



Brussels, 31st March 2017

Minutes

Meeting of the Commission Expert group on Waste¹

Directive 2006/21/EC on the management of extractive waste

15th March 2017, Brussels

1. OPENING OF THE MEETING AND APPROVAL OF THE AGENDA

The Chair recalled the adoption of a report² from the Commission on the implementation of the Extractive Waste Directive (2006/21/EC) (EWD) in September 2016. The report identifies implementation issues and announces a series of follow-up actions, including:

- Guidance on the implementation of the EWD,
- Technical guidelines for inspections,
- Improvement of the reporting

A change in the agenda was proposed (switch between points 3-4 and 2 in the afternoon) which was accepted.

2. NATURE OF THE MEETING

This meeting was not public.

3. IMPLEMENTATION OF THE EXTRACTIVE WASTE DIRECTIVE

3.1. Summary of the main findings of a study on the appraisal of implementation gaps, their root causes and possible good practices

The contractor presented preliminary findings. The final study is expected to be published this summer.

The discussion focused on:

- *Discrepancies between the volumes of extractive waste reported by Member States to Eurostat and the number of waste facilities reported under the EWD:* Experts suggested that these discrepancies may be explained by some misunderstandings during the reporting cycle, or the fact that part of the

¹ Published in the Register of Commission Expert groups, code E03343

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489760330450&uri=CELEX:52016DC0553>

extractive waste generated is recycled/ re-used, placed back into excavation voids or is generated offshore.

- *EU-wide inventory of waste facilities:* The Commission outlined that such an inventory could enable a better overview of the situation and enhance transparency. For closed waste facilities, it could be created based on existing inventories at national level. Several experts supported such idea but stressed that national inventories of closed waste facilities were developed using different approaches. Therefore, a disclaimer should point out that national inventories may not be comparable. The Commission asked whether experts would also agree to the public disclosure of data on extractive waste facilities in operation. Some experts asked for more time to check this question internally.

3.2. Guidance on the implementation of the EWD

National experts were asked to provide suggestions on key elements which could feature in the general guidance.

The exchange of views focused on the following aspects:

- *Definition of extractive waste*
 - Some experts stated that they have no difficulties with the definition of "extractive waste", while others expressed interest in further guidance/examples, pointing to existing divergences in interpretation between Member States or between regions within a Member State.
 - A question was raised as to whether gas to be flared (in the field of oil and gas extraction) should be considered as extractive waste.
 - Further exchanges took place on the following issues:
 - to what extent waste transported offsite remains extractive waste
 - when extractive waste ceases to be (extractive) waste, e.g. following adequate treatment in a waste treatment facility
 - status of top soil used for backfilling
 - re-injection of water authorised under Article 11 3) j first indent of the Water Framework Directive
 - link with the Waste Framework Directive (end of waste; by-products; list of wastes).
- *Characterisation of extractive waste*

Some experts stressed the need

 - To improve the understanding of "reactive" waste (article 3 Decision 2009/337/EC). It could be clarified that reactive waste encompasses not only acid producing/sulphidic waste but also waste leaching metals. Uranium was identified as a rather mobile compound in recipient water courses.
 - To provide guidance on how to interpret CEN standard related to sampling of extractive waste.
- *Classification of waste facilities*

Some experts called for:

 - a common understanding of the first indent of Annex III of the Directive. This indent must not be reduced to dam failure and guidance should address "incorrect operation", e.g. the incorrect handling of reactive waste;

- guidance on the interpretation of the different time-periods in the definition of “waste facility” (art.3.15 of the Directive) and how they are applied in practice (esp. to what extent this applies to very temporary storage of hazardous waste given that "no-time period" is specified for hazardous waste facilities)
- clarification on the categorisation of waste facilities located offsite that treat or dispose extractive waste,
- clarification on how to interpret “hazardous waste generated unexpectedly” in the definition of a "waste facility" (art.3.15),
- an exchange of good practices in the field of major accident prevention policy (internal and external emergency plans) and possible synergies with existing guidance developed under Seveso legislation,
- criteria that would justify to de-classify a category A facility, e.g. if requested by an operator

- *Management of closed and abandoned facilities*

The discussion focused on:

- The financial challenge of remediating closed facilities that pose an environmental and human health risk /legacy sites
- What can be done from an environmental perspective at abandoned sites
- Re-processing of closed facilities and possible interlinks with other pieces of EU legislation (Natura 2000)

There was a common agreement that no further guidance was needed with regard to transboundary communication.

Two experts recalled the existence of a guidance developed in 2008 on financial guarantees. Several experts expressed the wish to provide further comments in writing after the meeting, which was agreed.

4. REVISION OF THE BREF ON THE MANAGEMENT OF TAILINGS AND WASTE-ROCK IN MINING ACTIVITIES (MWEI BREF)

The Commission informed the participants of the current status of preparation of the revised Best Available Techniques (BAT) Reference document for the management of waste from extractive industries.

Members of the MWEI BREF Technical Working Group will receive a background document containing proposals for revised BAT conclusions as well as a full update of at least Chapters 3 and 4 of the draft BREF before the final meeting. The latter is scheduled for the autumn of this year. TWG Members will also be able to check that the conclusions of the final meeting will be properly reflected in the final document before it is released by the end of this year.

One expert suggested to split the document into two parts distinguishing minerals from hydrocarbons and called for a second draft of the BREF.

The Commission explained that the scope and format of the BREF were agreed at the kick-off meeting in 2014. No second draft is planned given the ample feedback and discussion opportunities that were provided and are still planned for in the coming months.

