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*****I**
REPORT

on the proposal for a European Parliament and Council directive on the management of waste from the extractive industries
(COM(2003) 319 – C5-0256/2003 – 2003/0107(COD))

Committee on the Environment, Public Health and Consumer Policy

Rapporteur: Jonas Sjöstedt

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 2 June 2003 the Commission submitted to Parliament, pursuant to Articles 251(2) and 175 (1) of the EC Treaty, the proposal for a European Parliament and Council directive on the management of waste from the extractive industries (COM(2003) 319 – 2003/0107(COD)).

At the sitting of 19 June 2003 the President of Parliament announced that he had referred the proposal to the Committee on the Environment, Public Health and Consumer Policy as the committee responsible and the Committee on Industry, External Trade, Research and Energy for its opinion (C5-0256/2003).

The Committee on the Environment, Public Health and Consumer Policy appointed Jonas Sjöstedt rapporteur at its meeting of 16 June 2003.

The committee considered the Commission proposal and draft report at its meetings of 1 December 2003, 21 January 2004, 26 January 2004 and 16 March 2004.

At the last meeting it adopted the draft legislative resolution by 26 votes to 5, with 9 abstentions.

The following were present for the vote: Caroline F. Jackson (chairman), Guido Sacconi (vice-chairman), Jonas Sjöstedt (rapporteur), María del Pilar Ayuso González, María Luisa Bergaz Conesa, Hans Blokland, John Bowis, Hiltrud Breyer, Martin Callanan, Dorette Corbey, Chris Davies, Jillian Evans (for Alexander de Roo), Marialiese Flemming, Karl-Heinz Florenz, Robert Goodwill, Cristina Gutiérrez Cortines, Jutta D. Haug (for Béatrice Patrie), Marie Anne Isler Béguin, Christa Kläß, Eija-Riitta Anneli Korhola, Bernd Lange, Paul A.A.J.G. Lannoye (for Patricia McKenna), Peter Liese, Torben Lund, Minerva Melpomeni Malliori, Rosemarie Müller, Antonio Mussa (Nicole Thomas-Mauro), Riitta Myller, Ria G.H.C. Oomen-Ruijten, Marit Paulsen, Jacqueline Rousseaux, Dagmar Roth-Behrendt, Yvonne Sandberg-Fries, Karin Scheele, Horst Schnellhardt, Inger Schörling, María Sornosa Martínez, Catherine Stihler, Antonios Trakatellis, Peder Wachtmeister

The opinion of the Committee on Committee on Industry, External Trade, Research and Energy is attached.

The report was tabled on 18 March 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a European Parliament and Council directive on the management of waste from the extractive industries
(COM(2003) 319 – C5-0256/2003 – 2003/0107(COD))**

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 319)¹,
 - having regard to Articles 251(2) and 175 (1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0256/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy and to the opinion of the Committee on Industry, External Trade, Research and Energy (A5-0177/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 1

(1) The Communication of the Commission, entitled “Safe operation of mining activities: a follow-up to recent mining accidents” sets out as one of its priority actions an initiative to regulate the management of waste from the extractive industries. This action is designed to complement initiatives relating to the envisaged amendment of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances as well as

(1) The Communication of the Commission, entitled “Safe operation of mining activities: a follow-up to recent mining accidents” sets out as one of its priority actions an initiative to regulate the management of waste from the extractive industries. This action is designed to complement initiatives relating to the envisaged amendment of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances as well as

¹ Not yet published in OJ.

the production of a best available technique document covering waste rock and tailings from mining activities *under the auspices of* Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control.

the production of a best available technique document covering waste rock and tailings from mining activities *by analogy with the principles laid down in* Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control *for the drawing-up of reference documents (BREFs)*.

Justification

It is only the instrument of the best available technique document laid down in the IPPC Directive which should be used analogously when drawing up the BAT document, in order to provide a framework for the description of best available techniques in the management of mining waste. The basis for the BAT is provided by the new Directive on the management of waste from the extractive industries.

Amendment 2 Recital 4

(4) In accordance with the objectives of Community policy on the environment, it is necessary to lay down minimum requirements in order to prevent or reduce as far as possible any negative effects on the environment or on human health which are brought about as a result of the management of waste from the extractive industries, such as tailings (i.e. the solids that remain after the treatment of minerals by a number of techniques), waste rock and overburden (i.e. the material that extractive operations move during the process of accessing an ore or mineral body), and topsoil (i.e. the upper layer of the ground).

(4) In accordance with the objectives of Community policy on the environment, it is necessary to lay down minimum requirements in order to prevent or reduce as far as possible any negative effects on the environment or on human health which are brought about as a result of the management of waste from the extractive industries, such as tailings (i.e. the solids that remain after the treatment of minerals by a number of techniques), waste rock and overburden (i.e. the material that extractive operations move during the process of accessing an ore or mineral body), and topsoil (i.e. the upper layer of the ground) ***as long as they are waste in accordance with the relevant definition in Article 1(a) of Directive 75/442. Accordingly, this Directive should cover the management of waste from land-based extractive industries.***

Justification

Clarification that, as a matter of principle, the directive applies only to substances covered by the definition of waste given in the Waste Framework Directive. As the last part of recital 5 has been deleted, which follows from the Court case Avesta-Polarit, the first sentence of

recital 5 is therefore moved to recital 4.

Amendment 3
Recital 4 a (new)

(4a) In accordance with Article 24 of the Johannesburg Declaration on Sustainable Development adopted within the framework of the United Nations at the World Summit on Sustainable Development, it is necessary to protect the natural resource base of economic and social development and reverse the current trend in natural resource degradation by managing the natural resource base in a sustainable and integrated manner.

Justification

Mining waste is different from other waste. We want to minimise and prevent all waste but mining waste especially since it means that more of a natural resource will be wasted which is an essential part of sustainable development. Therefore it is necessary to include references to the sustainable protection and management of natural resources.

Amendment 4
Recital 5

(5) Accordingly, this Directive should cover the management of waste from land-based extractive industries. However, such provision should reflect the principles and priorities identified in Council Directive 75/442/EEC of 15 July 1975 on waste which, in accordance with Article 2(1)(b)(ii) thereof, continues to apply to any aspects of the management of waste from the extractive industries which are not covered by this Directive. ***deleted***

Justification

The deletion of the last part of recital 5 follows from the Court case Avesta-Polarit. The first sentence of recital 5 is therefore moved to recital 4.

