Mining Waste Directive 2006/21/EC
1st edition, information paper

This guidance note considers how the Mining Waste Directive (MWD) applies to the management of extractive waste from land-based extractive industries and the relevant regulatory procedures required for England and Wales under the Environmental Permitting (England and Wales) Regulations 2010.

It explains the general application of the MWD in England and Wales, and provides references to supporting guidance provided by bodies such as the Environment Agency and the CBI Minerals Group.

The following key areas are covered:
- Mining Waste Directive 2006/21/EC overview
- Mining waste operation
- Mining waste facility
- Environmental permitting
- Scoping materials outside the Mining Waste Directive.

This guidance note has been produced by a steering group comprising specialist RICS minerals and waste management and environment members. It is essential reading for all RICS members and other professionals practising in the minerals and waste management industry.
Mining Waste Directive 2006/21/EC

RICS information paper

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This is an information paper. Information papers are intended to provide information and explanation to RICS members on specific topics of relevance to the profession. The function of this paper is not to recommend or advise on professional procedure to be followed by members.

It is, however, relevant to professional competence to the extent that members should be up to date and have knowledge of information papers within a reasonable time of their coming into effect.

Members should note that when an allegation of professional negligence is made against a surveyor, a court or tribunal is likely to take account of any relevant information papers published by RICS in deciding whether or not the member has acted with reasonable competence.
1 Introduction

The EU Directive\(^1\) on management of waste from extractive industries was developed after mineral waste accidents at Aznalcóllar, Spain, in 1996\(^2\) and Baia Mare, Romania, in 2000\(^3\). These accidents and the environmental damage caused by them focused the European Union on the issue of mine and waste safety across the European community. In October 2000 the European Commission (EC) adopted a communication on the ‘safe operation of mining activities: a follow-up to recent mining accidents’\(^4\).

The Mining Waste Directive (MWD) was completed by the European Council and European Parliament in November 2005 and adopted on 15 March 2006. The MWD provides a regulatory framework and sets minimum requirements for preventing or reducing the environmental harm and risk to human health as a consequence of mining activities. It applies throughout the EU and is implemented through national legislation.

Responsibility for implementing the MWD in England and Wales is with the Department of Environment, Food and Rural Affairs (Defra), while different regulatory regimes apply within Scotland and Northern Ireland. Within England and Wales the competent authority is the Environment Agency (EA).

This guidance note is intended to explain the background to the MWD and give a broad overview of its implementation in England and Wales. It should not be relied upon as an interpretation of the law.
2 Mining Waste Directive 2006/21/EC overview

The MWD applies to the management of ‘extractive waste’ or, more specifically, waste from land-based extractive industries – that is, ‘waste arising from the prospecting, extraction (including the pre-production development stage), treatment and storage of mineral resources and from the working of quarries’. ‘Waste’ is defined within Article 3(1) of the MWD.

The MWD defines three types of extractive waste:
- inert;
- non-hazardous non-inert; and
- hazardous.

As mentioned above, extractive waste must be generated through the prospecting, extraction, treatment or storage of mineral resources. Any activity involving the management of extractive waste will form a ‘mining waste operation’.

Any area in which extractive waste is accumulated for periods longer than those specified within the MWD will comprise a ‘mining waste facility’. A facility that poses significant hazard to the environment or human health and safety is defined as a ‘category A facility’; any other facility is considered to be ‘not category A’ (see section 4 for further details).

As specified in Articles 2.2(a) and 2.2(b) of the MWD, the Directive does not apply to waste streams not directly linked to the extraction or treatment of minerals (for example food waste or waste oil), or to waste resulting from offshore prospecting or extraction.

It should be noted that if the MWD applies, then the Landfill Directive\(^5\) does not\(^6\). Article 10(2) of the MWD indicates that the Landfill Directive will apply to waste, other than extractive waste, that is used for filling of excavation voids\(^7\). If waste generated by an extractive site from extraction, prospecting or processing is transported to a non-mining waste facility, that waste will come under the Landfill Directive, the Waste Framework Directive\(^8\) or other European legislation. For further information, see Recital 8 of the MWD.

Unpolluted soil, non-hazardous waste from prospecting of mineral resources (except oil and evaporates other than gypsum and anhydrite) and waste from peat extraction, storage and treatment are specifically excluded from the MWD\(^9\) (see EA Regulatory Position Statement MWRP RPS 042\(^{10}\)). A mechanism is also in place for certain materials to be scoped out of the MWD if they satisfy the criteria of ‘non-waste by-products’ (see section 4.5).

The MWD has been implemented within England and Wales through the Environmental Permitting (England and Wales) Regulations 2010, which can be found at: www.legislation.gov.uk/ukdsi/2010/9780111491423/contents.

The MWD is now in force and requires all ‘mining waste operations’ to be the subject of an environmental permit. The introduction of this environmental permitting requirement does not alter the need for operators to comply with other existing legislative requirements such as the Mines and Quarries (Tips) Act 1969\(^{11}\), or other environmental legislation and the regulations made thereunder. Town and country planning requirements also remain unchanged, but operators must secure planning consent before the EA will grant an environmental permit under the MWD.
3 Operations and facilities

3.1 Mining waste operation

A mining waste operation is defined in the MWD as ‘the management of extractive waste whether or not involving a mining waste facility’.

All operators with mining waste operations and/or facilities are required to have in place a waste management plan, whose requirements are set out within Article 5 of the MWD. Details on what is required in the waste management plan are set out within guidance from the EA and the Confederation of British Industry (CBI) minerals group.

All mining waste operations are subject to an environmental permit. It is possible to scope some activities outside the requirements of the MWD.

