



STATUTORY INSTRUMENTS.

S.I. No. 566 of 2009

WASTE MANAGEMENT (MANAGEMENT OF WASTE FROM THE
EXTRACTIVE INDUSTRIES) REGULATIONS 2009

(Prn. A9/1909)

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EXTRACTIVE INDUSTRIES) REGULATIONS 2009

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WASTE MANAGEMENT (MANAGEMENT OF WASTE FROM THE
EXTRACTIVE INDUSTRIES) REGULATIONS 2009

WHEREAS, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, having regard to section 3(3) of the European Communities Act, 1972 (No. 27 of 1972) (as inserted by section 2 of the European Communities Act 2007) (No. 18 of 2007) (hereinafter referred to as the Act of 1972), consider it necessary for the purpose of giving full effect to the provisions of 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/EC¹ to make provision for offences under the following regulations to be prosecuted on indictment:

AND WHEREAS, I consider that it is necessary, having further regard to section 3(3) of the Act of 1972, and for the purpose of ensuring that penalties in respect of an offence prosecuted in that manner under the following regulations are effective, proportionate and have a deterrent effect, having regard to the acts or omissions of which the offence consists, to make such provision in the following regulations:

NOW THEREFORE, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 6 of the Environmental Protection Agency Act, 1992 (No. 7 of 1992) and section 3 of the European Communities Act, 1972 (No. 27 of 1972) as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007) and for the purpose of giving effect to the provisions of Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries¹ hereby makes the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Waste Management (Management of Waste from the Extractive Industries) Regulations 2009.

(2) These Regulations, other than Regulation 23(2), shall come into effect on 31 December 2009.

(3) Regulation 23(2) shall come into operation on 1 January 2011.

Purpose and scope of Regulations

2. (1) These Regulations provide 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

¹OJ L 102, 11.4.2006 p.15-34

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 5th January, 2010.*

to human health, brought about as a result of the management of waste from the extractive industries and transpose Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from Extractive industries¹ into Irish legislation. Any implementing and amending measures adopted under article 22 of Directive 2006/21/EC shall also be covered by these Regulations.

(2) Subject to subparagraphs 3 and 4, these Regulations cover the management of waste resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries, hereinafter "extractive waste".

(3) The following shall be excluded from the scope of these Regulations:

- (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/EC², to the extent authorised by that Article.

(4) 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 Regulation 7, 8, 11(1) and (3), 12, 13(6), 14 and 15, unless deposited in a Category A waste facility.

The competent authority may reduce or waive the requirements for the deposit of non-hazardous waste generated from the prospecting of mineral resources, except oil and evaporites other than gypsum and anhydrite, as well as for the deposit of unpolluted soil and of waste resulting from the extraction, treatment and storage of peat as long as it is satisfied that the requirements of Regulation 4 are met.

The competent authority may reduce or waive the requirements of Regulation 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.

(5) Without prejudice to other Community legislation, waste which falls within the scope of these Regulations shall not be subject to Directive 1999/31/EC³ as transposed into Irish legislation.

¹OJ L 102, 11.4.2006 p.15-34

²OJ L327, 22.12.2000 p.1 Directive as amended by Decision No 2455/2001/EC (OJ L331, 15.12.2001, p.1)

³OJ L 182, 16.7.1999, p.1. Directive as amended by Regulation (EC) No. 1882/2003 (OJ L284, 31.10.2003, p.1-53)

Interpretation generally

3. (1) In these Regulations any reference to a Regulation, paragraph or Schedule, which is not otherwise identified, is a reference to respectively a Regulation of these Regulations or to a paragraph of the provision in which the reference occurs.

(2) In these Regulations:

“Act” means the Waste Management Acts 1996-2008;

“Agency” means the Environmental Protection Agency established under section 19 of the 1992 Act;

“authorised officer” means a person who is appointed in writing to be an authorised officer for the purposes of these Regulations. An authorised officer appointed in writing under the 1992 Act shall also be deemed to be an authorised officer;

“best available techniques” is as defined in Article 2(11) of Directive 96/61/EC⁴;

“competent authority” is as defined in Regulation 22;

“competent person” means a natural person who has the technical knowledge and experience, as defined by the competent authority, to perform the duties arising from these Regulations;

“dam” means an engineered structure designed to retain or confine water and/or waste within a pond;

“dangerous substance” means a substance, mixture or preparation which is dangerous within the meaning of Directive 67/548/EEC⁵ or Directive 1999/45/EC⁶;

“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;