Amendment 5
Recital 7

(7) Accordingly, the provisions of this Directive should not apply to those waste streams which, albeit generated in the course of mineral extraction or treatment operations, are not directly linked to the extraction or treatment process. Where such waste is deposited into or on to land, the provisions of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste will apply, ***as in the case of waste generated at an extraction or treatment site and transported to another location for the purposes of its deposit into or on to land.***

(7) Accordingly, the provisions of this Directive should not apply to those waste streams which, albeit generated in the course of mineral extraction or treatment operations, are not directly linked to the extraction or treatment process. Where such waste is deposited into or on to land, the provisions of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste will apply.

Justification

The same rules should apply to all waste, whether it is transported to another location or not.

Amendment 6
Recital 26 a (new)

(26a) It is necessary for Member States to ensure that an inventory of closed sites located on their territory is carried out, since these sites often pose a very high environmental risk. The Members States and the Community have a responsibility for rehabilitating abandoned sites likely to cause serious negative environmental impacts. It should therefore be possible to use Structural Funds and other relevant EU funding in order to draw up inventories and implement measures to clean up such facilities

Justification

The Directive must require that an inventory of closed sites (e.g. tailings ponds) is drawn up by the Member States. Many of the chronic water pollution problems arise from these, in particular in Central and Eastern Europe. They are an unmanaged burden of the past, veritable “time bombs”, accidents waiting to happen on top of the everyday pollution. Having

this provision in the proposal is the only way to guarantee that these “time bombs” are identified and dealt with to minimise the risk. In addition, the objective of “good ecological and chemical status” in all waters by 2015 in the Water Framework Directive will not be achieved unless these closed sites are dealt with.

Amendment 7
Recital 27 a (new)

(27a) This Directive could be a useful instrument to be taken into account when verifying that projects receiving Community funding in the context of development aid include the necessary measures to prevent or reduce as far as possible negative effects on the environment. Such an approach is consistent with Article 6 of the Treaty, particularly with regard to integrating environmental protection requirements into the Community's policy in the sphere of development cooperation.

Justification

The integration of environmental policy into other areas is essential and much work has been achieved. But there has been more talk than action. The EU needs to ensure that money contributed to the development of other countries is sustainable. An example is that if the European Investment Bank were to consider funding mining projects outside of the EU they should in their assessment include the provisions of this directive as a baseline of an environmental standard that should be met.

Amendment 8
Recital 28

(28) The objective of this Directive, that is to say, improving the management of waste from the extractive industries, cannot be sufficiently achieved by the Member States acting alone because the mismanagement of such waste may cause pollution of a transboundary nature. Under the polluter pays principle it is necessary, *inter alia*, to take into account any damage to the environment caused by waste from the extractive industries, and different national

(28) The objective of this Directive, that is to say, improving the management of waste from the extractive industries, cannot be sufficiently achieved by the Member States acting alone because the mismanagement of such waste may cause pollution of a transboundary nature. Under the polluter pays principle it is necessary, *inter alia*, to take into account any damage to the environment caused by waste from the extractive industries, and different national

applications of that principle may lead to substantial disparities in the financial burden on economic operators. Moreover, the existence of different national policies on the management of waste from the extractive industries hampers the aim of ensuring a minimum level of safe and responsible management of such waste and maximising its recovery throughout the Community. Therefore, since by reason of the scale and effects of the proposed action, it can be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. ***In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve the objective.***

applications of that principle may lead to substantial disparities in the financial burden on economic operators. Moreover, the existence of different national policies on the management of waste from the extractive industries hampers the aim of ensuring a minimum level of safe and responsible management of such waste and maximising its recovery throughout the Community. Therefore, since by reason of the scale and effects of the proposed action, it can be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty.

Justification

The recital here mentions the principle of proportionality, but the extent of that principle's application 'beyond what is necessary' depends in turn on the set of measures decided on in order to fulfil the objectives proposed. In this connection, it is necessary to have applied more restrictive criteria, especially for activities having a greater environmental impact or supposing greater risks to persons and property. It is therefore proposed that this part of the recital be deleted.

Amendment 9 Article 1, paragraph 1 a (new)

With a view to the consistent application of Article 6 of the Treaty, environmental protection requirements must be integrated into the implementation of Community policies and activities with a view to promoting sustainable development.

Justification

The subject matter of this directive is foremost the implementation of the principles of the Waste Framework Directive within the extractive industry. But this is not enough. We also need to add references to the important aim of careful management of natural resources. This can be done by referring explicitly to the promotion of sustainable development in Article 6 of the treaty.

Amendment 10
Article 2, paragraph 1

1. Subject to the provisions of paragraph 2, this Directive covers the management of waste from the extractive industries, hereinafter “extractive waste”, that is to say, waste resulting from the extraction, treatment and storage of mineral resources and the working of quarries.

1. Subject to the provisions of paragraph 2, this Directive covers the management of waste from the extractive industries, hereinafter “extractive waste”, that is to say, waste resulting from the **prospecting**, extraction, treatment and storage of mineral resources and the working of quarries.

Justification

It is not universally true that prospecting produces negligible waste. It all depends on the mineral being sought, its depth and local geology etc. Generally the amounts are small compared with actual mining/quarrying operations, but they can undoubtedly contaminate soil around boreholes if not disposed of properly.

Amendment 11
Article 2, paragraph 2, point (a)

(a) waste which is generated by the extraction and treatment of mineral resources, but which does not directly result from those operations, such as food waste, waste oil, end-of-life vehicles, spent batteries and accumulators;

(a) waste which is generated by the **prospecting**, extraction and treatment of mineral resources, but which does not directly result from those operations, such as food waste, waste oil, end-of-life vehicles, spent batteries and accumulators;

Justification

See above.

Amendment 12
Article 2, paragraph 2, point (c)

(c) the deposit of unpolluted soil resulting from the extraction, treatment and storage of mineral resources and the working of quarries;

deleted

Justification

Owing to the change in exposure to oxygen and the elements, the improper handling of unpolluted soil can lead to the production of toxic substances which would then enter the water cycle without hindrance. In principle the following problem arises regarding the cases to be excluded under (c) and (e): all materials resulting from mining activities are initially regarded as waste and then - as in the case of 'unpolluted soil' and 'waste from prospecting' - excluded from the scope of the Directive. However, bearing in mind Article 2(4) of the proposal, this method would result in both the above 'wastes' being subject to the Landfill Directive. It is clear from the explanatory memorandum, though not from the text of the directive, that this is not intended. This problem could be resolved by deleting points (c) and (e) and including them in the provisions of Article 2(3) (provisions for non-hazardous waste).