5. SHARING OF BEST PRACTICES IN MINING WASTE MANAGEMENT PLANS

This initiative was announced in the Circular Economy Action plan and recalled in the Commission report on the EWD implementation adopted in Sept. 2016.

This project aims at identifying best practices in the field of extractive waste management plans by 2018. The guidance document will be targeted at competent authorities and extractive industry operators. It will be complementary to the BREF.

Several experts agreed to provide good examples of extractive waste management plans (EWMP) and/or factsheets and to enable discussion on site with the Commission. Two experts called for clear and measurable criteria against which to evaluate the quality of plans submitted by operators.

6. OPTIONS TO IMPROVE REPORTING, INCLUDING ON ACCIDENTS AND PROMOTE THE DISSEMINATION OF INFORMATION

The Commission explained that a horizontal review of monitoring and reporting requirements in the area of environment is on-going, with a Commission Communication scheduled for adoption by the summer. The aim of this exercise is to ensure that EU law is delivering on the ground, to better inform citizens with comparable and consistent data and to minimise administrative burden.

The outcome of this review will need to be taken into account when considering revising Commission Decision 2009/358/EC on the harmonisation, the regular transmission of the information and the questionnaire referred to in the Directive.

Three main reporting requirements were discussed:

- Triennial reports on the implementation of the Directive
- Annual reporting of “events likely to affect the stability of the waste facility and any significant adverse environmental effect revealed by control & monitoring”
- Information in the permits (upon request)

National experts asked for clarification notably in the table in Annex III of the Decision (waste facilities “in operation” vs “waste facilities in operation with a permit”). It was also suggested to specify the concept of “cases of non-compliance” and to split the category “closed or abandoned” facilities. At the same time, it was stressed that article 20 of the Directive refers to “closed waste facilities including abandoned waste facilities”.

Several participants encouraged the use of modern IT to facilitate reporting. Synergies with the reporting format chosen under other pieces of EU legislation, such as the IED, could be further investigated.

One expert raised the importance of waste characterisation (incl. chemical composition of leachate over time) which should be featured in the questionnaire. There may be also value in asking if guidance is available at national level. One participant suggested identifying a national report which could be used as a model.

Several experts expressed the wish to provide further comments in writing after the meeting, which was agreed.

7. DEVELOPMENT OF TECHNICAL GUIDELINES FOR INSPECTIONS OF WASTE FACILITIES

The Commission proposed to develop guidelines by 2018 building on work carried out in 2012 by a contractor³. National experts were invited to provide feedback on the proposed approach.

No objection was raised with regard to the use of the 2012 report as basis for further work.

It was suggested that guidelines should not necessarily compare national inspection plans but rather identify minimum criteria. Further reflection is needed as to what extent the guidelines should refer to monitoring. A participant suggested distinguishing in the guidelines between Category A and non-Category A facilities.

Some participants referred to their comments⁴ made in 2012 and asked for the possibility to make further comments in writing, which was agreed.

Draft guidelines will be developed by the Commission and further consulted with Member States before the adoption as an implementing act under the examination procedure in the Technical Adaptation Committee.

8. ANY OTHER BUSINESS

No point was discussed under this session.

9. CONCLUSIONS

The Chair thanked national experts for their participation and concluded that the Commission will further reflect on next steps on the basis of input received, also taking into account other sources of information.

No objection was raised against the drafting by the Commission of inspection guidelines building on work commissioned in 2012.

Improvements of the reporting mechanism will need to take into account the outcome of the on-going Fitness Check on environmental reporting requirements.

The Commission will send an e-mail to national experts summarising which input is expected by which date.

10. NEXT STEPS

Another meeting may be organised in the course of this year to further discuss about the draft guidelines for inspections, the general guidance as well as changes to be made in the Commission Decision 2009/358/EC. The date will be confirmed at a later stage.

³ http://ec.europa.eu/environment/waste/mining/pdf/Annex2_guidelines_inspection.pdf

⁴ http://ec.europa.eu/environment/waste/mining/pdf/Annex4_comments_guidance.pdf

11. LIST OF PARTICIPANTS

Hungary	Hungarian Office for Mining and Geology	BANYACSKI
Spain	Ministry of Agriculture and Fishing, Food and Environmental Affairs	CABRERA
Poland	Ministry of Environment	CYKOWSKI
Ireland	Department of Communications, Climate Action and Environment	DOYLE
United Kingdom	Environment Agency England	EDWARDS
Sweden	Swedish Environmental Protection Agency	FALLMAN
Croatia	Ministry of Environment and Energy	HORVAT
Czech Republic	Czech mining authority	KANKA
Czech Republic	Czech Mining Authority	KASTNER
Slovakia	Ministry of Environment	JANOVA
Finland	Ministry of Environment	KIVIPELTO
Cyprus	Department of Environment of the Ministry of Agriculture, Rural Development and Environment	KONSTANTINIDI
Estonia	Estonian Ministry of Environment	KURRISTA
Poland	State Mining Authority	MADEJ
Italy	Ministry of Environment	MORABITO
Ireland	Environmental Protection Agency	O SEASNAIN
Latvia	Ministry of Environmental Protection and Regional Development	OZOLA
Denmark	Danish Environmental Protection Agency	THOSTRUP
Belgium	ISSeP	VESCHKENS
France	MEEM	VOUILLOUX
Consultancy	Amec Foster Wheeler	LUSCOMBE
European Commission	DG ENV; DG GROW; JRC IPTS	LIMET, WIMMER, SAVEYN, ORVEILLON, GARBARINO