“extractive waste” means waste from the extractive industries within the meaning and the scope of these Regulations;

“Facility Permit Regulations” means the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I. No. 821 of 2007) as amended by the Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008 (S.I. No. 86 of 2008);

“hazardous waste” has the meaning assigned to it by section 4 of the Act;

⁴OJ L257, 10.10.1996, p.26-40

⁵OJ 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)

⁶OJ L 200, 30.07.1999, p.1 Directive as last amended by Commission Directive 2006/8/EC (OJ L 19, 24.1.2006, p.12)

“heap” means an engineered facility for the deposit of solid waste on the surface;

“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. The waste shall fulfil all of the criteria detailed in Commission Decision (EC) No. 2009/359/EC⁷ or any amendment thereto;

“integrated pollution prevention and control licence” means a licence under Part IV of the Environmental Protection Agency Acts 1992 to 2007;

“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;

“licence” means a licence for the purposes of Directive 2006/21/EC¹ issued by the Agency under these Regulations and which shall be known as “Extractive Waste Licence”;

“major accident” means an occurrence on site in the course of an operation involving the management of extractive waste in any establishment covered by Directive 2006/21/EC¹, leading to a serious danger to human health and/or the environment, whether immediately or over time, on-site or off-site;

“Member State” means a Member State of the European Community;

“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;

“off-shore” means that area of the sea and seabed extending from the low water mark of ordinary or medium tides outwards;

“operator” means the natural or legal person responsible for the management of extractive waste, including in respect of temporary storage of extractive waste as well as the operational and the after-closure phases;

“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;

“prospecting” means the search for mineral deposits of economic value, including sampling, bulk sampling, drilling and trenching, but excluding any works

⁷OJ L 110, 1.5.2009, P.46-47

¹OJ L 102, 11.4.2006 p.15-34

required for the development of such deposits, and any activities directly associated with an existing extractive operation;

“public” means one or more natural or legal persons, their associations, organisations or groups;

“public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making under Regulation 6 and 7; for the purposes of this definition, non-governmental organisations promoting environmental protection shall be deemed to have such an interest;

“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/EC², respectively;

“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;

“site” means all land at a distinct geographic location under the management control of an operator;

“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;

“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;

“the 1992 Act” means the Environmental Protection Agency Act, 1992 (No.7 of 1992), as amended by the Protection of the Environment Act 2003 (No. 27 of 2003);

“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;

“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 Community law;

“waste” has the meaning assigned to it in the Act;

²OJ L327, 22.12.2000 p.1 Directive as amended by Decision No 2455/2001/EC (OJ L331, 15.12.2001, p.1)

“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:

- (a) no time-period for Category A waste facilities and facilities for waste characterised as hazardous in the waste management plan,
- (b) a period of more than six months for facilities for hazardous waste generated unexpectedly,
- (c) a period of more than one year for facilities for non-hazardous non-inert waste,
- (d) 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;

“waste facility permit” is as defined in the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I. No. 821 of 2007) as amended by the Waste Management (Facility Permit and Registration)(Amendment) Regulations 2008 (S.I. No. 86 of 2008);

“waste holder” means the producer of the extractive waste or the natural or legal person who is in possession of it;

“waste licence” means a licence granted under the Act;

“weak acid dissociable cyanide” means cyanide and cyanide compounds that are dissociated with a weak acid at a defined pH.

General requirements

4. (1) The operator 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.

(2) The competent authority shall ensure that the provisions of paragraph 1 are met by the operator and shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled depositing of extractive waste.

(3) The competent authority 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.

(4) The measures referred to in paragraph 3 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.

Waste Management Plan

5. (1) (a) The operator shall draw up a waste management plan (to be known as an Extractive Waste Management Plan) for the minimisation, treatment, recovery and disposal of extractive waste, taking account of the principle of sustainable development.

(b) The competent authority shall ensure that the provisions of paragraph 1(a) are met by the operator.