Amendment 13

Article 2, paragraph 2, point (d)

(d) waste generated at an extraction or treatment site and transported to **another** location for the purposes of its deposit into or on to land;

(d) waste generated at an extraction or treatment site and transported to **a** location **outside the extractive industry** for the purposes of its deposit into or on to land;

Justification

Legal clarity requires that areas relating to the transport of waste should be clearly separated. The transport of waste outside the responsibility of the extractive industries should be covered by the corresponding other directives.

Amendment 14

Article 2, paragraph 2, point (e)

(e) waste from the prospecting of mineral resources. **deleted**

Justification

It is not universally true that prospecting produces negligible waste. It all depends on the mineral being sought, its depth and local geology etc.

In principle the following problem arises regarding the cases to be excluded under (c) and (e): all materials resulting from mining activities are initially regarded as waste and then - as in the case of 'unpolluted soil' and 'waste from prospecting' - excluded from the scope of the Directive. However, bearing in mind Article 2(4) of the proposal, this method would result in both the above 'wastes' being subject to the Landfill Directive. It is clear from the explanatory memorandum, though not from the text of the directive, that this is not intended. This problem could be resolved by deleting points (c) and (e) and including them in the provisions of

Article 2(3) (provisions for non-hazardous waste).

Amendment 15
Article 2, paragraph 3

3. The ***deposit of non-hazardous inert waste*** shall only be subject to the provisions of Article 5 paragraphs 1 and 2, Article 11(2) points (a) to (e) and Article 13(1) points (a) to (c) of this Directive.

3. The ***following substances*** shall only be subject to the provisions of Article 5 paragraphs 1 and 2, Article 11(2) points (a) to (e) and Article 13(1) points (a) to (c) ***and Article 13(2)*** of this Directive, ***where they constitute waste in accordance with Article 1(a) of Directive 74/442/EEC:***

(a) non-hazardous waste and unpolluted soil resulting from the extraction, treatment and storage of mineral resources;

(b) unpolluted waste from the prospecting of mineral resources.

Justification

In view of the slight environmental impact of unpolluted soil and waste from the prospecting of mineral resources, it does not appear appropriate for all the requirements of the Directive to apply to these substances. It is therefore proposed that they should instead be included in Article 2(3).

Amendment 16
Article 3, point (4)

(4) ‘mineral resource’ or ‘mineral’ means a naturally occurring deposit in the earth’s crust of an organic or inorganic compound, such as oil, bituminous shale, coal, lignite, metal, stone, slate, clay, gravel or sand, including natural gas, but excluding water;

(4) ‘mineral resource’ or ‘mineral’ means a naturally occurring deposit in the earth’s crust of an organic or inorganic compound, such as oil, bituminous shale, coal, lignite, metal ***and metal ores***, stone, slate, clay, gravel or sand, including natural gas, but excluding water;

Justification

Few metals occur in the native state, and it is important to acknowledge that most occur in ores requiring significant processing.

Amendment 17
Article 3, point (6)

(6) 'treatment' means the mechanical, physical or chemical process or combination of processes carried out on mineral resources with a view to extracting the mineral, including size reduction, classification, separating and leaching and re-processing of previously discarded waste, **but excluding thermal treatment;**

(6) 'treatment' means the mechanical, physical, **thermal** or chemical process or combination of processes carried out on mineral resources with a view to extracting **and processing** the mineral, including size reduction, classification, separating and leaching and re-processing of previously discarded waste;

Justification

The current proposal for a Directive on the management of waste from the extractive industries should not only complement European waste legislation currently in force but also fill the existing legal loophole regarding the management of waste from the extractive industries coming from the thermal process of the minerals:

According to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, 'thermal processes' are included in the definition of treatment, according to its Article 2(h). This definition only refers to the 'thermal process that changes the characteristics of the waste in order to reduce its volume or hazardous nature, facilitate its handling or enhance recovery'. This definition does not refer to the waste coming from mineral thermal processes and it is therefore excluded from the scope of the Landfill Directive.

According to Council Directive 75/442/EEC of 15 July 1975 on waste, the reference made in its Annex I to classification as Q11 for the 'residues from raw materials extraction and processing' includes not only the extraction but also the processing of minerals. Processing should therefore be included in the definition of treatment for reasons of consistency with the Framework Directive and in order to avoid the current legal loophole regarding the processing of the minerals.

The revision of the Seveso II Directive of the European Parliament and of the Council amending Council Directive 96/82/EC of 9 December 1996 on the control of major accident hazards involving dangerous substance was formally adopted by the Council on 1 December after a conciliation procedure. It now includes in its scope, in accordance with Article 4(e) and (g), thermal processing operations on minerals which involve dangerous substances as defined in its Annex I. However, thermal processing operations related to substances not included in Annex I will not be covered and, therefore, there will also be a legal loophole on this issue.

Neither the Waste Framework Directive, nor the revised Seveso II Directive nor the Landfill Directive cover the management of waste from the extractive industries which results from the thermal processing of the minerals. The current proposal should therefore cover this issue for reasons of legal certainty and in order to avoid legal loopholes in European waste legislation.

Amendment 18
Article 3, point (7)

(7) 'tailings' means the **waste solids 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;

(7) 'tailings' means the **waste that remains** 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;

Justification

This is to bring the paragraph into line with paragraph 13 (which covers both solids and liquids).

Amendment 19
Article 3, point (9)

(9) 'dam' means an engineered structure designed to retain or confine water **and** waste within a pond;

(9) 'dam' means an engineered structure designed to retain or confine water **and/or** waste within a pond;

Justification

If the waste in a dam is drained, or supernatant water decanted to leave dry waste in the impoundment, the structure is still a dam, even in the absence of free water.

Amendment 20
Article 3, point (10)

(10) '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;

(10) 'pond' means a natural or engineered facility for **depositing, dumping or** 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;

Justification

A 'pond' is best defined as a facility for depositing or dumping waste. Waste is not eliminated

by the mere fact of depositing it.

Amendment 21
Article 3, point (13)

(13) 'waste facility' means any area designated for the accumulation or deposit of waste, whether in a solid or liquid state or in solution or suspension, **for a period of more than one year**, and being 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;

(13) 'waste facility' means any area designated for the accumulation or deposit of waste, whether in a solid or liquid state or in solution or suspension, and being 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;

Justification

The phrase 'for a period of more than one year' needs to be removed: the accumulation or depositing of waste must not be managed on a time-dependent basis. Periods of a year or less can be more than sufficient to engender severe environmental consequences, especially for aquatic ecosystems. This latter provision is contrary to the framework directive on water, which forbids deterioration of the chemical and ecological condition of such systems.

