

Subsidiary Legislation made under s.18.

Waste (Extractive Industries) Regulations 2009

LN.2009/080

| | | <i>Commencement</i> | 26.11.2009 |
|---------------------|---|---------------------|-------------------|
| Amending enactments | Relevant current provisions | Commencement date | |
| LN. 2011/155 | r. 21A | 22.9.2011 | |
| 2014/061 | rr. 2, 3(3)(c), 5(3)(g), 8(2), (b), 11(1), (2)(a) | 2.5.2014 | |
| 2015/083 | r. 3(3) | 11.6.2015 | |

EU Legislation/International Agreements involved:

Directive 67/548/EEC

Directive 76/464/EEC

Directive 80/68/EEC

Directive 1999/45/EC

Directive 2000/60/EC

Directive 2004/35/EC

Directive 2006/21/EC

Directive 2008/99/EC

ARRANGEMENT OF REGULATIONS

Regulation

1. Title.
2. Interpretation.
3. Scope of Regulations.
4. General requirements.
5. Waste management plan.
6. Major-accident prevention and information.
7. Application and permit.
8. Public participation.
9. Classification system for waste facilities.
10. Excavation voids.
11. Construction and management of waste facilities.
12. Closure and after-closure procedures for waste facilities.
13. Prevention of water status deterioration, air and soil pollution.
14. Financial guarantee.
15. Approval of closure.
16. Transboundary effects.
17. Inspections by the competent authority.
18. Obligation to report every 3 years.
19. Annual notifications.
20. Inventory of closed waste facilities.
21. Exchange of information.
- 21A. Liability of bodies corporate - general.
22. Transitional provision.
23. Schedules.

SCHEDULE 1

MAJOR-ACCIDENT PREVENTION POLICY AND INFORMATION TO BE
COMMUNICATED TO THE PUBLIC CONCERNED

SCHEDULE 2

WASTE CHARACTERISATION

SCHEDULE 3

CRITERIA FOR DETERMINING THE
CLASSIFICATION OF WASTE FACILITIES

In exercise of the powers conferred on it by section 18 of the Environment Act 2005 and in order to transpose into the law of Gibraltar Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC as amended, the Government has made the following Regulations—

Title.

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

Interpretation.

2. In these Regulations and unless the context otherwise requires—

“best available techniques” shall be construed in accordance with Article 3(10) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control);

“Category A waste facility” shall be construed in accordance with regulation 9;

“competent authority” shall be interpreted in accordance with section 192C of the Public Health Act;

“competent person” means a natural person whom the competent authority considers has the technical knowledge and experience 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/EEC or Directive 1999/45/EC;

“Directive” means Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC as amended;

“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;

“hazardous waste” shall be construed in accordance with section 192KA of the Public Health Act;

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

“inert waste” means waste—

- (a) that does not undergo any significant physical, chemical or biological transformations;
- (b) that 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; and
- (c) with a total leachability and pollutant content, and the ecotoxicity of the leachate that is insignificant, and in particular not endanger the quality of surface water and/or groundwater;

“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;

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

“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;

“Minister” means the Minister responsible for the environment;

“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 lawfully responsible for the management of extractive waste in Gibraltar, 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 required for the development of such deposits, and any activities directly associated with an existing extractive operation;

the “public” means one or more natural or legal persons in Gibraltar and, in accordance with the legislation or practice in Gibraltar, their associations, organisations or groups;

the “public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making under these Regulations; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirement under national law shall be deemed to have such an interest;

“receiving body of water” means surface waters, groundwater, transitional waters and coastal water as understood in the Public Health (Water Framework) Rules 2004;

“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;

“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 lawfully not deemed to be polluted;

“waste” shall be construed in accordance with section 192A of the Public Health Act;

“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,

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

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

Scope of Regulations.

3.(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 to human health, brought about as a result of the management of waste from the extractive industries.

(2) Subject to sub-regulations (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 indent of Article 11(3)(j) of Directive 2000/60/EC, to the extent authorised by that Article.

(4) The following provisions apply–

- (a) 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 regulations 7, 8, 11(1) and (3), 12, 13(6), 14 and 16, unless deposited in a Category A waste facility;
- (b) 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;
- (c) the competent authority may reduce or waive the requirements of regulations 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 this Directive shall not be subject to the Landfill Act 2002.

General requirements.

