

DRAFT RECOMMENDATIONS FOR SECOND READING

On the Council common position for adopting a directive of the European Parliament and of the Council on the management of waste from the extractive industries.

(16075/04 – C6-0000/2004 – 2003/0107(COD))

Rapporteur: Jonas Sjøstedt

KEY ISSUES OF CONCERN

To the

CBI MINERALS GROUP

General

The CBI Minerals Group represents the broad spectrum of the minerals extractive industry in the UK. The Group's position on each of the 75 amendments proposed is contained in the attached schedule. The Group has several key concerns about the proposed amendments, which are highlighted below.

Non-hazardous non-inert waste facilities.

The overwhelming proportion of extractive waste produced in the UK falls within the category of non-hazardous non-inert waste which though it may, for example, slowly dissolve as in the case of limestone and thus may not technically comply with the definition of "inert waste", presents no significant pollution risk. The overwhelming proportion of this material is also deposited in waste facilities that present no significant stability risk.

We fully accept that failure of an extractive waste facility may cause physical damage or injury by virtue of the location of the facility or the nature of the waste is such that environmental damage might be possible.

These risks are encapsulated in the justification in the Rapporteur's Amendment 10 which states; "so-called "non hazardous" waste could have a physical impact, smothering and killing humans as well as aquatic plants and animals. In addition, this waste – being "non-inert" – dissolves in water and could alter the chemistry of the aquatic environment...".

However, the Common position fully addresses these concerns because as set out in Annex III waste facilities which present such risks would be classified as Category A and therefore all the provisions of the Directive would apply to them.

For this reason we strongly believe that the risk posed by extractive waste facilities needs to be assessed on a case-by-case basis. Where such a risk assessment shows that the facility in question should be classed as a Category A facility then it is proper that the full provisions of the Directive should apply. But where the risk is acceptably low Member States should have the right to waive the specified requirements of the Directive. Failure to provide this flexibility will result in the imposition of significant cost to operators and the competent authority with no environmental or health and safety gain.

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Amendments 2,8, 9, 10,37,44,45,46,47,48,49,50 and 51 to Article 2 seek to remove this proportionality and we would strongly urge you to oppose them.



INVESTOR IN PEOPLE

Robert Le Clerc –Executive Secretary –CBI Minerals Group.
DL: +44(0)20 7395 8059 DF: +44(0)20 7497 2597 E: bob.leclerc@cbi.org.uk

CBI Centre Point 103 New Oxford Street London WC1A 1DU
T: +44 (0)20 7379 7400 F: +44 (0)20 7240 1578 E: enquiry.desk@cbi.org.uk W: www.cbi.org.uk

Director-General: Sir Digby Jones President: John Sunderland

Extending the scope of the Directive to deal with non-extractive waste issues.

We are concerned that some draft amendments extend the scope of the Directive beyond that reasonably necessary to address the issues relating to extraction waste.

In respect of Amendment 19 to Article 10 which relates to the placing of waste back into the void, we accept that this should relate also to the placing of other extracted materials back into the void to ensure greater legal certainty. However, we think that a general requirement to secure the stability of the excavation void goes beyond the scope of the Directive. This is a matter, which should be addressed as part of the overall permitting of the site for extraction. We suggest changes to this amendment in the attached schedule, which would make the amendment acceptable.

Amendment 33 to Article 24 seeks to introduce provisions for the control of mine water which take the scope of the Directive beyond the control of mining waste, as these do not specifically relate to voids that contain waste, whether backfilled or merely left behind, but to all mining voids.

Amendments 56, and 62 also relate to matters beyond the scope of the Directive

We therefore would ask you to oppose Amendments 19,33 56 and 62.

Waste Management Plan (Article5)

Amendment 16 seeks to prevent air and soil pollution as well as water status deterioration. We think it is necessary to distinguish between the need to prevent water status deterioration as prescribed under the Water Framework Directive and the need to minimise air and soil pollution which cannot be fully prevented. In the case of soil and air pollution, there needs to be a balance struck between the need for the mineral and the minimisation of pollution

This amendment should also not attempt to pre-empt discussions on the review of the Ambient Air Quality Directive and the Air quality thematic strategy which are to be published in the very near future.

We therefore would ask you to oppose amendment 16. However we do suggest revisions to the amendment in the attached schedule which would make it acceptable.

Prevention of water status deterioration, air and soil pollution

We believe that this Directive should not attempt to alter what is permitted under another Directive. Water status deterioration is addressed in 2000/60/EC. There are circumstances where discharging mine waste into a receiving body of water is beneficial. For example, where non hazardous materials are placed into a flooded mineral extraction void which is being rehabilitated to improve biodiversity in an ecologically sensitive area where to de-water the extraction void would have an adverse impact upon nearby ecosystems.

For this reason we would ask you to oppose Amendments 39 and 66

Financial Guarantee (Article 14)

We strongly support the Common Position wording regarding the use of financial guarantees. There must be flexibility as to the form of the security that can be used – i.e. a guarantee or equivalent. The member states should have the flexibility to set procedures appropriate to their circumstances and institutions, taking account of the guidelines proposed under Article 22 (1c). We believe amendment 27 would remove this necessary flexibility.

It must also be crystal clear as to what area of land that the financial guarantee relates to and that the size of the guarantee can be adjusted to reflect the rehabilitation work needed to be carried out. We believe Amendments 5, 28 and 29 would remove this clarity. However, we support amendments 42,69 and 70 as they help to clarification

We therefore ask you to support amendments 42,69 and 70 but to oppose amendments 5,27,28 and 29.

Over prescriptive amendments

Amendments 21 to Article 11 requires independent validation of design, location and construction, which we think is over prescriptive. What we believe is required is that all design etc is undertaken by a person, whether in the employ of the operator or a consultant employed by him, who is competent in these matters. The Common Position provides for this.

Amendment 23 to Article 12 requires the reporting of monitoring data at a frequency of at least once a year which is over prescriptive. The frequency of reports should be determined by the competent authority on a case by case basis, related to the situation at each waste facility. Annual monitoring will not be necessary in all cases so this amendment would result in additional unnecessary costs for both operators and the competent authority.

We therefore ask you to oppose amendments 21 and 23

Annex 111 Classification of waste facilities.

We believe that it is not possible to totally eliminate the risk to human life in respect of site employees in the event of a failure of the waste facility which is a fact recognised in Recital 16. The health and safety of the workers in the extractive industries is covered by other Community legislation

We also believe that it is essential to retain the references to a certain threshold when classifying waste otherwise even insignificant quantities of dangerous or hazardous materials which present no significant risk would result in the facility being classified as Category A.

We would therefore ask you to oppose Amendment 36, though we do suggest amended wording which would make it acceptable by bringing it in line with the intention clearly expressed in Recital 16.

End 30.06.05