Amendment 22
Article 3, point (18)

(18) '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 pre-working soil quality, wild life, natural habitats, freshwater systems, landscape and appropriate beneficial uses;

(18) '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 **at least** to pre-working soil quality (**with especial reference to composition and structure**), wild life, natural habitats, freshwater systems, landscape and appropriate beneficial uses;

Justification

The change above is needed to allow for current practices which are more ambitious than what is currently implied in this definition of the word rehabilitation. For example, there are operators who choose, after having mined on "brown land" (where there was really nothing much in terms of natural value), to rehabilitate in a way that they provide a final added value

to what was originally on the site. The Commission's proposed reference to soil quality is over-general and needs to be expanded to include the elements of composition and structure, which can be markedly altered by prospection, and even more so by extraction. If, as should be the case, soil is to be seen as a limited resource, its conservation and protection should be an objective to be fulfilled. In addition, the concept of 'soil quality' is inherently related to structure and composition.

Amendment 23
Article 4, paragraph 1

1. Member States shall ensure that the operator of a waste facility takes all measures necessary to prevent **or** reduce as far as possible any adverse effects on the environment **or** on human health brought about as a result of the management of that facility, including after its closure, and to prevent major accidents involving that facility and to limit their consequences for the environment and for human health.

1. Member States shall ensure that the operator of a waste facility takes all measures necessary to prevent **and** reduce as far as possible any adverse effects on the environment **and** on human health brought about as a result of the management of that facility, including after its closure, and to prevent major accidents involving that facility and to limit their consequences for the environment and for human health..

Or. es

Justification

It is not an 'either-or' scenario, and the conjunction 'and' is therefore more appropriate in both cases.

Amendment 24
Article 4, paragraph 2

2. The measures referred to in paragraph 1 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.

2. The measures **required to achieve these objectives and** referred to in paragraph 1 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.

Amendment 25
Article 5, paragraph 1

1. Member States shall ensure that the operator draws up a waste management plan for the treatment, recovery and disposal of extractive waste.

1. Member States shall ensure that the operator draws up a waste management plan for the *minimisation*, treatment, recovery and disposal *into waste facilities of prospective and* extractive waste .

Justification

The first step of the Community hierarchy for waste management is prevention (i.e. minimisation) and as such should be considered here below, notwithstanding backfilling, the only adequate final deposition site for extractive waste is the waste facility and this needs to be spelled out in the proposal - this being the most suitable Article. When extractive waste is directly dumped into water (rivers, sea, etc.) , it goes against everything that Community environmental policy stands for.

Amendment 26

Article 5, paragraph 2, point (a) (i)

(i) waste management in the design phase and in the choice of the method used for mineral extraction and treatment;

(i) waste management *options* in the design phase and in the choice of the method used for mineral extraction and treatment;

Justification

Making (and justifying) decisions on options/methods considered should ensure that waste production and harmfulness are prevented or reduced .

Amendment 27

Article 5, paragraph 2, point (a) (iii)

(iii) placing waste back into the excavation void after extraction of the mineral, as far as is practically feasible and environmentally sound;

(iii) placing waste back into the excavation void after extraction of the mineral, as far as is practically feasible and environmentally sound *in line with existing environmental standards at Community level and with the requirements in this Directive where relevant and provided it is not contrary to the public interest in respect of future land use;*

Justification

Preserving the changes to the natural landscape created through the extraction of minerals may well be in the public interest, for example if the site is to be converted into a recreational area.

Amendment 28

Article 5, paragraph 2, point (b)

(b) to encourage the recovery of waste by means of recycling, reusing or reclaiming such waste, where environmentally sound.

(b) to encourage the recovery of waste by means of recycling, reusing or reclaiming such waste, where ***this is environmentally sound in line with existing environmental standards at the Community level and/or other requirements of this Directive where relevant.***

Justification

“Environmentally sound” must be defined. A reference to existing water protection Directives is thus needed as a reference.

Amendment 29

Article 5, paragraph 2, point (b) a (new)

(ba) to ensure short and long term safe disposal of the waste in particular by considering short and long term management during operation and after closure of a waste facility already in the design phase, and by choosing a design which requires little and ultimately no monitoring, control and management of the closed waste facility in order to prevent or at least minimize any long-term negative effects attributable to migration of airborne or aquatic pollutants from the waste facility, and to assure the long-term geotechnical stability of any dams or heaps rising above the pre-existing ground surface.

Justification

A safe disposal of the waste must also be one of the objectives of the management plan, and this has to be considered already at the design stage. When planning for closure, the need for monitoring and management in the future has to influence the choice of design.

Environmental and human health risks during the closure and after-closure phases of a waste facility must be addressed in the initial development of the waste management plan, with a view of preventing or at least minimizing any long-term negative effects attributable to, for example, migration of airborne or aquatic pollutants from the waste facility, and to assure the long-term geo-technical stability of any dams or heaps rising above the ground surface. The proposal does not require implementation of a criteria for “safe” closure phases beyond the decommissioning of waste facility. Experts predict that problems during the after closure can lead to water status deterioration against the objectives of the Water Framework Directive.

Amendment 30

Article 5, paragraph 3, point (c)

(c) a description of how the environment or human health may be **adversely** affected by the disposal of such waste and the preventive measures to be taken;

(c) a description of how the environment or human health may be affected by the disposal 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 Article 11(2) (a), b), (d) and (e)**;

Justification

It is important that the waste management plan contains all the elements that are needed in order to fulfill the objectives of the plan as expressed in Article 5, paragraph 2.

Amendment 31

Article 5, paragraph 3, point (e)

(e) the proposed plan for **the** closure **and** after-closure procedures and monitoring provided for in Article 12;

(e) the proposed plan for **rehabilitation and** closure, **including** after-closure procedures and monitoring provided for in Article 12;

Justification

It will often be necessary to rehabilitate surfaces, slopes and drainage prior to final closure

and this should be explicitly stated.

Amendment 32
Article 5, paragraph 3, point (f)

(f) measures for the prevention of water and soil pollution pursuant to Article 13.

(f) measures for the prevention of water ***status deterioration*** and soil pollution pursuant to Article 13.

Justification

EU water legislation now (Directive 2000/60/EC) requires the prevention of water status deterioration both in "chemical" and "ecological" terms.

Amendment 33
Article 5, paragraph 3, point (f a) (new)

(fa) a quantitative appraisal of the pre-working conditions in order to establish the “minimum tier” of the “satisfactory state” to allow for rehabilitation and/or restoration.

Justification

In order to make rehabilitation operational and establish the minimum tier of the “satisfactory state” (by the operator and subject to monitoring by the competent authority) as required in Article 3.18, there will be a need for a prior assessment of the pre-working conditions.