(2) The objectives of the extractive waste management plan shall be to:

(a) 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 Directive 2006/21/EC¹ 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) 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 Directive 2006/21/EC¹ where relevant,

¹OJ L 102, 11.4.2006 p.15-34

- (c) 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 extractive 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 Schedule 3 and Commission Decision 2009/337/EC⁸ or any amendment thereto,
 - (i) 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 Regulation 6(3),
 - (ii) 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 Schedule 2 and Commission Decision 2009/360/EC⁹ or any amendment thereto 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 environmental impact during operation and after closure, including the aspects referred to in Regulation 11(2) (a), (b),(d) and (e),
 - (e) the proposed control and monitoring procedures pursuant to Regulation 10, when applicable, and 11(2)(c),
 - (f) the proposed plan for closure, including rehabilitation, after-closure procedures and monitoring as provided for in Regulation 12,

⁸OJ L 102, 22.4.2009, P.7-11

⁹OJ L 110, 1.5.2009, P.48-51

- (g) measures for the prevention of water status deterioration in accordance with Directive 2000/60/EC² and for the prevention or minimisation of air and soil pollution pursuant to Regulation 13,
- (h) a survey of the condition of the land to be affected by the waste facility,
- (i) a map of the boundary showing the limits of extractions.

The extractive waste management plan shall provide sufficient information to enable the competent authority to evaluate the operator's ability to meet the objectives of the extractive waste management plan as set out in paragraph 2 and his obligations under Directive 2006/21/EC¹. 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 extractive waste management plan as laid down in paragraph 2(a).

(4) The extractive waste management plan shall be reviewed by the operator every five years and 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. The competent authority shall decide which plans are appropriate in this instance.

(6) The competent authority shall approve the extractive waste management plan on the basis of procedures to be decided by the competent authority and shall monitor its implementation.

Major-accident prevention and information

6. (1) This Regulation shall apply to Category A waste facilities, save for those waste facilities falling within the scope of Directive 96/82/EC¹⁰.

(2) Without prejudice to other Community legislation, and in particular Directives 92/91/EEC¹¹ and 92/104/EEC¹², the Agency 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 either human health or the environment or both, including any transboundary impacts.

²OJ L327, 22.12.2000 p.1 Directive as amended by Decision No 2455/2001/EC (OJ L331, 15.12.2001, p.1)

¹OJ L 102, 11.4.2006 p.15-34

¹⁰OJ L10, 14.1.1997, p.13-33

¹¹OJ L348, 28.11.1992, p.9-24

¹²OJ L404, 31.12.1992, p.10-25

(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 Schedule 1, 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.

When the operator has drawn up an internal emergency plan, information from this plan should be made available in an appropriate format to the Principal Response Agencies (as defined by A Framework for Major Emergency Management 2006) in whose area the waste facility is located, so that they may include it in their annual risk assessment process, and so they can undertake appropriate preparedness measures to respond to specific hazards, including preparing a Site or Hazard Specific plans. Operators shall inform the Principal Response Agencies and the competent authority of any changes to contact details regarding the safety manager.

The local 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 licence the operator shall provide the Agency with the information necessary to enable the local authority to draw up that plan. The Agency shall as soon as possible (and no later than 3 months) after receiving the licence application notify the local authority that an external emergency plan is required for the applicant.

When drawing up an external emergency plan, the local authority should consult with the Principal Response Agencies in whose area the waste facility is located. Any external emergency plans should take account of the provisions of the Framework referred to above, and be compatible with the major emergency plans of the relevant Principal Response Agencies.

(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.

In the event of a major accident, the operator shall immediately provide 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) The competent authority 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.

The competent authority 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) The competent authority 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 Schedule 1, is provided, free of charge and as a matter of course, to the public concerned.

That information shall be reviewed by the competent authority every three years and, where necessary, updated.

Application and licence or waste facility permit

7. (1) (a) A Category A waste facility shall not operate after the date of commencement of these Regulations without a licence granted by the competent authority.
- (b) The licence shall contain the elements specified in paragraph 3 of this Regulation.
- (c) The competent authority shall ensure that where installations carry out activities that are included in Schedule 1 to the 1992 Act or the Third or Fourth Schedule of the Act, the conditions of, and procedure for the issue of, a licence under these Regulations are coordinated with those for integrated pollution prevention and control licences provided for in the 1992 Act.
- (d) In relation to a waste facility in operation on the date of commencement of these Regulations and which has either a waste licence or an integrated pollution prevention and control licence that licence shall, until it is reviewed by the competent authority in accordance with this Regulation, be deemed to be a licence under these Regulations where such a licence, in the opinion of the competent authority (which shall be conveyed in writing to the licensee), obviates the unnecessary duplication of information and the repetition of work by the operator or the competent authority.

The competent authority shall, however, review any such licence as soon as possible after the coming into operation of these Regulations and in accordance with the procedures set out in section 90 of the 1992 Act or the Act, as appropriate, with a view to determining whether the licence is in compliance with these Regulations, and in particular Regulation 21. The competent authority may impose a charge for the granting or review of any such licence.

