

Commission Implementing Decision (EU) 2020/248 of 21 February 2020 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC of the European Parliament and of the Council (notified under document C(2020) 889) (Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION (EU) 2020/248

of 21 February 2020

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(notified under document C(2020) 889)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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)(c) thereof,

Whereas:

- (1) Article 17 of Directive 2006/21/EC requires inspections of any waste facility covered by Article 7 in that Directive in order to ensure that it complies with the relevant conditions of the permit. In order for those inspections to be efficient and effective, competent authorities should be appropriately resourced, independent from the operators of the waste facilities concerned, vested with the necessary functions and powers and entitled to assistance from operators. Inspection activities should also involve co-operation and co-ordination between national authorities responsible for ensuring that waste facilities in their jurisdiction comply with the provisions set out in Directive 2006/21/EC.
- (2) In order for the inspections to be efficient and proactive, it is appropriate that they are planned in advance by means of inspection plans reflecting the risks presented by the waste facilities concerned.
- (3) As the waste facilities covered by Article 7 of Directive 2006/21/EC include waste facilities which ought to have a permit and, as Article 7 provides that no waste facility should operate without a permit, it is necessary for the inspection plans to take account of those waste facilities which ought to have a permit but do not hold one.
- (4) Member States should retain a margin of discretion in the application of the inspection guidelines having regard to the different circumstances of each waste facility, to ensure that inspections are proportionate to the relevant environmental and safety risks presented by each waste facility.

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- (5) In order to address different situations of possible non-compliance with permits, provision should be made for both routine inspections and non-routine inspections to respond to serious complaints, accidents, incidents and occurrences of non-compliance. When carrying out the inspections, the inspectors should also take account of the findings of inspections carried out under other applicable EU legislation to the extent that those findings may also indicate possible problems with the permit requirements under Article 7 of Directive 2006/21/EC.
- (6) In order to ensure the effectiveness of the inspections, it is necessary that a certain proportion of inspection activities, and in particular site visits, are unannounced.
- (7) In order to make it possible to draw conclusions from inspection activities, in particular site visits, and to provide an empirical basis for future inspections and other related measures, it is important that all inspection activities are properly documented, including through regular site visit reports.
- (8) In order to effectively ensure compliance with permit conditions, it is important that inspections facilitate and enable any further measures to respond to detected non-compliance.
- (9) Given that risks vary depending on the stage of existence of the concerned waste facilities, it is necessary that the technical guidelines contain detailed provisions concerning the different life phases of waste facilities covered by Article 7 of Directive 2006/21/EC.
- (10) Given that Category A waste facilities pose potentially higher risks, it is necessary that the technical guidelines contain specific provisions in respect of such facilities.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Committee established in accordance with Article 23(2) of Directive 2006/21/EC,

HAS ADOPTED THIS DECISION:

Article 1

The technical guidelines for inspections of waste facilities in accordance with Article 17 of Directive 2006/21/EC set out in the Annex to this Decision are adopted.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 21 February 2020.

For the Commission

Virginijus SINKEVIČIUS

Member of the Commission

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ANNEX

TECHNICAL GUIDELINES FOR INSPECTIONS OF WASTE FACILITIES

PART A

Objectives

These guidelines set out elements to be taken into consideration for inspections of waste facilities covered by Article 7 of Directive 2006/21/EC that are to be carried out by competent authorities in accordance with Article 17 of that Directive. Such inspections are aimed at ensuring that any waste facility has obtained the required permit and complies with the relevant permit conditions. The inspections relate to the different life-phases of the waste facilities.

These guidelines address the general framework for carrying out inspections (Part C), the focus of the inspections for each of the different life-phases of the waste facilities (Part D) and the specific elements relevant to inspection of Category A facilities (Part E).

PART B

Definition

For the purpose of these guidelines, ‘inspection’ means all activities undertaken by a competent authority or on its behalf in order to ensure compliance by waste facilities covered by Article 7 of Directive 2006/21/EC with the conditions of the permit that they have to obtain. These activities may include in particular:

