

## June 2010 BRIEFING NOTE – The Mining Waste Directive

Update November 2010

### The management of waste from extractive industries

(The Mining Waste Directive 2006/21/EC)<sup>1</sup>

The Mining Waste Directive (MWD) was published in the Official Journal of the European Union on 11 April 2006 and came into force on 1 May 2006. The MWD is implemented in England and Wales by The Environmental Permitting (England and Wales) Regulations 2010 (the EP regulations). The Environment Agency has been designated the competent authority for the implementation of the MWD under the EP regulations.

The MWD applies to 'extractive waste'. Extractive waste is defined as wastes which are generated from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries. Extractive industries are defined 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*'. The MWD does not apply to offshore prospecting, extraction or treatment of minerals. Waste which falls within the scope of the MWD is not subject to the Landfill Directive. The MWD applies to all **existing sites** from 1 May 2008.

Under Article 24.1 of the MWD a mining waste facility that was operational on 1 May 2008 is an existing mining waste facility.

The EP regulations define two specific activities:

- *Mining waste operations*
  - *The management of extractive waste, whether or not involving a mining waste facility*
- *Mining waste facility*
  - *An area designated for the deposit or accumulation of extractive waste. This includes heaps, ponds and associated structures such as dams, but does not include the void from which minerals have been extracted if extractive waste is replaced in the void after extraction for the purpose of rehabilitation or construction.*

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:102:0015:0033:en:PDF>

### **Category A facilities**

Certain waste facilities may be classified as Category A facilities which are to be considered as higher risk than other waste facilities. Facilities which are likely to be classified as Category A include those where, based on risk assessment, a failure or incorrect operation of the mining waste facility has the potential to cause a major accident, or contains hazardous waste or dangerous substances above a certain threshold. Category A facilities are subject to a higher level of regulation than other facilities. Guidance on Category A facilities currently is being prepared by the Environment Agency in discussion with Industry.

### **Definition of Mining Waste Facility**

An area is only to be regarded as a mining waste facility if extractive waste would be kept for certain time periods:

- Six months for facilities for unexpectedly generated hazardous waste
- A year for facilities for non-hazardous non-inert waste
- Three years for facilities for inert waste, unpolluted soil, non-hazardous prospecting waste and waste from the peat industry.

These periods do not apply to Category A facilities which are always waste facilities irrespective of the time period involved. If extractive waste is stored for time periods less than those defined or is used to backfill the extraction void for the purpose of rehabilitation or construction its management will comprise a mining waste operation but there will be no mining waste facility.

### **Waste types**

Inert waste under the MWD has been defined in a Commission Decision document<sup>2</sup>. It is important to note that the definition of inert waste for the MWD is different from the definition of inert waste under the Landfill Directive. Mining wastes which are not classified as inert waste may be classified as non-hazardous non-inert waste or hazardous waste. The definition of hazardous waste is consistent with the definition in the Hazardous Waste Regulations<sup>3</sup>.

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<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:110:0046:0047:EN:pdf>

<sup>3</sup> [http://www.opsi.gov.uk/si/si2005/uksi\\_20050894\\_en.pdf](http://www.opsi.gov.uk/si/si2005/uksi_20050894_en.pdf)

## What do I need to do to comply with the legislation?

### Environmental Permits

All sites will need to apply for an Environmental Permit. Dependent on the type of site the permit may be either a Standard Rules permit or a bespoke permit. Standard Rules permits are only applicable to sites for inert wastes and unpolluted soil. The Environment Agency has published the Standard Rules permit for the management of inert wastes and unpolluted soil on its web site<sup>4</sup>. For all other sites it will be necessary to apply for a bespoke Environmental Permit.

### Waste Management Plans

For all mining waste operations including mining waste facilities a Waste Management Plan (WMP) is required. It is likely that many of the requirements of WMPs can be met by other plans specified in other legislation (for example the Quarries Regulations 1999).

### Category A facilities - Major Accident Prevention Policy (MAPP)

All Category A facilities must provide information relating to major accident prevention. A MAPP must be prepared which includes internal emergency plans and a safety management system to implement the MAPP. In addition for a Category A site it is necessary to prepare an external emergency plan in accordance with the emergency plan regulations<sup>5</sup>. It will also be necessary for financial guarantees to be provided for Category A facilities and hazardous waste facilities.

The CBI Minerals Group has produced a guidance note on the definition of extractive waste to assist operators in defining whether their extractive operations produce waste. The guidance document may be found at <http://www.cbi.org.uk/pdf/2010701-cbi-minerals-guidance-note.pdf>

## Timescales

### 30 December 2010

If an existing mining waste operation **closes** prior to 30 December 2010 it is not necessary to apply for an Environmental Permit. Operators of existing mining waste operations must apply for an Environmental Permit by 30 December 2010.

### 1 May 2011

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<sup>4</sup> <http://www.environment-agency.gov.uk/business/topics/permitting/106569.aspx>

<sup>5</sup> [http://www.opsi.gov.uk/si/si2009/pdf/ukj\\_20091927\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/ukj_20091927_en.pdf)

Operators of existing mining waste facilities must apply for an Environmental Permit by 1 May 2011.

***Please note that this briefing note comprises a summary of the issues but is not intended to be comprehensive or to be read in isolation from the Directive and associated regulations and guidance.***

