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Subject : Proposal for a Directive of the European Parliament and of the Council on **the management of waste from the extractive industries**
– Political agreement

Delegations will find attached the text of the political agreement as reached at the Council (Environment) meeting on 14 October 2004.

**Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the management of waste from the extractive industries**

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, fauna, flora, soil, air, and landscape, and any resultant risks to human health, brought about as a result of the management of waste from the extractive industries, hereinafter “extractive waste”.

Article 2

Scope

1. Subject to the provisions of paragraphs 2 and 3, this Directive covers the management of extractive waste, that is to say, waste resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries.
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;
 - (c) injection of water and re-injection of pumped groundwater as defined in Article 11(3)j first and second indent 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(4), 14 and 15, 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.

Member States may reduce or waive the requirements of Articles 11(3), 12(5) and (6), 13(4), 14 and 15 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; *

* OJ L 377, 31.12.1991, p. 20. Directive as amended by Council Directive 94/31/EC of 27 June 1994 (OJ L 168, 2.7.1994, p. 28).

- (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;
- (3a) 'unpolluted soil' means soil that is removed from the upper layer of the ground during extractive activities and that is not polluted according to the national law of the Member State where the site is located and Community law;
- (4) '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;
- (5) '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;
- (5a) 'off-shore' means that area of the sea and seabed extending from the low water mark of ordinary or medium tides outwards;
- (6) 'treatment' means the mechanical, physical, biological, thermal or chemical process or combination of processes carried out on mineral resources and 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 and/or metallurgical operations;
- (7) '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;
- (8) 'heap' means an engineered facility for the deposit of solid waste on the surface;
- (9) 'dam' means an engineered structure designed to retain or confine water and waste within a pond;

- (10) '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;
- (11) 'weak acid dissociable cyanide' means cyanide and cyanide compounds that are dissociated with a weak acid at a defined pH;
- (12) '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;
- (13) '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 hazardous waste characterised 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;

- (14) 'major accident' means an occurrence on site in the course of an operation involving the management of 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;

- (15) 'dangerous substance' means a substance, mixture or preparation which is dangerous within the meaning of Council Directive 67/548/EEC * and Directive 1999/45/EC of the European Parliament and of the Council **;
- (16) 'best available techniques' is as defined in Article 2(11) of Directive 96/61/EC;
- (17) 'receiving body of water' means surface waters as defined in Article 2(1) of Directive 2000/60/EC, groundwater as defined in Article 2(2) of Directive 2000/60/EC, transitional waters as defined in Article 2(6) of Directive 2000/60/EC, and coastal water as defined in Article 2(7) of Directive 2000/60/EC;
- (18) '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;
- (18a) 'prospecting' means the search for economic mineral deposits, 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;
- (19) 'the public' means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;
- (20) 'the public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making under Article 6 and Article 7 of the present 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;
- (21) '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;
- (22) 'waste holder' means the producer of the extractive waste or the natural or legal person who is in possession of it;

* OJ P 196, 16.8.1967, p. 1.

** OJ L 200, 30.7.1999, p. 1.

- (23) '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 carry out the duties arising from this Directive;
- (24) 'competent authority' means the authority or authorities which a Member State designates as responsible for performing the duties arising from this Directive;
- (25) 'site' means all land at a distinct geographic location under the management control of an operator;
- (25a) '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 plants and animals, without causing a nuisance through noise or odours, without adversely affecting the countryside 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 referred to in Art. 3(21) 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.
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/or other requirements of this Directive where relevant;
- (ba) to ensure short and long term safe disposal of the extractive waste, in particular by considering management during operation and after-closure of a waste facility during the design phase and by choosing a design which requires minimal and, if possible, ultimately no monitoring, control and management of the closed facility.

3. The waste management plan shall contain at least the following elements:

- (a) where applicable, the proposed classification for the waste facility according to the criteria laid down in Annex III:
 - Where a Category A 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 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 or minimisation of water status deterioration, air and soil pollution pursuant to Article 13.

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 Article 5(2) and his obligations under this Directive.

- 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.
- 5a. The competent authority shall approve the waste management plan on the basis of procedures to be decided by the Member States and monitor its implementation.

Article 6

Major-accident prevention and information

1. The provisions of this Article shall apply to Category A waste facilities, as defined in Article 9 save for those waste facilities falling within the scope of Directive 96/82/EC.
2. Without prejudice to other Community legislation, and in particular Council Directive 92/91/EEC * and Council Directive 92/104/EEC **, Member States shall ensure that major-accident hazards are identified and 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 point 1 of Annex I, as well as put into effect an internal emergency plan with 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 for 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.

* OJ L 348, 28.11.1992, p. 9.

** OJ L 404, 31.12.1992, p. 10.

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 services or authorities concerned 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 timeframes 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 point 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 and shall clearly indicate the category of the facility according to the criteria set out 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 Article 7(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;
 - [...]
 - (e) adequate arrangements by way of a financial guarantee or equivalent, as required under Article 14;

- (ea) 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.

3. [...]

4. 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.

4a. 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 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 16;
- in the light of information exchange on substantial changes in best available techniques under Article 19(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 is subject to consultation between the Member States in accordance with Article 15;
 - (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 and consultation made pursuant to paragraph 5.
2. Member States shall ensure that, within appropriate time frames, the following is made available to the public concerned:
 - (a) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities 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 on public access to environmental information^{*}, 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.

