis for any consultation necessary within the context of bilateral relations between the two Member States on a reciprocal and equivalent basis.

2. Within the framework of their bilateral relations, Member States shall ensure that in the cases referred to in paragraph 1 the applications are also made available for an appropriate period of time to the public concerned of the Member State likely to be affected so that they will have the right to comment on them before the competent authority reaches its decision.

3. Member States shall ensure that, in the event of an accident involving a waste facility as referred to in paragraph 1 of this Article, information provided by the operator to the competent authority pursuant to Article 6(4) is immediately forwarded to the other Member State in order to help minimise the consequences of the accident for human health and to assess and minimise the extent of the actual or potential environmental damage.

*Article 17***Inspections by the competent authority**

1. Prior to the commencement of deposit operations and at regular intervals thereafter, including the after-closure phase, to be decided by the Member State concerned, the competent authority shall inspect any waste facility covered by Article 7 in order to ensure that it complies with the relevant conditions of the permit. An affirmative finding shall in no way reduce the responsibility of the operator under the conditions of the permit.

2. Member States shall require the operator to keep up-to-date records of all waste management operations and make them available for inspection by the competent authority and to ensure that, in the event of a change of operator during the management of a waste facility, there is an appropriate transfer of relevant up-to-date information and records relating to the waste facility.

*Article 18***Obligation to report**

1. At intervals of three years Member States shall transmit to the Commission a report on the implementation of this Directive. The report shall be drawn up on the basis of a questionnaire or outline to be adopted by the Commission in accordance with the procedure referred to in Article 23(2). The report shall be transmitted to the Commission within nine months of the end of the three-year period covered by it.

The Commission shall publish a report on the implementation of this Directive within nine months of receiving the reports from the Member States.

2. Every year Member States shall transmit to the Commission information on events notified by the operators in accordance with Articles 11(3) and 12(6). The Commission shall make this information available to the Member States upon request. Without prejudice to Community law on public access to environmental information, Member States shall in their turn make the information available to members of the public concerned on request.

*Article 19***Penalties**

The Member States shall lay down rules on penalties for infringement of the provisions of national law adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

*Article 20***Inventory of closed waste facilities**

Member States shall ensure that an inventory of closed waste facilities, including abandoned waste facilities, located on their territory which cause serious negative environmental impacts or have the potential of becoming in the medium or short term a serious threat to human health or the environment is drawn up and periodically updated. Such an inventory, to be made available to the public, shall be carried out by 1 May 2012, taking into account the methodologies as referred to in Article 21, if available.

*Article 21***Exchange of information**

1. The Commission, assisted by the Committee referred to in Article 23, shall ensure that there is an appropriate exchange of technical and scientific information between Member States, with a view to developing methodologies relating to:

(a) the implementation of Article 20;

(b) the rehabilitation of those closed waste facilities identified under Article 20 in order to satisfy the requirements of Article 4. Such methodologies shall allow for the establishment of the most appropriate risk assessment procedures and remedial actions having regard to the variation of geological, hydrogeological and climatological characteristics across Europe.

2. Member States shall ensure that the competent authority follows or is informed of developments in best available techniques.

3. The Commission shall organise an exchange of information between Member States and the organisations concerned on best available techniques, associated monitoring and developments in them. The Commission shall publish the results of the exchange of information.

Article 22

Implementing and amending measures

1. By 1 May 2008, the Commission shall adopt, in accordance with the procedure referred to in Article 23(2), the provisions necessary for the following, prioritising (e), (f) and (g):

- (a) the harmonisation and regular transmission of the information referred to in Articles 7(5) and 12(6);
- (b) the implementation of Article 13(6), including technical requirements relating to the definition of weak acid dissociable cyanide and its measurement method;
- (c) technical guidelines for the establishment of the financial guarantee in accordance with the requirements of Article 14(2);
- (d) technical guidelines for inspections in accordance with Article 17;
- (e) completion of the technical requirements for waste characterisation contained in Annex II;
- (f) interpretation of the definition contained in point 3 of Article 3;
- (g) definition of the criteria for the classification of waste facilities in accordance with Annex III;
- (h) determination of any harmonised standards for sampling and analysis methods needed for the technical implementation of this Directive.