- (2) (a) A non hazardous non inert waste facility shall not operate after the date of commencement of Regulation 23(2) without a waste facility permit granted by the competent authority.
- (b) The waste facility permit shall contain the elements specified in paragraph 3 of this Regulation.
- (c) In relation to a non hazardous non inert waste facility in operation on the date of commencement of these Regulations and which has a waste facility permit that permit shall, until it is reviewed by the competent authority in accordance with this Regulation, be deemed to be in compliance with these Regulations where such a permit, in the opinion of the competent authority (which shall be conveyed in writing to the permit holder), obviates the unnecessary duplication of information and the repetition of work by the operator or the competent authority.

The competent authority shall, however, review any such permit as soon as possible after the coming into operation of these Regulations and in accordance with the procedures set out in the Facility Permit Regulations with a view to determining whether the permit is in compliance with these Regulations.

The competent authority shall, on completion of its review, issue a revised permit to the licensee with or without conditions deeming the permit to be in compliance with these Regulations, or shall refuse to grant a permit.

The competent authority may impose a charge for the granting or review of a permit in accordance with the procedures set out in the Facility Permit Regulations.

- (3) The application for a licence or a waste facility permit shall contain at least the following details:
- (a) the identity of the operator,
- (b) the proposed location of the waste facility, including any possible alternative locations,
- (c) the waste management plan pursuant to Regulation 5,

- (d) adequate arrangements by way of a financial guarantee or equivalent, as required under Regulation 14,
 - (e) the information provided by the operator in accordance with Article 5 of Directive 85/337/EEC¹³ if an environmental impact assessment is required under that Directive.
- (4) The competent authority shall only grant a licence if it is satisfied that:
- (a) the operator complies with the relevant requirements under Directive 2006/21/EC¹,
 - (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 sections 22 and 26 of the Act.
- (5) The competent authority shall periodically reconsider and, where necessary, update licence conditions or waste facility permit conditions in accordance with the procedures set out in section 90 of the 1992 Act, the Act or the Facility Permit Regulations, as appropriate, in relation to licences or waste facility permits issued:
- (a) where there are substantial changes in the operation of the waste facility or the waste deposited,
 - (b) on the basis of monitoring results reported by the operator pursuant to Regulation 11(3) or inspections carried out pursuant to Regulation 16,
 - (c) in the light of information exchange on substantial changes in best available techniques under Article 21(3) of Directive 2006/21/EC¹.
- (6) 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.
- (7) The Agency may integrate the requirements of Regulations 7 and 8 into the procedures for integrated pollution prevention and control licensing provided for in the 1992 Act or into the procedures provided for waste licensing under the Act.

Public participation

8. (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 licence or permit or, at the latest, as soon as the information can reasonably be provided:

- (a) the application for a licence,

¹³OJ L 175,5.7.1985, p.40. Directive as last amended by Directive 2003/35/EC (OJ L 156, 25.6.2003, p.17)

¹OJ L 102, 11.4.2006 p.15-34

- (b) where applicable, the fact that a decision concerning an application for a licence is subject to consultation between the Member States in accordance with Regulation 15,
 - (c) details of the competent authority responsible for taking the decision, and from which relevant information can be obtained, and to whom 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 licence or of licence 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) The competent authority shall ensure that, within appropriate time frames, the following are made available to the public concerned:
- (a) in accordance with the national transposition legislation for Directive 96/61/EC⁴, 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 information¹⁴, any information in addition to that referred to in paragraph 1 of this Regulation which is relevant for the decision in accordance with Regulation 7 and which only becomes available after the time the public have been informed in accordance with paragraph 1 of this Regulation.
- (3) The competent authority shall take appropriate measures to ensure that the public are informed, in accordance with paragraph 1 of this Regulation, of an update of a licence or permit conditions in accordance with Regulation 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 Regulation shall be duly taken into account in the taking of a decision.
- (6) When a decision has been taken the competent authority shall, inform the public concerned and shall make the following information available to the public concerned:

⁴OJ L257, 10.10.1996, p.26-40

¹⁴OJ L 41, 14.2.2003, p.26

- (a) the content of the decision, including a copy of the licence,
- (b) the reasons and considerations on which the decision is based.

(7) The detailed arrangements for public participation under these Regulations shall be set by the competent authority who shall ensure coordination with such procedures in either the 1992 Act, the Act or Facility Permit Regulations, as appropriate.