- assessing relevant environmental and safety issues and the risks presented by the waste facilities;
- carrying out site visits to check premises, site conditions, relevant equipment, including whether it is adequately maintained, relevant documents and electronic data, internal measures and systems and operating processes;
- interviewing staff working at the waste facility;
- reinforcing operators’ knowledge of the relevant legal requirements and the environmental impacts of the activities of the operators;
- taking samples;
- using earth observation techniques and other forms of remote surveillance, including those involving *in situ* sensors, where appropriate;
- verifying operators’ self-monitoring;
- checking documents and electronic data, including operator’s reports, other than by means of site visits;
- checking operators’ internal measures and systems and operating processes other than by means of site visits;
- checking financial guarantees or equivalent;
- recording factual information on non-compliance;
- identifying the reasons for detected non-compliance and the possible types of impacts of such non-compliance on the environment and human health;
- describing detected non-compliance, in particular the circumstances (including the persons) which led to non-compliance, in order to identify, as far as possible, what actions are needed to ensure compliance and enable them, including by cooperating and sharing inspection findings with other relevant competent authorities.

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Inspections, including site visits, may be routine, i.e. carried out as part of a regular set of activities, and non-routine, i.e. carried out in response to serious complaints or for the investigation of serious accidents, incidents and other occurrences of non-compliance.

PART C

Conduct of detailed checks, investigations and information gathering

1. *Competent authorities*

The following shall be taken into consideration:

- (a) the availability, for the entire territory of the Member State and for the full range of waste facilities covered by Article 7 of Directive 2006/21/EC, of competent authorities in charge of inspections;
- (b) the independence of the competent authorities and their capacity to fulfil all tasks necessary for carrying out the inspections;
- (c) the powers of the competent authorities to carry out inspections, including their right to enter facilities and examine relevant material assets, documents and electronic data;
- (d) the sufficiency of the resources, personnel and equipment available to the competent authorities in order to carry out inspections;
- (e) the arrangements the competent authorities have in place for co-operation and co-ordination of their activities with other relevant authorities, in particular other authorities with responsibilities in relation to compliance with permits required under national or Union environmental legislation that is applicable or relevant to the facilities covered by Article 7 of Directive 2006/21/EC;
- (f) the level of knowledge, experience and competence that inspectors need to have to carry out inspections, in particular as regards the design, construction, operation and closure of waste facilities;
- (g) the organisation of training to update the knowledge that inspectors have;
- (h) the necessary assistance that operators must provide to the competent authorities to enable them to carry out inspections, including site visits, the taking of samples and the gathering of information necessary for the performance of their duties pursuant to Article 17 of Directive 2006/21/EC.

When carrying out inspections, the competent authorities may be assisted by and may delegate inspection tasks to independent experts in accordance with national legislation, provided that the experts operate under the supervision of the competent authority. The competent authority shall determine the minimum qualifications of the experts and shall assess whether those qualifications are met. The competent authority shall also verify that the experts have no personal interest in the outcome of the inspection.

2. *Organisation of inspections*

2.1. *Inspection plans*

The following shall be taken into consideration:

- (a) planning of inspections in advance by means of a plan or plans established at the appropriate administrative level based on a general assessment of the relevant

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environmental and safety issues and risks of the waste facilities and, where information is already available on compliance, an overall assessment of the state of compliance for the waste facilities operating within the plan area. Such plans can be integrated or combined with other inspection plans where considered appropriate;

- (b) the periodic review and, where appropriate, the updating of the inspection plan or plans;
- (c) the coverage in the inspection plan or plans of each waste facility under Article 7 of Directive 2006/21/EC;
- (d) the inclusion in each inspection plan of the following:
 - (i) a general assessment of relevant environmental and safety issues and risks;
 - (ii) the geographical area covered by the inspection plan;
 - (iii) a list of the waste facilities covered by the inspection plan which hold a permit;
 - (iv) the means of ensuring identification of waste facilities covered by Article 7 of Directive 2006/21/EC which operate without a permit;
 - (v) procedures for carrying out routine inspections;
 - (vi) procedures for carrying out non-routine inspections;
 - (vii) procedures for carrying out announced and unannounced site visits;
 - (viii) where necessary, arrangements on the cooperation and co-ordination between different competent authorities in charge of inspections and between those authorities and other authorities with a role in the enforcement of permits required under national or Union environmental legislation that is applicable or relevant to the waste facilities covered by Article 7 of Directive 2006/21/EC;
 - (ix) information on the human, financial and other resources needed by the competent authority for the implementation of the inspection plan.