2. Any subsequent amendments necessary for adapting the Annexes to scientific and technical progress shall be adopted by the Commission in accordance with the procedure referred to in Article 23(2).

Those amendments shall be made with a view to achieving a high level of environmental protection.

Article 23

Committee

1. The Commission shall be assisted by the Committee established by Article 18 of Directive 75/442/EEC, hereinafter 'the Committee'.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

Article 24

Transitional provision

1. Member States shall ensure that any waste facility which has been granted a permit or which is already in operation on 1 May 2008 complies with the provisions of this Directive by 1 May 2012, except for those set out in Article 14(1) for which compliance must be ensured by 1 May 2014 and for those set out in Article 13(6) for which compliance must be ensured in accordance with the timetable laid down therein.

2. Paragraph 1 shall not apply to waste facilities closed by 1 May 2008.

3. Member States shall ensure that, from 1 May 2006 and notwithstanding any closure of a waste facility after that date and before 1 May 2008, extractive waste is managed in a way that does not prejudice the fulfilment of Article 4(1) of this Directive, and other applicable environmental requirements set out in Community legislation, including Directive 2000/60/EC.

4. Articles 5, 6(3) to (5), 7, 8, 12(1) and (2) and 14(1) to (3) shall not apply to those waste facilities that:

- 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.

Member States shall notify such cases to the Commission by 1 August 2008 and ensure that these facilities are managed in a way that does not prejudice the achievement of the objectives of this Directive, in particular the objectives of

Article 4(1), and those of any other Community legislation, including Directive 2000/60/EC.

Article 25

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 May 2008. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Done at Strasbourg, 15 March 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 26

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 27

Addressees

This Directive is addressed to the Member States.

For the Council

The President

H. WINKLER

ANNEX I

Major-accident prevention policy and information to be communicated to the public concerned**1. Major-accident prevention policy**

The operator's major-accident prevention policy and safety management system should be proportionate to the major-accident hazards presented by the waste facility. For the purpose of implementing them, account shall be taken of the following elements:

- (1) the major-accident prevention policy should include the operator's overall aims and principles of action with respect to the control of major-accident hazards;
- (2) the safety management system should include the part of the general management system which includes the organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the major-accident prevention policy;
- (3) the following issues shall be addressed by the safety management system:
 - (a) organisation and personnel — the roles and responsibilities of personnel involved in the management of major hazards at all levels in the organisation; identification of training needs of such personnel and the provision of the training so identified; and involvement of employees and, where appropriate, subcontractors;
 - (b) identification and evaluation of major hazards — adoption and implementation of procedures for systematically identifying major hazards arising from normal and abnormal operations and assessment of their likelihood and severity;
 - (c) operational control — adoption and implementation of procedures and instructions for safe operation, including maintenance of plant, processes, equipment and temporary stoppages;
 - (d) management of change — adoption and implementation of procedures for planning modifications to, or the design of, new waste facilities;
 - (e) planning for emergencies — adoption and implementation of procedures to identify foreseeable emergencies by systematic analysis and to prepare, test and review emergency plans to respond to such emergencies;
 - (f) monitoring performance — adoption and implementation of procedures for the ongoing assessment of compliance with the objectives set by the operator's major-accident prevention policy and safety management system, and the mechanisms for investigation and taking corrective action in case of non-compliance. The procedures should cover the operator's system for reporting major accidents or near misses, particularly those involving failure of protective measures, and their investigation and follow-up on the basis of lessons learnt;
 - (g) audit and review — adoption and implementation of procedures for periodic systematic assessment of the major-accident prevention policy and the effectiveness and suitability of the safety management system; the documented review of performance of the policy and safety management system and its updating by senior management.

2. Information to be communicated to the public concerned

- (1) Name of operator and address of the waste facility.
- (2) Identification, by position held, of the person providing the information.