4.(1) The following provisions apply–

- (a) extractive waste shall be 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; and

- (b) it is an offence punishable with a fine at level 4 on the standard scale to abandon, dump or unlawfully deposit extractive waste.

(2) The operator shall take 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, including 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.

(3) The measures by an operator and referred to in sub-regulation (2) 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) All operators shall draw up a waste management plan for the minimisation, treatment, recovery and disposal of extractive waste, taking account of the principle of sustainable development.

(2) The objectives of a waste management plan shall be—

- (a) to 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 these Regulations 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) to 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 these Regulations where relevant;
 - (c) to 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 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—
 - (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 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 regulations 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;
- (g) measures for the prevention of water status deterioration in accordance with the Public Health (Water Framework) Rules 2004 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,

and the waste management plan shall provide sufficient information to enable the competent authority to evaluate the operator's ability to meet the objectives of the waste management plan as set out in sub-regulation (2) and his obligations under these Regulations. The plan shall explain, in particular, how the option and method chosen as mentioned in sub-regulation 2(a)(i) will fulfil the objectives of the waste management plan as laid down in sub-regulation 2(a).

(4) The waste management plan shall be reviewed every five years and/or 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 legislation and containing the information specified in sub-regulation (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 sub-regulations (1) to (4) are met.

(6) The competent authority shall approve the waste management plan on the basis of procedures agreed with the Member States 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/EC.

(2) The competent authority 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 human health or the environment, including any transboundary impacts.

(3) The following provisions apply–

- (a) for the purposes of the requirements under sub-regulation (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;
- (b) 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; and
- (c) the competent authority shall draw up an external emergency plan specifying the measures to be taken off - site in the event of an accident,

and as part of the application for a permit the operator shall provide the competent authority with the information necessary to enable the latter to draw up that plan.

(4) The emergency plans referred to in sub-regulation (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,

and the competent authority shall ensure that, in the event of a major accident, the operator immediately provides 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 following provisions apply–

- (a) 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 sub-regulation (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;
- (b) the public concerned shall be entitled to express comments within reasonable time frames and, in the decision on the external emergency plan, due account shall be taken of these comments; and
- (c) 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, shall be provided, free of charge and as a matter of course, to the public concerned,

and that information shall be reviewed every three years and, where necessary, updated.

Application and permit.

7.(1) It is an offence punishable by a fine at level 4 on the standard scale for a waste facility to operate without a permit granted by the competent authority. The permit shall contain the elements specified in sub-regulation (2) and shall clearly indicate the category of the waste facility in accordance with the criteria referred to in regulation 9: and subject to compliance with all requirements under this regulation, any permit produced pursuant to other legislation may be combined to form a single permit, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or competent authority, and the details specified in sub-regulation (2) can be covered by one single permit or several permits, provided that all requirements under this regulation are complied with.

(2) The application for a 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 where environmental impact assessment is required by law.
- (3) The competent authority shall only grant a permit if it is satisfied that—
- (a) the operator complies with the relevant requirements under these Regulations; and
 - (b) the management of waste does not conflict directly or otherwise interfere with the implementation of any waste management plan or plans required by law.
- (4) The competent authority shall periodically reconsider and, where necessary, update permit conditions—
- (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)(c) or inspections carried out pursuant to regulation 17;
 - (c) in the light of information exchange on substantial changes in best available techniques under regulation 21.
- (5) The information contained in a permit granted under this regulation shall be made available to the competent national and Community statistical authorities where requested for statistical purposes. 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.

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 permit or, at the latest, as soon as the information can reasonably be provided—
- (a) the application for a permit;
 - (b) where applicable, the fact that a decision concerning an application for a permit is subject to consultation with Member States in accordance with regulation 16;
 - (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which 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 permit or of permit 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 sub-regulation (7).

(2) The Competent Authority shall, within appropriate time frames, ensure that the following are made available to the public concerned—

- (a) the main reports and advice transmitted to the competent authority at the time when the public were informed in accordance with sub-regulation (1);
- (b) in accordance with the provisions of the Freedom of Access to Information on Environment Regulations 2005 any information in addition to that referred to in sub-regulation (1) 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 sub-regulation (1).

(3) The public shall be informed, in accordance with sub-regulation 1, of an update of 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, in accordance with the appropriate procedures, inform the public concerned and shall make the following information available to the public concerned—

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

(7) The detailed arrangements for public participation under this regulation shall be determined by the competent authority so as to enable the public concerned to prepare and participate effectively.