2.2. *Routine inspections*

The following shall be taken into consideration:

- (a) the carrying out of routine inspections at regular intervals based on an appropriate risk assessment of the waste facility concerned;
- (b) an adequate frequency of site visits based on an appropriate risk assessment of the waste facility concerned, reflecting also the potentially higher risks of Category A facilities;
- (c) the application of the following criteria for the risk assessment of the waste facilities:
 - (i) the potential and actual impacts of the facilities concerned on human health and the environment, taking into account the levels and types of emissions, the sensitivity of the local environment and the risk of accidents as further specified in Best Available Technique (BAT 5) of the BAT Reference Document for the management of wastes from the extractive industries (MWEI BREF)⁽²⁾;

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- (ii) the previous compliance record;
- (iii) the participation of the operator of the waste facility in the Environmental Management System (EMS) as further specified in BAT 1 of the MWEI BREF;
- (d) the noting by the inspector, where appropriate, of relevant findings of inspections carried out under other applicable Union legislation;
- (e) the provision to the operator, when site visits are announced in advance, of the visit schedule and details of the information, and any other assistance, that the operator will be requested to provide;
- (f) in the event of detection of non-compliance or a risk to compliance, the carrying out of an investigation and, as appropriate, the sharing of the results with other authorities, in particular with a view to:
 - (i) providing a description of the non-compliance or compliance risk, clarifying its causes and impact on the environment and human health, and in particular clarifying the circumstances (including the persons) which led to non-compliance;
 - (ii) providing a factual base to facilitate and enable appropriate responses to address the detected non-compliance and prevent future non-compliance, including, as appropriate, additional inspections, corrective measures by the operator, update of permit conditions, suspension of the permit or use of sanctions;
- (g) in the event of the suspension of the operation of a waste facility because of non-compliance with permit conditions, the undertaking of further inspection activities with a view to attaining environmental and other results that the permit conditions were intended to secure.

2.3. *Non-routine inspections*

The following shall be taken into consideration:

- (a) the carrying out of non-routine inspections, including site visits, as soon as possible after the competent authority receives serious complaints concerning non-compliance with the permit requirements or otherwise becomes aware of serious accidents, incidents or occurrences of non-compliance, irrespective of whether such events need to be notified according to Article 11(3) or Article 12(6) of Directive 2006/21/EC, in particular with a view to:
 - (i) clarifying the causes of the event, its impacts on the environment and human health, and in particular clarifying the circumstances (including the persons) which led to non-compliance;
 - (ii) providing a factual base to facilitate and enable appropriate responses to address the detected non-compliance and prevent future accidents, incidents or occurrences of non-compliance, including, as appropriate, additional inspections, corrective measures by the operator, update of permit conditions, suspension of the permit or use of sanctions;
- (b) the noting by the inspector, where appropriate, of relevant findings of inspections carried out under other applicable Union legislation;

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- (c) the carrying out of non-routine inspections as soon as possible with respect to, and, where appropriate, before the reconsideration or update of a permit.

2.4. *Unannounced site visits*

The following shall be taken into consideration:

- (a) the undertaking of an appropriate number of unannounced site visits, in particular where relevant to the detection of problems or risk exposure or the need to respond to an urgent situation;
- (b) as far as practicable, the addressing, in decisions on unannounced site visits, of health, environmental and safety concerns and of the possible need for the waste facility's operational staff to be on site.

3. *Documentation of inspections*

3.1. *Documentation of inspection activities, including site visits*

The following shall be taken into consideration:

- (a) the appropriate documentation of all inspection activities;
- (b) the preparation, after each site visit to a waste facility, of a site visit report that is recorded in writing and stored in identifiable form in a readily accessible and adequately maintained database;
- (c) the inclusion in the site visit report of the purpose of the inspection, the data, information and findings gathered, an evaluation thereof and a conclusion on whether the waste facility complies with the relevant conditions of the permit and whether any further action should follow;
- (d) the completion of the site visit report within two months after the site visit, unless more serious findings have been made during the site visit, in which case another deadline may be required;
- (e) the provision to the operator, before or after the finalisation of the site visit report, of an opportunity to submit comments, where appropriate;
- (f) the availability to the public of the results of the site visit and, as appropriate, of other inspection activities, in accordance with Directive 2003/4/EC of the European Parliament and of the Council⁽³⁾.