Classification system for waste facilities

9. (1) For the purposes of these Regulations the classification of a waste facility as Category A shall, in accordance with the criteria set out in Schedule 3 and Commission Decision 2009/337/EC⁸ or any amendments thereto, be the responsibility of—

- (a) the Agency in respect of all activities that are included in Schedule 1 of the 1992 Act or licensed by the Agency under the Act, and
- (b) the relevant local authority for waste facilities other than those covered by paragraph (a). Operators of such waste facilities shall, in order to assist the local authority in its obligations under this Regulation, carry out, or arrange for the carrying out, of a risk assessment by a relevant competent person by 30 September 2010 and forward it to the local authority.

(2) Where a local authority has doubts concerning whether a waste facility referred to in Regulation 9(1)(b) should be regarded as a Category A facility that authority may make a request to the Agency to assist in determining the question and the Agency shall provide such assistance, which may be in the form of an opinion, no later than 3 months from the receipt of any such request. The local authority shall comply with the determination of the Agency in the matter.

Excavation voids

10. (1) The competent authority 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:

- (a) secure the stability of the extractive waste in accordance, mutatis mutandis with Regulation 11(2),
- (b) prevent the pollution of soil, surface water and groundwater in accordance, mutatis mutandis, with Regulation 13(1), (3) and (5),
- (c) ensure the monitoring of the extractive waste and the excavation void in accordance, mutatis mutandis, with Regulation 12(4) and (5).

⁸OJ L 102, 22.4.2009, P.7-11

(2) Directive 1999/31/EC³ as transposed into Irish legislation shall continue to apply to waste, other than extractive waste, used for filling in excavation voids as appropriate.

Construction and management of waste facilities

11. (1) The competent authority 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/EEC¹⁵, 80/68/EEC¹⁶ and 2000/60/EC², 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 licence documentation, in order to ensure the appropriate hand-over of information, particularly in the event of a change of operator.

³OJ L 182, 16.7.1999, p.1. Directive as amended by Regulation (EC) No. 1882/2003 (OJ L284, 31.10.2003, p.1-53)

¹⁵OJ L 129, 18.5.1976, p.23 as last amended by Directive 2000/60/EC (OJ L 327, 22.12.2000, p.1)

¹⁶OJ L 20, 26.1.1980, p.43. Directive as amended by Directive 91/692/EC (OJ L 377, 31.12.1991, p.48)

²OJ L327, 22.12.2000 p.1 Directive as amended by Decision No. 2455/2001/EC (OJ L331, 15.12.2001, p.1)

(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 licence 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.

Closure and after-closure procedures for waste facilities

12. (1) The competent authority 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 licence 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 licence 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 or a Minister of the Government, as appropriate, 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/EEC¹⁵, 80/68/EEC¹⁶ and 2000/60/EC², 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 licence conditions and increasing knowledge of waste and waste facility behaviour.

Prevention of water status deterioration, air and soil pollution

13. (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/EC², 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.

¹⁵OJ L 129, 18.5.1976, p.23 as last amended by Directive 2000/60/EC (OJ L 327, 22.12.2000, p.1)

¹⁶OJ L 20, 26.1.1980, p.43. Directive as amended by Directive 91/692/EC (OJ L 377 31.12.1991, p.48)

²OJ L327, 22.12.2000, p.1 Directive as amended by Decision No. 2455/2001/EC (OJ L331, 15.12.2001, p.1)

(3) Where, on the basis of an assessment of environmental risks, taking into account, in particular, Directives 76/464/EEC¹⁵, 80/68/EEC¹⁶ or 2000/60/EC², 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) The competent authority 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/EEC¹⁵, 80/68/EEC¹⁶ and 2000/60/EC².

(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/EC².

(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 licence 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 licence 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.

Financial guarantee

14. (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 competent authority, so that:

- (a) all obligations under the licence issued pursuant to these Regulations, including after-closure provisions, are discharged,

¹⁵OJ L 129, 18.5.1976, p.23 as last amended by Directive 2000/60/EC (OJ L 327, 22.12.2000, p.1)

¹⁶OJ L 20, 26.1.1980, p.43. Directive as amended by Directive 91/692/EC (OJ L 377 31.12.1991, p.48)

²OJ L327, 22.12.2000 p.1 Directive as amended by Decision No 2455/2001/EC (OJ L331, 15.12.2001, p.1)

- (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 Regulation 5 and required by the Regulation 7 licence or waste facility 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, and in accordance with Commission Decision 2009/335/EC¹⁷ or any amendments thereof.

(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 Regulation 5 and required by the Regulation 7 licence or waste facility permit.