- 2a. Member States shall take appropriate measures to ensure the public are informed, in accordance with paragraph 1, about an update of permit conditions in accordance with Article 7(4a).
3. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.
4. The results of the consultations held pursuant to this Article shall be taken into due account in the taking of a decision.
5. 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.
6. 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.

^{*} OJ L 41, 14.2.2003, p. 26.

Article 9
Classification system for waste facilities

For the purposes of this Directive, the competent authorities shall classify a waste facility as Category A according to 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 and groundwater in accordance, *mutatis mutandis*, with Article 13(1) and (2);
 - (3) ensure the monitoring of the extractive waste 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 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 Directive 76/464/EEC, Directive 80/68/EEC and Directive 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, to ensure the appropriate hand-over of information, particularly in the event of a change of operator.

3. The operator shall, without unnecessary delay and in any event not later than 48 hours, notify the competent authority of any events likely to affect the stability of the 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.

The operator shall meet 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 site 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 and control 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 following closure of a waste facility, the operator shall, in particular, 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 any events or developments likely to affect the stability of the 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 meet 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:
 - (a) evaluate 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 determine the water balance of the waste facility;
 - (b) prevent or minimise leachate generation and surface water or groundwater and soil from being contaminated by the waste;
 - (c) treat contaminated water and leachate collected from the waste facility to the appropriate standard required for their discharge.
- 1a. The competent authority shall ensure that the operator has taken adequate measures to prevent or reduce dust and gas emissions.
2. Where, on the basis of an assessment of environmental risks, taking into account, in particular, Council Directive 76/464/EEC *, Council Directive 80/68/EEC ** or Directive 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.
3. 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 Directive 76/464/EEC, Directive 80/68/EEC and Directive 2000/60/EC.

* OJ L 129, 18.5.1976, p. 23.

** OJ L 20, 26.1.1980, p. 43.

4. 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 facilities which have been granted a permit before or have already been in operation on [transposition date] 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 [transposition date], 25 ppm as from [transposition date + five years], 10 ppm as from [transposition date + ten years] and 10 ppm at facilities which are granted a permit after [transposition date].

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 deposit of 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 site.
2. The calculation of the guarantee referred to in paragraph 1 shall be made according to:
 - (a) the likely environmental impact of the facility, taking into account in particular the category of the 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 appropriately adjusted according to the rehabilitation work needed to be carried out on the waste facility.
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 with the exception of after-closure obligations as referred to in Article 12(4).

Article 14a

Environmental liability

The following entry shall be added to Annex III of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage: "13. The management of extractive waste pursuant to Directive .../.../EC of the European Parliament and of the Council on the management of waste from extractive industries".

Article 15

Transboundary effects

1. Where a Member State in which a facility is situated is aware that the operation of a Category A waste facility is likely to have significant adverse effects on the environment, and any resultant risks to human health of 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, 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 16

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 facility.

Article 17
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 21(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 18
Sanctions

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 18a
Inventory of closed waste facilities

Member States shall ensure that an inventory of closed waste facilities (including abandoned 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 within four years from [date of transposition], taking into account the methodologies as referred to in Article 19, if available.

Article 19
Exchange of information

1. The Commission, assisted by the Committee referred to in Article 21, 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 fulfilment of Article 18a;
 - (b) the rehabilitation of those closed waste facilities identified under Article 18a in order to satisfy the requirements of Article 4 of this Directive. 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. The 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 20
Implementing and amending measures

1. Within two years of the date of entry into force of this Directive, the Commission shall adopt, in accordance with the procedure referred to in Article 21(2), the provisions necessary for the following, prioritising (e), (ea) and (f) :
 - (a) the harmonisation and regular transmission of the information referred to in Articles 7(5) and 12(6) of this Directive;
 - (b) the implementation of Article 13(4), including technical requirements relating to the definition of weak acid dissociable cyanide and its measurement method;
 - (c) technical non-binding 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 16;
 - (e) completion of the technical requirements for waste characterisation contained in Annex II;
 - (ea) interpretation of the definition contained in Article 3(3).
 - (f) definition of the criteria for the classification of waste facilities according to Annex III;
 - (g) 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 21(2).

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

Article 21

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.

Article 22

Transitional provision

1. Member States shall ensure that any waste facility which has been granted a permit or which is already in operation on [date of transposition] complies with the provisions of this Directive within [four years] after that date, save for those set out in Article 14(1) for which compliance must be ensured within [six years] after that date and for those set out in Article 13(4) for which compliance must be ensured in accordance with the timetable laid down therein.
2. Paragraph 1 does not apply to closed waste facilities on [date of transposition].
3. Articles 5 to 11, 12(1), (2), (5) and (6), 13(3) and (4) and 14(1) to (3) of this Directive shall not apply to those waste facilities that stopped accepting waste before the date of transposition, are completing the closure procedures in accordance with the applicable Community or national legislation or programmes approved by the competent authority and which will be effectively closed by 31 December 2010. Member States shall notify such cases to the Commission within three months after the date of transposition and ensure that these facilities are managed in a way that does not prejudice the achievement of the objectives of this Directive and those of any other Community legislation, including Directive 2000/60/EC.

Article 23
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before [date of entry into force + 24 months]. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, 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.

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 24
Entry into force

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

Article 25
Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President

**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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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 and to prevent major accidents. The waste characterisation shall include, where appropriate and in accordance with the category of the 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;
- (2) classification of the waste according to the relevant entry in Commission Decision 2000/532/EC *, 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.

* OJ L 203, 28.7.2001, p. 18.

Criteria for determining the classification of waste facilities

A waste facility shall be classified in 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.
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