- (3) Confirmation that the waste facility is subject to the regulations and/or administrative provisions implementing this Directive and, when applicable, that the information relevant to the elements referred to in Article 6(2) has been submitted to the competent authority.
 - (4) An explanation in clear and simple terms of the activity or activities undertaken at the site.
 - (5) The common names or the generic names or the general danger classification of the substances and preparations involved at the waste facility as well as waste which could give rise to a major accident, with an indication of their principal dangerous characteristics.
 - (6) General information relating to the nature of the major-accident hazards, including their potential effects on the surrounding population and environment.
 - (7) Adequate information on how the surrounding population concerned are to be warned and kept informed in the event of a major accident.
 - (8) Adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident.
 - (9) 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.
 - (10) A reference to the external emergency plan drawn up to cope with any off-site effects from an accident. This should include advice to co-operate with any instructions or requests from the emergency services at the time of an accident.
 - (11) Details of where further relevant information can be obtained, subject to the requirements of confidentiality laid down in national legislation.
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ANNEX II

Waste characterisation

The waste to be deposited in a facility shall be characterised in such a way as to guarantee the long-term physical and chemical stability of the structure of the facility and to prevent major accidents. The waste characterisation shall include, where appropriate and in accordance with the category of the waste facility, the following aspects:

- (1) description of expected physical and chemical characteristics of the waste to be deposited in the short and the long term, with particular reference to its stability under surface atmospheric/meteorological conditions, taking account of the type of mineral or minerals to be extracted and the nature of any overburden and/or gangue minerals that will be displaced in the course of the extractive operations;
- (2) classification of the waste according to the relevant entry in Decision 2000/532/EC ⁽¹⁾, with particular regard to its hazardous characteristics;
- (3) description of the chemical substances to be used during treatment of the mineral resource and their stability;
- (4) description of the method of deposition;
- (5) waste transport system to be employed.

ANNEX III

Criteria for determining the classification of waste facilities

A waste facility shall be classified under category A if:

- a failure or incorrect operation, e.g. the collapse of a heap or the bursting of a dam, could give rise to a major accident, on the basis of a risk assessment taking into account factors such as the present or future size, the location and the environmental impact of the waste facility; or
- it contains waste classified as hazardous under Directive 91/689/EEC 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.

⁽¹⁾ Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3). Decision as last amended by Council Decision 2001/573/EC (OJ L 203, 28.7.2001, p. 18).

Annex 3 – The Definition of Waste

A3.1. Article 3(1) of the Mining Waste Directive (the MWD) provides that, for the purposes of that Directive, 'waste' is as defined in Article 1(1)(a) of the Waste Framework Directive¹ (the WFD). There is no definitive list of what is and is not waste within the meaning of Article 1(1)(a) of the WFD. Whether or not a substance or object is waste, and when waste ceases to be waste, are matters that must be determined on the facts of the case and the interpretation of the law is ultimately a matter for the Courts. It rests, in the first place, with the producer or holder of a substance or object to decide whether it is being discarded and is waste; and the 'competent authorities'² (e.g. the Environment Agency) are responsible for the enforcement of waste management controls in England and Wales.

A3.2. There is now a substantial body of case law by the European Court of Justice (ECJ) on the interpretation of the definition of waste and the meaning of 'discard'. A summary of the ECJ's judgments on the definition of waste is available on Defra's website at www.defra.gov.uk/environment/waste/topics/pdf/ecj-definition.pdf

A3.3. The broad effect of the ECJ's judgments is to interpret the meaning of 'discard' for the purposes of determining whether or not substances and objects are waste within the meaning of Article 1(1)(a) of the WFD. In this sense, the ECJ's judgments set out principles which apply to all types of waste. However, two of the ECJ's judgments are of direct relevance to the extractive industries.

A3.4. The main question referred to the ECJ for a ruling in the Palin Granit Oy case (C-9/00) was whether leftover stone resulting from stone quarrying is to be regarded as waste. The ECJ's judgment was that:-

'(1) Leftover stone resulting from stone quarrying which is stored to await possible use, failing which it will remain indefinitely on the site, is to be regarded as discarded or intended to be discarded and is accordingly to be classified as waste within the meaning of Article 1(a) of [the WFD].'

A3.5. The ECJ also concluded in this case that:-

'(2) It is not relevant to the classification of the leftover stone as waste (a) whether it is stored on the quarrying site, a site next to it or further away; (b) that it is the same as regards its composition as the basic rock from which it has been quarried and does not change its composition regardless of how long it is kept or how it is kept; (c) that it

¹ Directive 2006/12/EC.

² Designated by the Secretary of State under Article 6 of the WFD to be responsible for implementing the Directive

is harmless to human health and the environment or (d) that it can be recovered as such without processing or similar measures.'

