

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

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;
- 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.

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⁽¹⁾;
- (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;
- (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;

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- (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⁽²⁾ or Directive 1999/45/EC⁽³⁾;
- (18) ‘best available techniques’ is as defined in Article 2(11) of Directive 96/61/EC;
- (19) ‘receiving body of water’ means surface waters, groundwater, 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

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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.

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- 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

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- 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

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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;

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- 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⁽⁴⁾ if an environmental impact assessment is required under that Directive.
- 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:

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- 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⁽⁵⁾, 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.

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).

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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⁽⁶⁾, 80/68/EEC⁽⁷⁾ 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.

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.

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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⁽⁸⁾.

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

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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.

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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.

[^{F1} Article 22

1 The Commission shall, in accordance with the regulatory procedure referred to in Article 23(2), adopt the following:

- a provisions necessary for the harmonisation and regular transmission of the information referred to in Article 7(5) and Article 12(6);
- b technical guidelines for the establishment of the financial guarantee in accordance with the requirements of Article 14(2);
- c technical guidelines for inspections in accordance with Article 17.

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2 The Commission shall lay down provisions necessary for the following, prioritising points (b), (c) and (d):

- a the implementation of Article 13(6), including technical requirements relating to the definition of weak acid dissociable cyanide and its measurement method;
- b the completion of the technical requirements for waste characterisation contained in Annex II;
- c the interpretation of the definition contained in point 3 of Article 3;
- d the definition of the criteria for the classification of waste facilities in accordance with Annex III;
- e the determination of any harmonised standards for sampling and analysis methods needed for the technical implementation of this Directive.

Those measures, designed to amend non-essential elements of this Directive, *inter alia*, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3).

3 The Commission shall make the necessary amendments to the Annexes for the purpose of adapting them to scientific and technical progress. Those amendments shall be made with a view to achieving a high level of environmental protection.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3).]

Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny — Part Four.](#)

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.

[^{F13} Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.]

Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of](#)

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[the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny](#)
[Adaptation to the regulatory procedure with scrutiny — Part Four.](#)

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.

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.

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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.

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- (1) [OJ L 377, 31.12.1991, p. 20](#). Directive as amended by Regulation (EC) No 166/2006.
- (2) 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](#)).
- (3) 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](#)).
- (4) 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](#)).
- (5) [OJ L 41, 14.2.2003, p. 26](#).
- (6) 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.
- (7) 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](#)).
- (8) [OJ L 102, 11.4.2006, p. 15](#)'