Amendment 34
Article 5, paragraph 3, last subparagraph

The waste management plan shall provide sufficient information to enable the competent authority to evaluate the operator’s compliance with the requirements of this Directive.

The waste management plan shall provide sufficient information to enable the competent authority to evaluate the operator’s compliance with the requirements of this Directive. ***The plan shall provide justification, in particular, on how the option and method chosen following Article***

5.2(a)(i) above shall fulfil the objectives of the waste management plan as laid down in Article 5.2(a).

Justification

The operator should justify to the competent authority how the option and method for waste management he/she has chosen would achieve the overall objectives of the waste management plan. Otherwise, choosing the less environmentally damaging option and method is just left to the operator and there is not specific obligation to prove he/she has done so.

Amendment 35
Article 6, paragraph 2

2. Without prejudice to other Community legislation, and in particular Council Directive 92/91/EEC and Council Directive 92/104/EEC, Member States shall ensure that major-accident hazards are identified and the necessary features are incorporated into the design, construction, operation **and** maintenance of the waste facility in order to prevent such accidents and to limit their adverse consequences for human health and the environment, including any transboundary impacts.

2. Without prejudice to other Community legislation, and in particular Council Directive 92/91/EEC and Council Directive 92/104/EEC, Member States shall ensure that major-accident hazards are identified and the necessary features are incorporated into the design, construction, operation, maintenance, **closure and after-closure** of the waste facility in order to prevent such accidents and to limit their adverse consequences for human health and the environment, including any transboundary impacts.

Justification

It is often in the after-closure period that the most long-lasting problems with waste facilities arise, and it is therefore important that this period is included in accident prevention planning.

Amendment 36
Article 6, paragraph 3

3. For the purposes of the requirements under paragraph 2, *each* operator shall draw up a major-accident prevention policy for waste and put into effect a safety management system implementing it, in accordance with the elements set out in point 1 of Annex I.

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.

The operator shall draw up an *external* emergency plan for the measures to be taken *off* site in the event of an accident.

The competent authority shall draw up an external emergency plan for the measures to be taken off site in the event of an accident. The operator shall provide the competent authority with the information necessary to enable the latter to draw up that plan.

3. For the purposes of the requirements under paragraph 2:

(a) Each operator shall draw up a major-accident prevention policy for waste and put into effect a safety management system implementing it, in accordance with the elements set out in point 1 of Annex I. 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. *The operator will provide the competent authority with a safety report demonstrating how such policy and systems are implemented.* The operator shall *also* draw up an *internal* emergency plan *of* the measures to be taken *on* site in the event of an accident.

(b) The competent authority shall draw up an external emergency plan for the measures to be taken off site in the event of an accident. The operator shall provide the competent authority with the information necessary to enable the latter to draw up that plan.

Justification

Breaking up paragraph 3 into different points helps clarify the obligations of the operator and those of the competent authority regarding major-accident prevention policy. In this respect, it is important that the former provides the latter with a safety report demonstrating how he/she will implement such policy.

Amendment 37

Article 7, paragraph 1, subparagraph 1

1. In accordance with Article 9 of Directive 75/442/EEC, no waste facility shall be allowed to operate without a permit granted by the competent authority. The permit shall

1. In accordance with Article 9 of Directive 75/442/EEC, no waste facility shall be allowed to operate without a permit granted by the competent authority. The permit shall

contain the elements specified in paragraph 2 and shall clearly indicate the category of the facility according to the criteria set out in Article 9.

contain the elements specified in paragraph 2 and shall clearly indicate the category of the facility according to the criteria set out in Article 9. ***Any structural alterations of a qualitative or quantitative nature undertaken after the operating permit has been issued shall be subject to authorisation.***

Justification

Structural alterations should not only be inspected from the safety point of view but must also be subject to mandatory authorisation from the outset as they may alter the entire structural balance of an installation and its exposure to weather conditions.

Amendment 38

Article 7, paragraph 2, point (b a) (new)

(ba) the type of mineral or minerals extracted and the nature of any overburden and/or gangue minerals that will be displaced in the course of the extractive operations;

Justification

The application also needs to contain information about the mineral extracted and the overburden, since the risks and the precautionary measures that have to be taken will to a large extent depend upon this information.

Amendment 39

Article 7, paragraph 2, point (e a) (new)

(ea) the information provided by the operator in accordance with Article 5 of Directive 85/337/EEC¹ if an environmental impact assessment is required under that Directive;

¹ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7. 1985, p. 40). Directive as amended by Directive 97/11/EC (OJ L 73, 14.3 1997, p.5).

Justification

If there is no Environmental Impact Assessment, there should be no permit.

Amendment 40
Article 7, paragraph 5

5. The information contained in a permit granted under this Article 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, shall not be made public.

5. The information contained in a permit granted under this Article shall be made available to the competent national and Community authorities *for the purpose of drawing up national and Community inventories of waste facilities respectively*. Sensitive information of a purely commercial nature, such as information concerning business relations and cost components, shall not be made public.

Justification

All the information gathered during the authorisation process should be entered on an “identity card” for each waste facility. This is important for efficient risk assessment, the implementation of the monitoring activities laid down in the Directive, general land-use planning under the terms of other EU environmental legislation (e.g. analysis of pressures under the Water Framework Directive, etc.). Only by knowing the profile of the individual facilities and their position, will we be able to improve their management and prevent adverse effects on the environment.

Amendment 41
Article 8, paragraph 4

4. The results of the consultations held pursuant to this Article shall be taken into due account in the taking of a decision.

4. The results of the consultations held pursuant to this Article shall be taken into due account in the taking of a decision, *which will include a justification as regards individual comments and opinions.*

Justification

Justification is necessary to ensure that the public concerned knows how its views/opinions have been taken into account and can understand the final decision.

Amendment 42
Article 10, introduction

Member States shall ensure that the operator, when considering placing waste back into the excavation voids, takes appropriate measures in order to:

Member States shall ensure that the operator, when considering placing waste **and other production residues** back into the excavation voids, takes appropriate measures in order to:

Justification

Necessary change due to the recent Court case Avesta-Polarit.

Amendment 43
Article 10, point (1)

(1) secure the stability of such waste in accordance with Article 11(2);

(1) secure the stability of such waste **and the void** in accordance with Article 11(2);

Justification

Necessary change due to the recent Court case Avesta-Polarit.