PART D

Focus of inspections over the different life-phases of waste facilities

1. *Inspections of new waste facilities prior to the commencement of deposition operations*

The following shall be taken into consideration for the purposes of the inspection:

- (a) the implementation of the measures taken in order to minimise environmental impact during operation and after closure, including, if required, handling of contaminated water and leachate;
- (b) the compliance of the location, design and construction of the waste facility with the safety and environmental elements given in the permit;

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- (c) the content, availability and performance of the self-monitoring system for regular monitoring and operators self-inspections and of the planned reporting of the monitoring data to the competent authority;
- (d) the implementation of the management, maintenance and surveillance measures planned to ensure the physical stability of the facility 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 the landscape;
- (e) the availability of sufficient human resources and the competence of the personnel in charge of the environmental management and safety of the waste facility;
- (f) the adequacy of the plan for closure referred to in Article 5(3)(f) of Directive 2006/21/EC;
- (g) the adequacy of the financial guarantee or equivalent with regard to its amount and form, where the competent authority requires a financial guarantee or equivalent; whether the classification of the waste facility as a Category A facility or not a Category A facility needs to be reviewed and verified;
- (h) the compliance with any other permit conditions and any other relevant requirements set out in Directive 2006/21/EC.

2. *Inspections of waste facilities in operation*

The following shall be taken into consideration for the purposes of the inspection:

- (a) adverse effects of the waste facility on the environment and human health and measures taken in order to minimise environmental impact; in particular, suitability of the construction, management and maintenance of the waste facility 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 and how these effects correspond to the permit conditions and the information in the environmental impact assessment if such an assessment is required;
- (b) the compliance of the quantities, characteristics and classification of the waste deposited in the waste facility with the elements given in the permit;
- (c) the compliance of the estimated leachate generation, including the contaminant content of the leachate, of the deposited waste, and of the water balance of the waste facility with the elements given in the permit;
- (d) structural and operational changes of the waste facility: checking of (1) the water management, (2) the quality of geotechnical construction activities (e.g. raised dam/embankment construction), (3) the management of geotechnical safety systems (e.g. surface coverings, stability and safety monitoring), (4) quantities and characteristics of the waste deposited in comparison to projections in the waste management plan, (5) leachate generation including contaminant content of the leachate in comparison to projections in the waste management plan, (6) the water balance of the waste facility in comparison to projections in the waste management plan, and (7) techniques used for, and the adequacy of, the environmental and safety management and the environmental monitoring;
- (e) the adoption of measures recommended or imposed after previous inspections;
- (f) the environmental and safety audit reports and statements if required in the permit;

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- (g) results, completeness, management and performance of the self-monitoring programme for regular monitoring and of the reporting of all monitoring data (if applicable) to the competent authority;
 - (h) visual abnormalities of the site;
 - (i) the representativeness of the sampling and characterization of extractive waste;
 - (j) roles, responsibilities and competence of personnel in charge of the environmental and safety management of the waste facility as well as availability of sufficient human resources and training provided to staff;
 - (k) procedures for notifying the competent authority of any events likely to affect the stability of the waste facility, and any significant adverse environmental effects revealed by the relevant control and monitoring procedures;
 - (l) the adequacy of the plan for closure referred to in Article 5(3)(f) of Directive 2006/21/EC and compliance with any progressive closure measures specified in the plan;
 - (m) the adequacy of the amount and form of the financial guarantee or equivalent in respect of the calculated costs for the obligations of the operator under the permit, including closure and after-closure arrangements and rehabilitation of the land affected, where the competent authority requires a financial guarantee or equivalent;
 - (n) the classification of the waste facility as a Category A facility or not a Category A facility;
 - (o) the compliance with any other permit conditions and any other relevant requirements set out in Directive 2006/21/EC.
3. *Final on-site inspection of waste facilities in accordance with Article 12(3) of Directive 2006/21/EC*

The following shall be taken into consideration for the purposes of the inspection:

- (a) adverse effects on the environment and human health from the waste facility and the measures taken in order to minimise such impact after closure, including, if required, the handling of contaminated water and leachate;
- (b) the implementation of the plan for closure referred to in Article 5(3)(f) of Directive 2006/21/EC;
- (c) the rehabilitation of the land affected by the waste facility;
- (d) the adequacy of the plan and arrangements for the maintenance, monitoring, control and corrective measures in the after-closure phase of the waste facility, including the functioning and the adequacy of the monitoring, surveillance and control equipment;
- (e) *the adequacy of the amount and form of the financial guarantee or equivalent* in respect of the calculated costs for the obligations of the operator under the permit, including completion of closure and after-closure arrangements and remaining rehabilitation of the land affected, where the competent authority requires a financial guarantee or equivalent;
- (f) the classification of the waste facility as a Category A facility or not a Category A facility;

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(g) the compliance with any other permit conditions and with any other relevant requirements set out in Directive 2006/21/EC.