A3.6. The first of the two questions referred to the ECJ for a ruling in the AvestaPolarit case (C-114/01) was as follows:-

'(1) Are leftover rock resulting from the extraction of ore and/or ore-dressing sand resulting from the dressing of ore in mining operations to be regarded as waste within the meaning of Article 1(a) of [the WFD] having regard to points (a) to (d) below?'

A3.7. The full text of the first question, including points (a)-(d), is re-produced in the appendix (Part A) to this Annex. The ECJ's judgment on the first question was as follows:-

'1. In a situation such as that at issue in the main proceedings, the holder of leftover rock and residual sand from ore-dressing operations from the operation of a mine discards or intends to discard those substances, which must consequently be classified as waste within the meaning of [the WFD], unless he uses them lawfully for the necessary filling in of the galleries of that mine and provides sufficient guarantees as to the identification and actual use of the substances to be used for that purpose.'

A3.8. The reasoning underlying the Court's ruling on this question is set out in the text of its judgment and, in particular, paragraphs 34-39 which are re-produced in the appendix (Part B) to this Annex. In paragraph 39 of its judgment the Court states that:-

'39 ... if a mining operator can identify physically the residues which will actually be used in the galleries and provides the competent authority with sufficient guarantees of that use, those residues may not be regarded as waste. In this respect, it is for the competent authority to assess whether the period during which the residues will be stored before being returned to the mine is so long that those guarantees cannot in fact be provided.'

A3.9. The Government's view is that the ECJ recognised in this judgment that there are circumstances in which residues from mining operations, which are to be used to fill galleries/voids in the mine from which they were extracted, may be classified as non-waste by-products. These circumstances are where:

- (a) **The mining operator** physically identifies the residues which will actually be used to fill the galleries/voids;
- (b) **The mining operator** provides the competent authority with sufficient guarantees of that use; and

(c) **The competent authority** assesses whether the period during which the residues will be stored before being returned to the mine is so long that those guarantees cannot in fact be provided.

A3.10. Other relevant considerations which the ECJ identified in its judgment on the AvestaPolarit case are that:-

(a) the use of the residues to fill the galleries/voids is **(i)** necessary and **(ii)** lawful; and

(c) that the residues are used for this purpose without prior processing.

Appendix to Annex 3

THE AVESTAPOLARIT CASE (C-114/01)

Part A

The First Question

'(I) Are leftover rock resulting from the extraction of ore and/or ore-dressing sand resulting from the dressing of ore in mining operations to be regarded as waste within the meaning of Article 1(a) of Council Directive 75/442/ EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/ EEC of 18 March 1991, having regard to points (a) to (d) below?

a) What relevance, in deciding the above question, does it have that the leftover rock and ore-dressing sand is stored in the mining area or on the ancillary site? Is it relevant generally, with respect to falling within the definition of waste, whether the said by-products of mining operations are stored in the mining area, on the ancillary site or further away?

b) What relevance does it have, in assessing the matter, that the leftover rock is the same as regards its composition as the basic rock from which it is quarried, and that it does not change its composition regardless of how long it is kept and how it is kept? Should ore-dressing sand which results from the ore-dressing process perhaps be assessed differently from leftover rock in this respect?

c) What relevance does it have, in assessing the matter, that leftover rock is harmless to human health and the environment, but that, according to the view of the environmental licence authorities, substances harmful to health and the environment dissolve from ore-dressing sand? To what extent generally is importance to be attached to the possible effect of leftover rock and ore-dressing sand on health and the environment in assessing whether they are waste?

d) What relevance does it have, in assessing the matter, that leftover rock and ore-dressing sand are not intended to be discarded? Leftover rock and ore-dressing sand may be re-used without special processing measures, for example for supporting mine galleries, and leftover rock also for landscaping the mine after it has ceased operation. Minerals may in future with the development of technology be recovered from ore-dressing sand for utilisation. To what extent should attention be paid to how definite plans the person carrying on mining operations has for such utilisation and to how soon after the leftover rock and ore-dressing sand has been tipped on the mining area or the ancillary site the utilisation would take place?'