Amendment 44
Article 10, point (2)

(2) prevent the pollution of surface and groundwater in accordance with paragraphs **1 and 2** of Article 13;

(2) prevent the pollution of **soil and** surface and groundwater in accordance with paragraphs **1, 2 and 4a** of Article 13;

Justification

Follows from the amendment to Article 13. This amendment is in line with the Member States' obligation to protect water and soil.

Amendment 45
Article 10, point (3)

(3) monitor such waste in accordance with paragraphs 4 and 5 of Article 12 .

(3) monitor such waste **and the void** in accordance with paragraphs 4 and 5 of Article 12 .

Justification

Necessary change due to the recent Court case Avesta-Polarit.

Amendment 46
Article 11, paragraph 2, point (a)

(a) the waste facility is suitably located, taking into account in particular geological, hydrogeological and geotechnical factors, and is designed so as to meet the necessary conditions for preventing pollution of the soil, groundwater or surface water and ensuring efficient collection of contaminated water and leachate as and when required under the permit;

(a) the waste facility is suitably located, taking into account in particular ***Community or national obligations for protected areas***, geological, hydrogeological and geotechnical factors, and is designed so as to meet the necessary conditions for preventing pollution of the soil, groundwater or surface water and ensuring efficient collection of contaminated water and leachate as and when required under the permit;

Justification

Community obligations for the conservation of habitat and species affect land-use and should, therefore, be considered in the location of a waste facility. Note that the paragraph refers to “waste facilities” and not to the actual “extractive activities”, the location of which would be also affected by the presence of the mineral ores etc .

Amendment 47
Article 11, paragraph 2, point (c)

(c) there are suitable arrangements for 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;

(c) there are suitable arrangements for ***regular*** monitoring and inspection of the waste facility by competent persons ***from the responsible authority*** and for taking action in the event of results indicating instability or water or soil contamination;

Justification

Considering that many waste facilities (e.g. tailing ponds) are built over a long period, they require not only a good design, but also close, consistent and regular monitoring and supervision over a long-period. Inspections must be carried out regularly and by people whose interests do not concur, in principle, with the economic interests of the operator.

Amendment 48
Article 11, paragraph 2, point (c a) (new)

(ca) there are appropriate arrangements to independently validate the design, location and construction of the waste facility by an expert not employed by the operating company prior to commencement of the operation. In particular, that reports from these independent validations shall be submitted to the competent authority, which will then use them to approve the design, location and construction of the waste facility;

Justification

External independent scrutiny directly to the competent authority is key to ensuring the safety of the waste facility according to numerous international studies (UNEP, ICOLD) on the stability of extractive waste facilities.

Amendment 49
Article 11, paragraph 2, point (e)

Does not affect the English version

Amendment 50
Article 11, paragraph 2, subparagraph 2

Records of the monitoring and inspections referred to in point (c) shall be kept to ensure the appropriate hand-over of information.

Records of the monitoring and inspections referred to in point (c) shall be kept ***together with permit documentation on a data sheet*** to ensure the appropriate hand-over of information, ***particularly in the event of a change of operator.***

Justification

The structured collection of information makes it possible to keep a 'history' of each facility to ensure proper management.

Amendment 51
Article 11, paragraph 3, subparagraph 1

3. The operator shall, without unnecessary delay, notify any events likely to affect the stability of the 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 and follow any other instruction from the competent authority as to the corrective measures to be taken.

3. The operator shall, without unnecessary delay, notify ***the competent authority of*** any events likely to affect the stability of the 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 and follow any other instruction from the competent authority as to the corrective measures to be taken.

Amendment 52
Article 11, paragraph 3, subparagraph 3

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 behaviour.

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 behaviour. ***On the basis of this report the competent authority may decide that validation by an independent expert is necessary.***

Amendment 53
Article 11, paragraph 3 a (new)

3a. Where a waste facility falls under Category A, the operator shall submit as part of the application for permit to the competent authority a report on how it will meet the requirements in paragraph 2 (a) to (e) of this article. The competent authority may require further clarifications and the development of complementary studies.

Justification

Category A refers to waste facilities with the highest hazard potential. It is necessary to ensure that the competent authority receives a full report on how their stability will be guaranteed upon operation.

Amendment 54

Article 12, paragraph 5, introductory sentence

5. When considered necessary by the competent authority following closure of a waste facility, the operator shall, **in particular**, 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:

5. When considered necessary by the competent authority, ***in order to meet Community environmental standards, in particular those in directives 76/464/EEC, 80/68/EEC and /or Directive 2000/60/EC,*** 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:

Amendment 55

Article 12, paragraph 5, point (b a) (new)

(ba) passive or active water treatment facilities are set up when necessary to prevent the migration of contaminated leachate from the facility to contiguous groundwater or surface water bodies.

Justification

(a) and (b) as written are concerned only with physical stability and preventing erosion by excessive runoff. In most cases, care will also need to be taken with respect to quality of water, and passive or active treatment is often necessary to this end.

Amendment 56

Article 12, paragraph 6, subparagraph 3

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 authorities for the purposes of demonstrating compliance with permit conditions and increasing knowledge of waste behaviour.

In cases and 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 behaviour.

Amendment 57
Article 13, title

Prevention of water and soil pollution

Prevention of water status deterioration, air and soil pollution

Amendment 58
Article 13, paragraph 1, introductory sentence

1. The competent authority shall satisfy itself that the operator has taken the necessary measures in order to:

1. The competent authority shall satisfy itself that the operator has taken the necessary measures in order to **standards, in particular to prevent, in line with Directive 2000/60/EC, the deterioration of current water status, by inter alia:**

Amendment 59
Article 13, paragraph 1, point (a)

(a) evaluate the leachate generation potential of the waste disposed of during both the operational and after-closure phase of the waste facility and determine the water balance of the waste facility;

(a) evaluate the leachate generation potential, **including contaminant content of the leachate**, of the waste disposed of during both the operational and after-closure phase of the waste facility and determine the water balance of the waste facility;

Justification

Article 13, point 1, sets a list of what the competent authority needs to know with regard to what the operator is achieving. It is not enough that the leachate generation potential is evaluated. There are other aspects besides the leachate generation that influences how dangerous the waste may be. We have therefore added qualitative criteria.

Amendment 60

Article 13, paragraph 1, point (b)

(b) prevent leachate generation and surface water or groundwater from being contaminated by the waste;

(b) prevent leachate generation and **soil**, surface water or groundwater from being contaminated by the waste;

Justification

This amendment is in line with the Member States' obligation to protect water and soil.

Amendment 61

Article 13, paragraph 1, point (b a) (new)

(ba) collect contaminated water and leachate;

Justification

Point (ba) is identical to the corresponding passages in Council Directive 1999/31/EC on the landfill of waste.

