Management of waste from extractive industries. Mining Waste Directive

2003/0107(COD) - 12/04/2005 - Council position

The common position is substantially in accordance with the positions taken by the Commission and the Parliament, insofar as it confirms all the objectives and essential elements of the Commission's proposal which were also supported by the European Parliament. It takes the greatest possible account of the opinion of the European Parliament by taking on, in letter or in spirit, a great number of its amendments. In particular, elements of the amendments relating to the scope of the Directive, the definition of waste facility, the financial guarantee and the inventory of closed sites have been accepted in principle by the Council, subject to some adjustments.

Several changes aim at adjusting the text to reflect the various changes made throughout the articles. Furthermore, the following changes to the recitals are highlighted: it is clarified that waste produced during the pre-production development stage is also to be covered by the waste definition; a reference to the definition of extractive waste is added; it is clarified that other waste legislation shall apply as appropriate to non-extraction related waste generated, as well as to extractive waste transported to a

location that is not an extractive waste facility; a new recital was added to clarify that waste from the extraction of materials used for their radioactive properties is not covered by the Directive if it is already covered by legislation under the Euratom Treaty; a new recital was added to clarify that the classification of waste facilities into Category A is not to be made solely on the basis of risks to health and safety of workers since this issue is covered by other relevant Community legislation; another new recital was added to emphasise the need for setting an appropriate after-care period for monitoring and control of Category A facilities and finally another recital was added to encourage Member States to show the correlation between the Directive and their national implementing measures.

The Council has added the following amendments:

- **Subject matter**: emphasis is added to the protection of water, fauna, flora, soil, air, and landscape.

- **Scope**: the injection of water and re-injection of pumped groundwater were exempted from the scope in an analogous way to Directive 2000/60/EC. The limited provisions applying to inert waste (and which now, following an EP amendment, cover also unpolluted soil and waste from prospecting operations) were extended to include the full provisions of Article 5. Waste from peat extraction was also made subject to these limited provisions. However, it was specified that Category A facilities of such waste shall be subject to the full provisions of the Directive. The possibility was given to competent authorities to reduce requirements applying to non-hazardous waste from prospecting, as well as to unpolluted soil and waste from peat extraction. Furthermore, a new category of non-hazardous non-inert waste was created and Member States may exempt it from provisions on financial guarantees and on notification of events affecting stability, unless in a Category A facility as above.

- **Definitions**: the definitions of 'unpolluted soil', 'off-shore', 'prospecting' and 'substantial change' were added. A differentiated approach to the definition of 'waste facility' according to risks involved by each type of waste was introduced, while it was specified that this definition also includes excavation voids into which waste is replaced for reasons other than rehabilitation or construction. It was specified that the responsibility of an operator also covers the temporary storage of waste.

- **General requirements**: these were extended to cover all management of waste, including during temporary storage, and the full Article 4 of Directive 75/442/EEC was incorporated.

- **Application and permit**: Article 7 has become part of the waste management plan. A new paragraph was added requiring approval of the plan by the competent authority.

- **Major-accident prevention and information**: it was specified when the various major-accident arrangements need to be available.

- **Classification system for waste facilities**: the classification system for waste facilities was simplified and the relevant criteria set out in Annex III were adjusted to the definition of 'major accident'.

- **Construction and management of waste facilities**: several other elements to be taken into account for the location of waste facilities were added.

- **Prevention of water status deterioration, air and soil pollution**: the Cyanide concentration limit values for new facilities were reduced to the most stringent level.

- **Financial guarantee**: it was specified that the financial guarantees may also include equivalent systems. The Commission highlights that any such system, whatever form it takes, should ensure the availability of adequate funds at any given time to carry out the necessary rehabilitation work in case of insolvency or "walk away" practice of the operator. The Environmental Liability requirements were included in a separate article which specifies that the provisions of the relevant directive shall

apply to all management of extractive waste.

- **Inventory of closed waste facilities**: priorities were set for the tasks to be developed through commitology and the interpretation of the definition of inert waste was added to these tasks.

- **Application**: a new provision was added for waste facilities that have stopped receiving waste on the date of transposition of the Directive but have not completed their closure procedures yet.