Classification system for waste facilities.

9. For the purposes of these Regulations, the competent authority shall classify a waste facility as Category A in accordance with the criteria set out in Schedule 3.

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).

(2) The Landfill Act 2002 shall continue to apply to the waste other than extractive waste used for filling in excavation voids as appropriate.

Construction and management of waste facilities.

11.(1) It shall be an offence punishable by a fine at level 3 on the standard scale for the management of a waste facility to be other than in the hands of a competent person or that technical development and training of staff not be 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, 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 the Public Health (Pollution of the Aquatic Environment) Regulations 1994, the Public Health

(Pollution of Groundwater) Regulations 1995 and the Public Health (Water Framework) Rules 2004 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, and

records of the monitoring and inspections referred to in paragraph (c) shall be kept, together with permit documentation, in order to ensure the appropriate hand-over of information, particularly in the event of a change of operator.

(3) The following provisions apply–

- (a) the operator shall, without undue delay and in any event not later than 48 hours after the occurrence of an event of the type referred to in this subparagraph, 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;
- (b) the operator shall bear the costs of the measures to be undertaken; and
- (c) 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 permit 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) It shall be an offence punishable with a fine at level 4 on the standard scale not to comply with sub-regulations (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 permit 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: provided that such approval shall not in any way reduce the operator's obligations under the conditions of the permit 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 decides to take over such tasks from the operator, after a waste facility has been finally closed and without prejudice to any legislation governing the liability of the waste holder.

(5) When considered necessary by the competent authority in order to fulfil relevant environmental statutory obligations, 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) The following provisions shall apply—

- (a) 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;

- (b) the operator shall bear the costs of the measures to be undertaken; and
- (c) 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 authority for the purposes of demonstrating compliance with permit 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/EC, 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.

(3) Where, on the basis of an assessment of environmental risks, taking into account, in particular, Directives 76/464/EEC, 80/68/EEC or 2000/60/EC, 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 paragraphs (b) and (c) of sub-regulation (1) may be reduced or waived accordingly.

(4) 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 shall be conditional upon compliance by the operator with the relevant requirements of Directives 76/464/EEC, 80/68/EEC and 2000/60/EC.

(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 sub-regulations (1) and (3). The operator shall provide the competent authority with the information necessary to ensure compliance with lawful obligations, in particular those in Directive 2000/60/EC.

(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 permit 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 permit after 1 May 2008: provided that where 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 agreed with the Minister, so that—

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

(2) The calculation of the guarantee referred to in sub-regulation (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.

(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 permit.

Approval of closure.

15. 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 sub-regulation 14(1) with the exception of after-closure obligations as referred to in regulation 12(4).

Transboundary effects.

16.(1) Where the Minister 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, a Member State, or where a Member State likely to be thus affected so requests, the Minister shall forward the information provided pursuant to regulation 7 to that Member State at the same time as it is made available in Gibraltar; and such information shall serve as a basis for any consultation necessary with that Member State on a reciprocal and equivalent basis.

(2) The Minister shall ensure that in the cases referred to in sub-regulation (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 Minister shall ensure that, in the event of an accident involving a waste facility as referred to in sub-regulation (1), information provided by the operator to the competent authority pursuant to regulation 6(4) is immediately forwarded to the Member State referred to in sub-regulation (1) 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.

Inspections by the competent authority.

17.(1) Prior to the commencement of deposit operations and at regular intervals thereafter, including the after-closure phase, to be decided by the Minister, 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 permit. An affirmative finding shall in no way reduce the responsibility of the operator under the conditions of the permit.

(2) Operators shall 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.

Obligation to report every 3 years.

18. At intervals of three years the Minister shall ensure there is transmitted to the European Commission a report on the implementation of the Directive. The report shall be drawn up on the basis of a questionnaire or outline to be adopted by the Commission in accordance with the procedure referred to in Article 23(2) of the Directive. The report shall be transmitted within nine months of the end of the three-year period covered by it.

Annual notifications.

19. Every year the Minister shall ensure there is transmitted to the European Commission information on events notified by the operators in accordance with regulations 11(3) and 12(6), and the Minister shall make the information available to members of the public concerned on request.

Inventory of closed waste facilities.