Part B

'34 In the light of those considerations, it is clear that leftover rock and residual sand from ore-dressing, such as that from the mine operated by AvestaPolarit, constitute [r]esidues from raw materials extraction and processing under head Q 11 of Annex I to Directive 75/442 (see Palin Granit, paragraphs 32 and 33).

35. It remains to examine whether such residues are to be classified as waste on the ground that their holder discards or intends or is obliged to discard them, within the meaning of the first subparagraph of Article 1(a) of Directive 75/442. If not, those residues could, as AvestaPolarit submits, be classified as by-products which do not fall within the scope of that Directive.

36. In this respect, a distinction must be drawn between residues which are used without first being processed in the production process for the necessary filling in of the underground galleries, on the one hand, and other residues, on the other. 37. The former are being used in that case as a material in the industrial mining process proper and cannot be regarded as substances which the holder discards or intends to discard, since, on the contrary, he needs them for his principal activity.

38. Only if such use of those residues were prohibited, in particular for reasons of safety or protection of the environment, and the galleries had to be sealed and supported by some other process, would it have to be considered that the holder is obliged to discard those residues and that they constitute waste.

39. Outside such a case, if a mining operator can identify physically the residues which will actually be used in the galleries and provides the competent authority with sufficient guarantees of that use, those residues may not be regarded as waste. In this respect, it is for the competent authority to assess whether the period during which the residues will be stored before being returned to the mine is so long that those guarantees cannot in fact be provided.'

Annex 4 – Transposition Table

The Mining Waste Directive Directive 2006/21/EC

Directive article	Objective	Regulations provision
2(1) and (2)	To define “extractive waste” and “mining waste operation” and to give effect to the exclusions	Regulation 2(1)
2(3)	To allow derogations from requirements	Schedule 20 para 9
3	To define meanings in relation to the Directive	Schedule 20 para 2
4	To set the general requirements for the management of extractive waste	Schedule 20 para 7(b)
5	To set requirements for waste management plans	Regulation 8 and 12, Schedule 20 para 3(3) and (4) and para 7(c)
6	To set requirements in relation to emergency plans	Schedule 20 para 3(1)(b), 3(2), 7(d) and 14
7(1) and (2)	To ensure a permit is required to operate a mining waste regulated facility and to set out minimum requirements for permit applications	Regulation 8 and 12, Schedule 20 para 3(1)(a), 7(e)
7(3)(a)	To set the requirements in relation to operator’s compliance with requirements under the Directive	Schedule 20 para 7(e)
7(3)(b)	To set out requirements with respect to planning permission	Schedule 20 para 13 (1) and 14 and Schedule 25 Part 2 para 4(3)
7(4)	To set out requirements for periodic review	Schedule 20 para 4
7(5)	To set out public register and confidentiality provisions	Regulations 45 to 56, Schedule 24
8	To set out requirements for public participation	Schedule 5 para 5, 6 and 8, Schedule 20 para 8
9	To set out requirements for a classification system for waste facilities	Schedule 20 para 5 and 7(e)
10	To set out requirements relation to excavation voids	Schedule 20 para 7(f)
11	To set out requirements for the construction and management of waste facilities	Schedule 5 para 13, Schedule 20 para 7(g) and Schedule 25 Part 2 para 4(3)(a)
12	To set out requirements for the closure and after closure procedures for waste facilities	Schedule 20 para 7(h) and 10
13	To set out requirements for the prevention of water status deterioration, air and soil pollution	Schedule 20 para 7(i)

Directive article	Objective	Regulations provision
14	To set out requirements for financial guarantee	Schedule 20 para 7(j) and 10(5)
16	To set out requirements in relation to transboundary effects	Schedule 5 para 10
17	To ensure inspections by the competent authority and to set out record-keeping requirements	Schedule 20 para 6 and 7(k)
19	To set up offence, enforcement and penalties provisions	Regulations 12, 36 - 44
20	To ensure the regulator maintains an inventory of closed mining facilities	Schedule 20 para 12
21	To ensure that the regulator is informed of developments in best available techniques	Schedule 20 para 13
24(1)	To set out dates for applying for an environmental permit	Regulation 105 and Schedule 20 7(l)

European scrutiny history: EM 10143/03 and a supplementary EM 20 May 2004 were cleared by the Commons September 2004 and the House of Lords on 8 September 2004.