4. *Inspections of waste facilities after the closure, with regard to facilities closed after 1 May 2008*

The following shall be taken into consideration for the purposes of the inspection:

- (a) adverse effects on the environment and human health from the waste facility and the measures taken in order to minimise such impact after closure, including, if required, the handling of contaminated water and leachate;
- (b) the correspondence between, on the one hand, the adverse effects referred to in point (a) and, on the other hand, the permit conditions and the information in the environmental impact assessment, if required;
- (c) the compliance of the leachate generation, including the contaminant content of the leachate, of the deposited waste, and of the water balance of the waste facility and, if required, the handling of contaminated water and leachate with the elements given in the permit;
- (d) the implementation of the plan for closure referred to in Article 5(3)(f) of Directive 2006/21/EC;
- (e) the adequacy of the plan for closure referred to in Article 5(3)(f) of Directive 2006/21/EC, in particular as regards the need for additional closure and rehabilitation measures based on environmental risk and impact evaluation;
- (f) the rehabilitation of the land affected by the waste facility; the adequacy of the plan and arrangements for the maintenance, monitoring, control and corrective measures in the after-closure phase of the waste facility, including functioning and the adequacy of the monitoring, surveillance and control equipment, and of the reporting of all monitoring data to the competent authority;
- (g) procedure for notifying the competent authority of any events or developments likely to affect the stability of the waste facility, and of any significant adverse environmental effects revealed by the relevant control and monitoring procedures;
- (h) the adequacy of the amount and form of the financial guarantee or equivalent with in respect of the calculated costs for the obligations under the permit, including completion of after-closure arrangements, corrective measures and rehabilitation of the land affected, where the competent authority requires a financial guarantee or equivalent;
- (i) the classification of the waste facility as a Category A facility or not a Category A facility;
- (j) the compliance with any other permit conditions, and any other relevant requirements set out in Directive 2006/21/EC.

PART E

Additional elements for inspections of Category A waste facilities

1. *Inspection of dams of Category A waste facilities containing tailings*

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In addition to the relevant elements listed in Part D, the following shall be taken into consideration by the inspector where the inspection concerns dams of Category A waste facilities containing tailings:

- (a) type and condition of erosion protection;
- (b) adequacy of the hydrological design, such as water balance, available free-board (vertical distance (height) between the normal maximum operating level of a pond and the crest of the dam);
- (c) composition, status and structural integrity of the beach, such as presence of depressions, tailings density, dust control;
- (d) changes of the dam's crest and slope comparing the current state versus the design state;
- (e) functioning and condition of the drainage system and its state and geotechnical structures (such as geomembranes, dams) and equipment (such as dam structure monitoring);
- (f) leakage and seepage areas, and amount of material leaked;
- (g) any detected damages;
- (h) trees and vegetation on the dam.

2. *Inspection of discharge arrangements of Category A waste facilities containing tailings*

In addition to the relevant elements listed in Part D, the following shall be taken into consideration by the inspector where the inspection concerns discharge arrangements of Category A waste facilities containing tailings and the functioning of such discharge arrangements:

- (a) adequacy of access to discharge lines and discharge points;
- (b) damages of construction and control equipment;
- (c) leakage through and around the discharge arrangements;
- (d) erosion of downstream outlet;
- (e) vegetation in or close to the discharge arrangements;
- (f) discharge regulation equipment;
- (g) emergency discharge arrangements;
- (h) back-up power supply;
- (i) rate of increase of discharges to the tailings pond and related rate of increase of the pond level (measured in meters/year);
- (j) tailings placement system;
- (k) water management system.

3. *Inspections of Category A waste facilities containing waste rocks*

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In addition to the relevant elements listed in Part D, the following shall be taken into consideration by the inspector where the inspection concerns Category A waste facilities that contain waste rocks:

- (a) weathering of the rocks;
- (b) seepage water quality and quantity;
- (c) whether the measures taken to minimise the environmental impacts of waste rock facilities are adequate;
- (d) correctness and effectiveness of recultivation activities based on relevant legal obligations.

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- (1) [OJ L 102, 11.4.2006, p. 15.](#)
- (2) http://eippcb.jrc.ec.europa.eu/reference/BREF/jrc109657_mwei_bref_-_for_pubsy_online.pdf
- (3) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC ([OJ L 41, 14.2.2003, p. 26](#)).

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