20. The competent authority shall ensure that an inventory of closed waste facilities, including abandoned waste facilities, located in Gibraltar 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 regulation 21, if available.

Exchange of information.

21. The Minister shall ensure that the competent authority follows or is informed of developments in best available techniques.

Liability of bodies corporate - general.

21A.(1) A corporate body shall be liable for an offence under these Regulations where that offence is committed for its benefit by a person, acting either individually or as part of an organ of the corporate body, who has a leading position within the corporate body.

(2) For the purposes of subregulation (1), a leading position shall be deemed to exist where such a person has—

- (a) a power of representation of the corporate body;
- (b) an authority to take decisions on behalf of the corporate body; or
- (c) an authority to exercise control within the corporate body.

(3) A corporate body shall be liable for an offence under these Regulations committed by a person referred to in subregulation (1) where lack of supervision or control by that person has made possible the commission of the offence for the benefit of the corporate body by a person under its authority.

(4) Where a corporate body is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person referred to in subregulation (1), or any person who was purporting to act in any such capacity, that person, as well as the corporate body, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where the affairs of a corporate body are managed by its members, subregulation (4) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporate body.

(6) A fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

(7) Where an offence under these Regulations committed by a partnership is proved to have been committed with the consent or connivance of or to have been attributable to any neglect on the part of a partner he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

Transitional provision.

22.(1) The competent authority shall ensure that any waste facility which has been granted a permit or which is already in operation on 1 May 2008 complies with the provisions of these Regulations by 1 May 2012, except for those set out in regulation 14(1) for which compliance must be ensured by 1 May 2014 and for those set out in regulation 13(6) for which compliance must be ensured in accordance with the timetable laid down therein.

(2) Sub-regulation (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 regulation 4(1), and other applicable environmental legislation, including Directive 2000/60/EC.

(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;

- (b) are completing the closure procedures in accordance with the applicable legislation or programmes approved by the competent authority; and
- (c) will be effectively closed by 31 December 2010.

(5) The Minister shall ensure that the cases, if any, referred to in sub-regulation (4) are notified to the European Commission upon the entry into force of these Regulations and that such facilities are managed in a way that does not prejudice the achievement of the objectives of these Regulations, in particular the objectives of regulation 4(1), and those of any other Community legislation, including Directive 2000/60/EC.

Schedules.

23. The Schedules shall have effect.

SCHEDULE 1

Regulation 23

**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—

- (a) 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;
- (b) 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;
- (c) the following issues shall be addressed by the safety management system—
 - (i) 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;
 - (ii) 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;
 - (iii) operational control — adoption and implementation of procedures and instructions for safe operation, including maintenance of plant, processes, equipment and temporary stoppages;
 - (iv) management of change — adoption and implementation of procedures for planning modifications to, or the design of, new waste facilities;
 - (v) 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;

- (vi) 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;
- (vii) 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—

- (a) Name of operator and address of the waste facility.
- (b) Identification, by position held, of the person providing the information.
- (c) Confirmation that the waste facility is subject to these Regulations and, when applicable, that the information relevant to the elements referred to in regulation 6(2) has been submitted to the competent authority.
- (d) An explanation in clear and simple terms of the activity or activities undertaken at the site.
- (e) 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.
- (f) General information relating to the nature of the major-accident hazards, including their potential effects on the surrounding population and environment.
- (g) Adequate information on how the surrounding population concerned are to be warned and kept informed in the event of a major accident.
- (h) Adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident.

2005-27

Environment

2009/080

Waste (Extractive Industries) Regulations 2009

- (i) 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.
- (j) 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.
- (k) Details of where further relevant information can be obtained, subject to the requirements of confidentiality laid down in law.

SCHEDULE 2

Regulation 23

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–

- (a) 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;
- (b) classification of the waste according to the relevant entry in Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3). Decision as last amended by Council Decision 2001/573/EC (OJ L 203, 28.7.2001, p. 18), with particular regard to its hazardous characteristics;
- (c) description of the chemical substances to be used during treatment of the mineral resource and their stability;
- (d) description of the method of deposition;
- (e) waste transport system to be employed.

SCHEDULE 3

Regulation 23

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/EEC above a certain threshold; or
- (c) it contains substances or preparations classified as dangerous under Directives 67/548/EEC or 1999/45/EC above a certain threshold.