(4) Where the competent authority approves closure in accordance with Regulation 12(3), it shall provide the operator with a written statement releasing him from the guarantee obligation referred to in paragraph 1 of this Regulation with the exception of after-closure obligations as referred to in Regulation 12(4).

Transboundary effects

15. (1) Where the competent authority 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 competent authority shall forward the information provided pursuant to Regulation 7 to the other Member State at the same time as it makes it available to its own nationals. The procedure set out in section 85 of the 1992 Act, shall be used to give effect to this Regulation.

(2) The competent authority 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) The competent authority shall ensure that, in the event of an accident involving a waste facility as referred to in paragraph 1 of this Regulation, information provided by the operator to the competent authority pursuant to Regulation 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.

¹⁷OJ L101, 21.4.2009, p.25-25

Inspections by the competent authority

16. (1) Prior to the commencement of deposit operations and at regular intervals thereafter, including the after-closure phase, to be decided by the competent authority concerned, the competent authority shall inspect any waste facility covered by Regulation 7 in order to ensure that it complies with the relevant conditions of the licence. An affirmative finding shall in no way reduce the responsibility of the operator under the conditions of the licence.

(2) The competent authority 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.

(3) These Regulations shall in all respects be enforced in accordance with the provisions of the Act or the 1992 Act, as appropriate.

Obligation to report

17. (1) Each year the Agency shall transmit to the Commission information in accordance with Commission Decision 2009/358/EC¹⁸ or any amendments hereof on events notified by the operators in accordance with Regulations 11(3) and 12(6).

(2) Without prejudice to Community law on public access to environmental information, the Agency shall in turn make the information available to members of the public concerned on request.

(3) The Agency may prescribe reporting requirements in order to give effect to these Regulations.

Offences, prosecutions and penalties

18. (1) Any person who contravenes a provision of these Regulations shall be guilty of an offence.

(2) A prosecution for a summary offence under these Regulations may be taken by the competent authority.

(3) A person guilty of an offence under these Regulations is liable-

(a) on summary conviction to a fine not exceeding €3,000, or imprisonment for a term not exceeding 3 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000, or imprisonment for a term not exceeding 3 years, or both.

Registration of extractive industries

19. (1) Each local authority shall, by 31 December 2010, establish and maintain a register of all extractive industries within its functional area including:-

¹⁸OJ L110 1.5.2009, P. 39-45

- (a) the extraction, treatment and storage of mineral resources,
- (b) the working of quarries, and
- (c) the extraction, treatment and storage of peat.

Local authorities may, in establishing the register use existing data compiled under Section 261 of the Planning and Development Act 2000 (S.I. No. 30 of 2000).

(2) The Agency shall, by 31 March 2010, prescribe the particulars to be entered in the register, specify the methodology used to determine the particulars, and the form and manner in which such information shall be entered and maintained.

Inventory of closed waste facilities

20. The Agency shall ensure that an inventory of closed waste facilities, including abandoned waste facilities, 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 of Directive 2006/21/EC¹, if available.

Transitional arrangements

21. (1) The Agency shall ensure that any waste facility which has been granted a waste licence or an integrated pollution prevention and control licence or which is already in operation on 1 May 2008 complies with the provisions of these Regulations by 1 May 2012, other than in respect of Regulation 14(1), for which compliance must be ensured by 1 May 2014, and Regulation 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) The competent authority 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 Directive 2006/21/EC¹, and other applicable environmental requirements set out in Community legislation, including Directive 2000/60/EC²

(4) Regulations 5, 6(3) to (5), 7, 8, 12(1) and (2) and 14(1) to (3) shall not apply to those waste facilities that:

- (a) stopped accepting waste before 1 May 2006,

¹OJ L 102, 11.4.2006 p.15-34

²OJ L327, 22.12.2000 p.1. Directive as amended by Decision No 2455/2001/EC (OJ L331, 15.12.2001, p.1)

(b) are completing the closure procedures in accordance with the applicable Community or national legislation or programmes approved by the competent authority, and

(c) will be effectively closed by 31 December 2010.

The Agency shall notify such cases to the Commission by 1 August 2010 and the competent authority shall 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/EC².

Designation of competent authority for the implementation of Directive 2006/21/EC and guidance

22. (1) The Agency is the competent authority for the management of waste from extractive industries at Category A waste facilities.

(2) Save as provided for in paragraph (3) the local authority is the competent authority in respect of-

(a) all non-category A facilities, other than such waste facilities already licensed or licensable by the Agency, and

(b) implementation of Regulation 6.