Amendment 62

Article 13, paragraph 1, point (c)

(c) treat contaminated water and leachate collected from the waste facility to the appropriate standard required for their discharge.

(c) treat contaminated water, leachate and ***any other effluent*** collected from the waste facility to the appropriate standard required for their discharge, ***so that it complies with Community obligations, in particular those in Directives 76/464/EEC, 80/68/EEC and/or Directive 2000/60/EC.***

Amendment 63
Article 13, paragraph 1 a (new)

1a. The competent authority shall ensure that the operator has taken adequate measures to prevent air pollution, particularly with dust.

Amendment 64
Article 13, paragraph 2

2. Where, on the basis of an assessment of environmental risks, taking into account, in particular, Council Directive 76/464/EEC, Council Directive 80/68/EEC or Directive 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 points (b) and (c) of paragraph 1 may be reduced or waived accordingly.

2. Where, on the basis of an assessment of environmental risks, taking into account, in particular, Council Directive 76/464/EEC, Council Directive 80/68/EEC¹ or Directive 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, ***via the analysis required under Directive 2000/60/EC***, the ***relevant*** requirements set out in points (b) and (c) of paragraph 1 may be reduced or waived accordingly.

Justification

The key assessment required is whether the leachate, if discharged, would prevent the relevant body of water from achieving the requirements of Community water legislation. If the answer is “yes”, then it needs to be treated until it can be discharged without endangering the achievement of these water standards.

Amendment 65
Article 13, paragraph 4 a (new)

4a. In the case of excavation voids, including underground voids and back-

filled surface mine voids, which are allowed to flood after closure, the operator shall take the necessary measures to prevent water status deterioration and soil pollution, and shall provide the competent authority with information on the following elements at least 6 months before the cessation of dewatering of the voids;

(a) the layout of excavated voids, clearly marking those that are to be allowed to flood following cessation of dewatering, and geological details;

(b) a summary of the quantity and quality of water encountered in the excavated voids during at least the last two years of working;

(c) predictions of the impact, including location and quantity, of any future polluting discharges from the excavated voids to groundwater and surface water, and plans for the mitigation and remediation of such discharges;

(d) proposals for monitoring the process of flooding of the voids, to provide early warning of the need to instigate mitigation measures.

Justification

Volumetrically, the EU has far more problems with pollution from abandoned mine voids than from extractive waste, and this legacy will never be dealt with adequately as long as each Member State is entirely free to either tackle or ignore the problem. Therefore, voids should also be subject to adequate controls when they contain waste 'left behind' (rather than only back-filled) after extraction. This is because the fractured rock within and surrounding exhausted mine voids is not geochemically different from waste rock which has been transported before tipping. Provisions dealing with mine void pollution are not onerous (they already exist in UK law, for instance, and have been in force there for 5 years at no great expense or inconvenience to the industry, but at great benefit to the regulators).

Amendment 66

Article 14, paragraph 1, introductory part

1. The competent authority shall, prior to the commencement of any operations involving the deposit into or onto land of waste,

1. The competent authority shall, prior to the commencement of any operations involving the deposit into or onto land of waste,

require a guarantee, *in the form of* a financial deposit or equivalent, *including industry-sponsored mutual guarantee funds*, so that:

require a guarantee *e.g.* a financial deposit or equivalent *on the basis of procedures to be decided by the Member States and approved by the Commission* so that:

Or. en

Amendment 67
Article 14, paragraph 4

4. Where the competent authority approves closure in accordance with Article 12(3), it shall provide the operator with a written statement releasing him from the *guarantee obligation* referred to in paragraph 1.

4. Where the competent authority approves closure in accordance with Article 12(3), it shall provide the operator with a written statement releasing him from the *obligation to deposit a guarantee* referred to in paragraph 1(b) *and from all the obligations referred to in paragraph 1(a) other than those concerning the stage subsequent to the closure of the facility pursuant to Article 12(4).*

Justification

The operator must not be considered free of his obligations in respect of maintenance, surveillance and monitoring in the stage subsequent to the closure of a waste treatment plant over the entire time-period required by the competent authority, taking due account of the nature and duration of the risk (which could last for millennia), pursuant to Article 12(4).

Amendment 68
Article 14, paragraph 5 a (new)

5a. Any authorisation to construct a new waste facility on active sites shall be conditional upon the prior establishment by the operator of a guarantee as described in paragraph 1 of this Article.

Justification

“Existing” operations that need new waste facilities should not be exempted from having a

supplementary guarantee to cover for them. Thus, any extra facility would need an extra guarantee.

Amendment 69
Article 15, paragraph 1, subparagraph 1

1. Where a Member State is aware that the operation of a Category A waste facility is likely to have significant adverse effects on the environment of another Member State, or where a Member State likely to be thus affected *so requests*, the Member State in whose territory the application for a permit pursuant to Article 7 was submitted shall forward the information provided pursuant to that Article to the other Member State at the same time as it makes it available to its own nationals.

1. Where a Member State is aware that the operation of a Category A waste facility is likely to have significant adverse effects on the environment of another Member State, or where a Member State is likely to be thus affected, the Member State in whose territory the application for a permit pursuant to Article 7 was submitted shall forward the information provided pursuant to that Article to the other Member State at the same time as it makes it available to its own nationals.

Justification

The obligation to inform a Member State affected should not apply only where a request is made.

Amendment 70
Article 17, paragraph 2

2. Every year Member States shall transmit to the Commission information on events notified by the operators in accordance with Articles 11(3) and 12(6). The Commission shall make this information available to the Member States upon request.

2. Every year Member States shall transmit to the Commission information on events notified by the operators in accordance with Articles 11(3) and 12(6). The Commission shall make this information available to the Member States upon request. ***Member States shall in their turn make the information available to members of the public requesting it.***

Amendment 71

Article 18a

Inventory of closed sites

Member States shall ensure that:

1. within three years from the entry into force of this Directive, an inventory of closed sites (including disused facilities) located on their territory is carried out. Such an inventory, to be made available to the public, shall at least contain information on the following elements:

(a) the geo-referenced location of the site;

(b) the type of mineral or minerals formerly extracted;

(c) the types of waste present on the site;

(d) the physical and chemical stability of any sites;

(e) whether any acid or alkaline drainage, or metal concentration, is being generated;

(f) the environmental conditions of the site, with particular regard to quality of soil, surface water and its receiving catchment area including river sub-basins, and groundwater;

2. the sites listed in the inventory referred to in the previous paragraph are classified according to the degree of their impact on human health and the environment. The upper tier of the inventory will thus include closed sites causing serious negative environmental impacts or which have the potential of becoming in the near future a serious threat to human health, the environment and/or property. The lower tier of the inventory will include those sites with no significant negative environmental impacts and no potential of becoming in future a threat to human health, the environment and/or to property;

3. within four years from the entry into force of this Directive, rehabilitation is

started on sites classified in the upper tier in order to satisfy the requirements of Article 4 of Directive 75/442/EEC. Where the competent authority cannot ensure that the necessary rehabilitation measures are started at the same time, the competent authority shall be entitled to decide which sites must be rehabilitated first;

4. the financial costs for complying with the requirement of point (3) are to be borne by the waste producer, insofar as the latter is known and available. Where the waste producer is unknown or unavailable, national or Community rules on liability apply.

