

Commission Decision of 30 April 2009 completing the technical requirements for waste characterisation laid down by Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries (notified under document number C(2009) 3013) (2009/360/EC)

COMMISSION DECISION

of 30 April 2009

completing the technical requirements for waste characterisation laid down by Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries

(notified under document number C(2009) 3013)

(2009/360/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard 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 and amending Directive 2004/35/EC⁽¹⁾, and in particular Article 22(1)(e) thereof,

Whereas:

- (1) Directive 2006/21/EC provides for waste characterisation as part of the waste management plan, which has to be drawn up by the operator of extractive industries and approved by the competent authority. Annex II of that Directive provides a list of certain aspects to be included in the waste characterisation.
- (2) The purpose of the characterisation of extractive waste is to obtain the relevant information on the waste to be managed in order to be able to assess and monitor its properties, behaviour and characteristics and thereby ensure that it is managed under environmentally safe conditions in the long term. Furthermore, the characterisation of extractive waste should facilitate the determination of the options for managing such waste and the related mitigation measures in order to protect human health and the environment.
- (3) The necessary information and data for the characterisation of extractive waste should be collected on the basis of existing relevant and appropriate information or, if needed, by sampling and testing. It should be ensured that information and data for waste characterisation are appropriate, of adequate quality and representative of the waste. This information should be duly justified in the waste management plan to the full satisfaction of the competent authority.
- (4) The level of detail of information to be gathered and the related sampling or testing needs should be adapted to the type of waste, the potential environmental risks, and the

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intended waste facility. From a technical point of view, it should be made possible to adopt an iterative approach to ensure appropriate waste characterisation.

- (5) From a technical point of view, it is appropriate to exempt waste defined as inert in accordance with the criteria laid down in Commission Decision 2009/359/EC⁽²⁾ from part of the geochemical testing.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 18 of Directive 2006/12/EC of the European Parliament and of the Council⁽³⁾,

HAS ADOPTED THIS DECISION:

Modifications etc. (not altering text)

- C1** Decision: power to modify conferred (26.2.2022) by [The Waste and Agriculture \(Legislative Functions\) Regulations 2022 \(S.I. 2022/190\)](#), regs. 1(1), **10(1)(2)(d)**

[^{F1}Article A1

1. A term which is used in this Decision—
 - a as it extends to Scotland and which is defined in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010 has the meaning given in that regulation;
 - b as it extends to Northern Ireland and which is defined in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 has the meaning given in that regulation.
2. For the purposes of this Decision, Directive [2006/21/EC](#) of the European Parliament and the Council concerning the management of waste from extractive industries is to be read as if, in Article 3—
 - a in point (1), for “Article 1(a) of Directive [75/442/EEC](#)” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
 - b in point (2), for “Article 1(4) of Council Directive [91/689/EEC](#) of 12 December 1991 on hazardous waste” there were substituted “Article 3(2) of the Waste Framework Directive”;
 - c in point (4), for the words from “the national law” to the end there were substituted “national law”;
 - d in point (24), for the words from “the national law” to “takes place” there were substituted “national law”.
3. In paragraph 2, the “Waste Framework Directive” means Directive [2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851, and read in accordance with paragraphs 4 to 8.
4. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before IP completion day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of England or Wales.
5. Article 5 is to be read as if—

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- a in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - b after paragraph 1 there were inserted—
 - 1A. Any decision as to whether a substance or object is a by-product must be made—
 - a in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - b having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.
 - c paragraphs 2 and 3 were omitted.
6. Article 6 is to be read as if—
- a in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - b after paragraph 1 there were inserted—
 - 1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - a in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - b having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.
 - c in paragraph 2—
 - i the first subparagraph were omitted;
 - ii in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - iii the third and fourth subparagraphs were omitted;
 - d paragraph 3 were omitted;
 - e in paragraph 4—
 - i in the first subparagraph—
 - aa in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - bb the second sentence were omitted;
 - ii in the second subparagraph—
 - aa for “Member States” there were substituted “The appropriate agency”;
 - bb “by competent authorities” were omitted.
7. Article 7 is to be read as if—
- a before paragraph 1 there were inserted—
 - A1. In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).
 - b in paragraph 1—
 - i the first and second sentences were omitted;
 - ii for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards

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- determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- c paragraphs 2, 3, 6 and 7 were omitted.
8. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
9. In this Article—
- a “appropriate authority” means—
- i in relation to England, the Secretary of State;
 - ii in relation to Wales, the Welsh Ministers;
- b “local authority” means—
- i in England outside Greater London—
 - a district council,
 - a county council, or
 - the Council of the Isles of Scilly;
 - ii in Greater London—
 - the council of a London borough,
 - the Common Council of the City of London,
 - the Sub-Treasurer of the Inner Temple, or
 - the Under-Treasurer of the Middle Temple;
 - iii in Wales—
 - a county council, or
 - a county borough council.
10. In this Decision, “appropriate agency” means—
- a in relation to England, the Environment Agency;
 - b in relation to Wales, the Natural Resources Body for Wales;
 - c in relation to Scotland—
 - i a planning authority, or
 - ii a National Park authority within the meaning of section 35(1) of the National Parks (Scotland) Act 2000 (as the case may be);
 - d in relation to Northern Ireland—
 - i a district council established under section 1 of the Local Government Act (Northern Ireland) 1972, or
 - ii the Department for Infrastructure (as the case may be).]