(3) The Minister for Communications, Energy and Natural Resources is the competent authority for the management of waste generated as a consequence of prospecting where such prospecting is authorised under the Minerals Development Acts 1940 to 1999.

(4) The powers and functions conferred on the competent authority pursuant to these Regulations may be performed on its behalf by an authorised officer duly appointed in writing.

(5) For the purposes of these Regulations, “authorised officer” means a person appointed in writing by the competent authority.

(6) The Agency shall, as soon as practicable, prepare guidance to assist local authorities in the discharge of the functions conferred on them in these Regulations.

Amendment of the Waste Management (Facility Permit and Registration) Regulations 2007 and the Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008

23. (1) The Waste Management (Facility Permit and Registration) Regulations 2007 (S.I. No. 821 of 2007) are amended as follows:-

(a) In Regulation 4 by inserting after paragraph (x) the following paragraph:-

²OJ L327, 22.12.2000 p.1. Directive as amended by Decision No 2455/2001/EC (OJ L331, 15.12.2001, p.1)

“(y) Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006. on the management of waste from extractive industries”

(2) The Facility Permit Regulations are amended as follows:

by the addition of the following in the Third Schedule, Part 1:—

“

13.	Non —hazardous non-inert facilities under Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries
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”

Schedule 1

Major-accident prevention policy and information to be communicated to the public concerned

1. Major-accident prevention policy

The operator's major-accident prevention policy and safety management system should be proportionate to the major-accident hazards presented by the waste facility. For the purpose of implementing them, account shall be taken of the following elements:

- (1) the major-accident prevention policy should include the operator's overall aims and principles of action with respect to the control of major-accident hazards;
- (2) the safety management system should include the part of the general management system which includes the organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the major-accident prevention policy;
- (3) the following issues shall be addressed by the safety management system:
 - (a) organisation and personnel — the roles and responsibilities of personnel involved in the management of major hazards at all levels in the organisation; identification of training needs of such personnel and the provision of the training so identified; and involvement of employees and, where appropriate, subcontractors;
 - (b) identification and evaluation of major hazards — adoption and implementation of procedures for systematically identifying major hazards arising from normal and abnormal operations and assessment of their likelihood and severity;
 - (c) operational control — adoption and implementation of procedures and instructions for safe operation, including maintenance of plant, processes, equipment and temporary stoppages;
 - (d) management of change — adoption and implementation of procedures for planning modifications to, or the design of, new waste facilities;
 - (e) planning for emergencies — adoption and implementation of procedures to identify foreseeable emergencies by systematic analysis and to prepare, test and review emergency plans to respond to such emergencies;
 - (f) monitoring performance — adoption and implementation of procedures for the ongoing assessment of compliance with the objectives

set by the operator's major-accident prevention policy and safety management system, and the mechanisms for investigation and taking corrective action in case of non-compliance. The procedures should cover the operator's system for reporting major accidents or near misses, particularly those involving failure of protective measures, and their investigation and follow-up on the basis of lessons learnt;

- (g) audit and review — adoption and implementation of procedures for periodic systematic assessment of the major-accident prevention policy and the effectiveness and suitability of the safety management system; the documented review of performance of the policy and safety management system and its updating by senior management.

2. Information to be communicated to the public concerned

- (1) Name of operator and address of the waste facility.
- (2) Identification, by position held, of the person providing the information.
- (3) Confirmation that the waste facility is subject to the regulations and/or administrative provisions implementing Directive 2006/21/EC¹ and, when applicable, that the information relevant to the elements referred to in Regulation 6(2) has been submitted to the competent authority.
- (4) An explanation in clear and simple terms of the activity or activities undertaken at the site.
- (5) The common names or the generic names or the general danger classification of the substances and preparations involved at the waste facility as well as waste which could give rise to a major accident, with an indication of their principal dangerous characteristics.
- (6) General information relating to the nature of the major-accident hazards, including their potential effects on the surrounding population and environment.
- (7) Adequate information on how the surrounding population concerned are to be warned and kept informed in the event of a major accident.
- (8) Adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident.
- (9) Confirmation that the operator is required to make adequate arrangements on site, in particular liaison with the emergency services, to deal with major accidents and to minimise their effects.
- (10) A reference to the external emergency plan drawn up to cope with any off-site effects from an accident. This should include advice to co-operate with any instructions or requests from the emergency services at the time of an accident.