3.2 Mining waste facility

Under Article 3(15) of the MWD, a ‘mining waste facility’ is defined as an area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state, or in solution or suspension. Examples include heaps, ponds, dams or other structures serving to contain, retain, confine or otherwise support the mining waste facility.

Article 3(15) further states that for a site to be considered as a mining waste facility, the extractive waste would have to be kept in it for the following time periods:

1. no time period for category A waste facilities and those for waste characterised as hazardous in the waste management plan;
2. a period of more than six months for facilities for hazardous waste generated unexpectedly;
3. a period of more than one year for facilities for non-hazardous non-inert waste; or
4. 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.

3.3 Category A mining waste facility

The type of environmental permit granted by the EA will depend on the categorisation of the waste.

A ‘category A’ mining waste facility is so classified as:

Where a risk assessment has shown that incorrect activities could give rise to a major accident; or the mining waste facility contains hazardous waste above a certain threshold, or the mining waste facility contains dangerous substances above a certain threshold.

The thresholds for category A mining waste facilities are set out in Annex III of the MWD.

Category A mining waste facilities and facilities for hazardous waste require a financial guarantee for potential environmental impacts. The EA requires a detailed estimate of aftercare costs for a period of 60 years. The operator can be released from the requirement to provide a financial guarantee when the EA has approved the closure of the category A mining waste facility.

It should be noted that any requirements for an environmental permit under the Waste Framework Directive or under the Landfill Directive will still apply.

3.4 Environmental permitting

Permitting falls under two types:

- standard rules permit; and
- bespoke permit.

A standard rules permit is required for inert waste operations and facilities only. There is no requirement to submit the waste management plan with the permit application. This type of permit provides a simplified route for approvals for low risk activities. It is a requirement for the waste management plan to be made available.

A bespoke permit is required for all other mining waste operations and facilities, and where a
point-source discharge is present. The waste management plan is also required to be submitted with a bespoke permit application.

This is a more complex route for approval and is required for all extractive waste other than inert for category A facilities, and for inert waste where there are point source discharges. The application process may be open for public consultation.

3.5 Scoping materials outside the Mining Waste Directive

The European Court of Justice in the AvestaPolarit case\textsuperscript{15} gave guidance on the meaning of Article 2(1) (b) (ii) of the Water Framework Directive (WFD). It also indicated that national legislation can be considered as other legislation if it provides an equivalent level of protection for the environment as that provided in the WFD\textsuperscript{16}.

It is possible to scope materials outside the MWD by defining materials as ‘not waste’. This is achieved by applying the principles of the AvestaPolarit test. This case determined whether certain materials from mining operations were considered waste, which is based upon their use in restoration\textsuperscript{17}.

The tests that are required to be met (all of which should be satisfied) are the following:

- The materials to be used for restoration should be identifiable.
- There should be sufficient guarantees of that use (e.g. planning permission requirement).
- The time period for the use of the materials should be of a reasonable period to ensure that the guarantee can be provided.
- The use of the materials should be necessary and lawful.
- The materials should be used for restoration without prior processing (this is further processing, not the original).

Where materials meet these criteria they fall outside the scope of the MWD, however, an ‘extractive materials management statement’ (EMMS)\textsuperscript{18}, which is similar to a waste management plan, is required. An EMMS should be submitted to the EA along with an assessment of the status of the materials as ‘not waste’, verified by an appropriately qualified and experienced person. A chartered minerals surveyor practising in minerals can make this verification. The EMMS can utilise much information that has already been prepared, such as details from planning applications or Quarries Regulations 1999 reporting.

The EA currently view the majority of silt discards to be extractive waste, except in certain circumstances. Further advice and position is awaited from the EA on this.

3.6 Timescales

Applications for permits for mining waste facilities were required to be submitted by 1 May 2011.

Applications for mining waste operations where there is no mining waste facility were required by 31 December 2010. However, in view of the uncertainty of how silt is to be addressed, the EA agreed to defer this until the May 2011 deadline.

Where facilities closed before 1 May 2008 and for certain facilities closed before 31 December 2010 the MWD does not apply.

For those operators who have missed this deadline, they should contact the competent authority.
4 Guidance

The following EA publications contain useful guidance covering various aspects of the MWD:

- **How to comply with your environmental permit. Additional guidance for: mining waste operations**\(^{19}\)
- **Definition of extractive waste**\(^{20}\)
- **The regulation of the deposit unpolluted soil, and of waste arising from prospecting for mineral resources and from peat workings**\(^{21}\)
- **How to comply with your environmental permit**\(^{22}\)
- **Understanding the meaning of operator**\(^{23}\)
- **Understanding the meaning of regulated facility**\(^{24}\)
- **Demonstrating land and groundwater are protected to assist the surrender of an environmental permit**\(^{25}\)
- **Environmental Permitting Charging Scheme Guidance April 2011**\(^{26}\).

Additional guidance can be found within the CBI Minerals guidance note, *The definition of waste: Minerals industry guidance note for extractive minerals*\(^{27}\).

The following are useful links for general guidance:

- **EA:** [www.environment-agency.gov.uk/business/sectors/116542.aspx](http://www.environment-agency.gov.uk/business/sectors/116542.aspx)
- **NetRegs:** [www.netregs.gov.uk/netregs/businesses/111972.aspx](http://www.netregs.gov.uk/netregs/businesses/111972.aspx)

The *Environmental Damage (Prevention and Remediation) Regulations 2009* introduce wide-ranging new requirements addressing environmental liability, including facilities under the MWD. This includes strict liability for these facilities. For further information, see RICS information paper on these regulations\(^{28}\).
References


11 AvestaPolarit Chrome Oy (Case C-114/01) - [2003] All ER (D) 75

12 See note 6.


17 See note 10.

18 See note 19.


21 See note 18.

22 See note 18.


25 See note 18.

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