Textual Amendments

- F1** Art. A1 inserted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **20(2)** (as amended by [S.I. 2020/1540](#), regs. 1(3), **14**); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

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Article 1

Waste characterisation

1 [F²The appropriate agency] shall ensure that the waste characterisation to be carried out by operators in the extractive industries complies with this Decision.

2 Waste characterisation shall cover the following categories of information as specified in the Annex:

- a background information;
- b geological background of deposit to be exploited;
- c nature of the waste and its intended handling;
- d geotechnical behaviour of the waste;
- e geochemical characteristics and behaviour of the waste.

3 The criteria for defining inert waste laid down in Decision 2009/359/EC shall be taken into account for the purpose of assessing the geochemical behaviour of waste. Where, on the basis of those criteria, waste is considered to be 'inert', it shall be only subject to the relevant part of geochemical testing referred to in point 5 of the Annex.

Textual Amendments

- F2** Words in Art. 1(1) substituted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **20(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Article 2

Collection and evaluation of information

1 Information and data necessary for the waste characterisation shall be collected in the order set out in paragraphs 2 to 5.

2 Existing investigations and studies, including existing permits, geological surveys, similar sites, lists of inert waste, appropriate certification schemes, F³ ... or national standards for similar material, which satisfy the technical requirements set out in the Annex shall be used.

3 The quality and representativity of all information shall be evaluated and possible missing information shall be identified.

4 Where information necessary for the characterisation of the waste is missing, a sampling plan shall be drawn up in accordance with standard EN 14899 and samples shall be taken in accordance with that sampling plan. Sampling plans shall be based on identified information as necessary, including:

- a purpose of data collection,
- b testing programme and sampling requirements,
- c sampling situations, including sampling from drill-cores, excavation face, conveyor belt, heap, pond, or other relevant situation,
- d procedures and recommendations for sample numbers, size, mass, description and handling.

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The reliability and quality of the sampling results shall be evaluated.

5 The results of the characterisation process shall be evaluated. Where necessary, additional information shall be collected following the same methodology. The final result shall feed into the waste management plan.

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Textual Amendments

F3 Word in [Art. 2\(2\)](#) omitted (31.12.2020) by virtue of [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **20(4)**; 2020 c. 1, Sch. 5 para. 1(1)

F⁴ Article 3

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Textual Amendments

F4 [Art. 3](#) omitted (31.12.2020) by virtue of [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **20(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Done at Brussels, 30 April 2009.

For the Commission

Stavros DIMAS

Member of the Commission

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ANNEX

TECHNICAL REQUIREMENTS FOR WASTE CHARACTERISATION

1. Background information

Review and understanding of the general background and objectives of the extractive operation.

Collection of general information about:

- prospecting, extraction, or processing activity,
- type and description of method of extraction and process applied,
- nature of the intended product.

2. Geological background of deposit to be exploited

Identification of the waste units to be exposed by extraction and processing by providing relevant information on:

- nature of surrounding rocks, their chemistry and mineralogy, including hydrothermal alteration of mineralised rocks and barren rocks,
- nature of deposit, including mineralised rocks or rock-bearing mineralisation,
- mineralisation typology, their chemistry and mineralogy, including physical properties such as density, porosity, particle size distribution, water content, covering worked minerals, gangue minerals, hydrothermal newly-formed minerals,
- size and geometry of deposit,
- weathering and supergene alteration from the chemical and mineralogical point of view.

3. The waste and its intended handling

Description of the nature of all the wastes occurring in each prospecting, extraction and processing operation, including overburden, waste rock and tailings, by providing information on the following elements:

- origin of the waste in the extraction site and the process generating that waste such as prospecting, extraction, milling, concentration,
- quantity of the waste,
- description of the waste transport system,
- description of the chemical substances to be used during treatment,
- classification of the waste according to Commission decision 2000/532/EC⁽⁴⁾, including hazardous properties,
- type of intended waste facility, final form of exposure of the waste and method of deposition of the waste into the facility.

4. Geotechnical behaviour of waste

Identification of the suitable parameters for assessing the intrinsic physical characteristics of the waste taking into account the type of waste facility.

Relevant parameters to be considered are: granulometry, plasticity, density and water content, degree of compaction, shear strength and angle of friction, permeability and void ratio, compressibility and consolidation.

5. Geochemical characteristics and behaviour of the waste

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Specification of the chemical and mineralogical characteristics of the waste, and of any additives or residuals remaining in the waste.

Prediction of drainage chemistry over time for each type of waste, taking into account its intended handling, in particular:

- evaluation of metals, oxyanion and salt leachability over time by pH dependence leaching test, and/or percolation test and/or time-dependent release and/or other suitable testing,
- for sulphide-containing waste, static or kinetic tests shall be carried out in order to determine acid-rock drainage and metal leaching over time.

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- (1) [OJ L 102, 11.4.2006, p. 15.](#)
- (2) See page 46 of this Official Journal.
- (3) [OJ L 114, 27.4.2006, p. 9.](#)
- (4) [OJ L 226, 6.9.2000, p. 3.](#)

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