¹OJ L 102, 11.4.2006 p.15-34

(11) Details of where further relevant information can be obtained, subject to the requirements of confidentiality laid down in national legislation.

Schedule 2

Waste characterisation

The waste to be deposited in a facility shall be characterised in such a way as to guarantee the long-term physical and chemical stability of the structure of the facility and to prevent major accidents. The waste characterisation shall include, where appropriate and in accordance with the category of the waste facility, the following aspects:

- (1) description of expected physical and chemical characteristics of the waste to be deposited in the short and the long term, with particular reference to its stability under surface atmospheric/meteorological conditions, taking account of the type of mineral or minerals to be extracted and the nature of any overburden and/or gangue minerals that will be displaced in the course of the extractive operations;
- (2) classification of the waste according to the relevant entry in Decision 2000/532/EC¹⁹, with particular regard to its hazardous characteristics;
- (3) description of the chemical substances to be used during treatment of the mineral resource and their stability;
- (4) description of the method of deposition;
- (5) waste transport system to be employed.

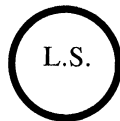
¹⁹OJ L226, 6.9.2000, p.3 as last amended by Council Decision 2001/573/EC (OJ L203, 28.7.2001, p.18)

Schedule 3

Criteria for determining the classification of waste facilities

A waste facility shall be classified under category A if:

- (a) a failure or incorrect operation, e.g. the collapse of a heap or the bursting of a dam, could give rise to a major accident, on the basis of a risk assessment taking into account factors such as the present or future size, the location and the environmental impact of the waste facility; or
- (b) it contains waste classified as hazardous under Directive 91/689/EEC²⁰ above a certain threshold; or
- (c) it contains substances or preparations classified as dangerous under Directives 67/548/EEC⁵ or 1999/45/EC⁶ above a certain threshold.



Given under my Official Seal this,
23 December 2009

JOHN GORMLEY,
Minister for the Environment, Heritage and Local
Government

²⁰OJ L377, 31.12.1991, p.20-27

⁵OJ 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)

⁶OJ L 200, 30.07.1999, p.1 Directive as last amended by Commission Directive 2006/8/EC (OJ L 19, 24.1.2006, p.12)

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations provide for measures and procedures 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 and transpose Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from the extractive industries into Irish legislation.

Where an existing licence for a facility covered by these Regulations exists there is provision for avoidance of duplication by both the operators and competent authority. The following table indicates how the Directive is transposed.

<i>Article of Directive 2006/21/EC</i>	Transposed by Regulation
1 Subject matter	2-Purpose and scope of Regulations
2 Scope	2-Purpose and scope of Regulations
3 Definitions	3-Interpretation generally
4 General Requirements	4 General Requirements
5 Waste Management Plan	5 Waste Management Plan
6 Major-accident prevention and information	6 Major-accident prevention and information
7 Application and permit	7 Application and permit
8 Public participation	8 Public participation
9 Classification system for waste facilities	9 Classification system for waste facilities
10 Excavation voids	10 Excavation voids
11 Construction and management of waste facilities	11 Construction and management of waste facilities
12 Closure and after-closure procedures for waste facilities	12 Closure and after-closure procedures for waste facilities
13 Prevention of water status deterioration, air and soil pollution	13 Prevention of water status deterioration, air and soil pollution
14 Financial Guarantee	14 Financial Guarantee
15 Environmental liability	Transposition not necessary
16 Transboundary effects	15 Transboundary effects
17 Inspections by the competent authority	16 Inspections by the competent authority
18 Obligation to report	17 Obligation to report
19 Penalties	18 Prosecutions and penalties
20 Inventory of closed waste facilities	20 Inventory of closed waste facilities
21 Exchange of Information	21 Exchange of Information-paragraph 2-paragraphs 1&3 do not need transposition-matters for the Commission
22 Implementing and amending measures	Does not need transposition-matter for the Commission
23 Committee	Does not need transposition-matter for the Commission

<i>Article of Directive 2006/21/EC</i>	Transposed by Regulation
24 Transitional arrangements	21 Transitional arrangements
25 Transposition	1 Citation and Commencement
26 Entry into force	Does not need transposition
27 Addresses	Does not need transposition
Annex 1 major accident prevention policy and information to be communicated to the public concerned	Schedule 1 major accident prevention policy and information to be communicated to the public concerned
Annex II Waste characterisation	Schedule 2 Waste characterisation
Annex III Criteria for determining the classification of waste facilities	Schedule 3 Criteria for determining the classification of waste facilities

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