Justification

The Directive must require that an inventory of closed sites (e.g. tailings ponds) is drawn up by the Member States. Many of the chronic water pollution problems arise from these, in particular in Central and Eastern Europe. They are an unmanaged burden of the past, veritable “time bombs”, accidents waiting to happen on top of the everyday pollution. Having this provision in the proposal is the only way to guarantee that these “time bombs” are identified and dealt with to minimise the risk. In addition, the objective of “good ecological and chemical status” in all waters by 2015 in the Water Framework Directive will not be achieved unless these closed sites are dealt with.

Amendment 72

Article 19, paragraph 1

1. The Commission, assisted by the Committee referred to in Article 21, shall ensure that there is an appropriate exchange of technical and scientific information between Member States, with a view to developing methodologies relating to:

(a) the drawing-up of inventories of closed waste facilities. Such methodologies shall allow for the identification of closed waste facilities and their classification, according to the degree of their impact on human health and the environment, in two tiers: an

1. The Commission, assisted by the Committee referred to in Article 21, shall ensure that there is an appropriate exchange of technical and scientific information between Member States, with a view to developing methodologies relating to ***the fulfilment of Article 18a***. Such methodologies shall, in particular, allow for the establishment of the most appropriate risk assessment procedures and remedial actions having regard to the variation of geological and hydrogeological characteristics across Europe.

upper tier including closed waste facilities causing serious negative environmental impacts or having the potential to become a serious threat in the near future to human health, the environment and/or property; and a lower tier including those waste facilities with no significant negative environmental impacts and no potential to become a serious threat in the future to human health, the environment and/or to property;

(b) the rehabilitation of those closed waste facilities classified in the upper tier of the inventory in order to satisfy the requirements of Article 4 of Directive 75/442/EEC. Such methodologies shall allow for the establishment of the most appropriate risk assessment procedures and remedial actions having regard to the variation of geological and hydrogeological characteristics across Europe.

Amendment 73
Article 19, paragraph 3

3. The Commission shall organise an exchange of information between Member States and the organisations concerned on best available techniques, associated monitoring and developments in them. The Commission shall publish the results of the exchange of information.

3. The Commission shall organise an exchange of information, *with the participation of the European IPPC Bureau and in accordance with the procedure for drawing up reference documents (BREFs) pursuant to Directive 96/61/EC*, between Member States and the organisations concerned on best available techniques, associated monitoring and developments in them. The Commission shall publish the results of the exchange of information.

Justification

It should be made clear that the exchange of information is intended to draw up documents concerning the best available techniques, in line with the IPPC Directive, 96/61/EC, and with the participation of the European Bureau.

Amendment 74
Article 22, paragraph 1 a (new)

Without prejudice to paragraph 1, Member States shall ensure that, from the entry into force of this Directive and notwithstanding any closure of a waste facility referred to in paragraph 1, the operator:

(a) ensures that the facility in question is operated and, in the event of its closure, managed after such a closure, in a way that does not prejudice the achievement of the requirements of the Directive, and those of any other relevant Community legislation including Directive 2000/60/EC;

(b) ensures that the facility in question does not cause any deterioration of surface or groundwater status according to Directive 2000/60/EC or soil pollution, due to leachate, contaminated water, any other effluent or waste, whether in solid, slurry or liquid form;

(c) takes all steps required to remediate the consequences of any breach under (c) in order to achieve compliance with relevant Community legislation including Directive 2000/60/EC.

Justification

With regard to existing Community environmental policy and legislation, no further deterioration should occur from the moment of the entry into force of this Directive and existing impacts should be addressed. All the relevant water Directives (76/464/EEC, 80/68/EEC and/or 2000/60/EC) should have been brought into force by the entry into force of this Directive. It is, therefore, legitimate and necessary to ensure that no “existing” facility can continue causing negative environmental impacts. This is the only way to improve the situation and fulfil Articles 1 and 4 of the proposed Directive in the long run.

Amendment 75
Annex II, point (1)

(1) description of expected physical chemical and radiological characteristics of the waste to be disposed of;

(1) description of expected physical chemical and radiological characteristics of the waste to be disposed of, **with particular reference to its stability under surface atmospheric/meteorological conditions**;

Justification

The whole problem with mine/quarry waste from a geochemical perspective is that the materials disturbed by mining/quarrying tend to be stable in the relatively anoxic subsurface conditions prevailing prior to commencement of mining/quarrying, whereas these materials are often not stable once exposed to the atmosphere. Hence an in-situ test prior to mining/quarrying might give a misleading impression that something is 'inert' simply because it is not weathering in the anoxic subsurface. It is therefore important that the degree of "inertness" of potential waste materials is assessed with respect to atmospheric conditions rather than in-situ pre-mining/ quarrying conditions

Amendment 76
Annex III, indent 1

– in the event of a breach or failure the loss of human life cannot reasonably be excluded on the basis of a risk assessment taking into account factors such as the size, the location and the environmental impact of the waste facility, or

– in the event of a breach or failure the loss of human life **and/or major environmental damage** cannot reasonably be excluded on the basis of a risk assessment taking into account factors such as the size, the location and the environmental impact of the waste facility, or

Justification

To base the definition of a “significant accident hazard” on the loss of human life only is not totally relevant for an environmental protection Directive (which this one is according to the legal basis 175(1) of the Treaty). An “environmental” reference is needed here in order to be able to better define what a “significant accident hazard” is (which is what this Annex is about according to Article 9) and to link this to Article 1, which relates to both humans and the environment.

Amendment 77
Annex III, indent 2

- it contains waste classified as hazardous under Directive 91/689/EEC **above a certain threshold**, or

- it contains waste classified as hazardous under Directive 91/689/EEC, or

Justification

If the thresholds are not specified, there is no point in referring to them. Directive 91/689/EEC classifies waste as dangerous on the basis of its inherent qualities and irrespective of any threshold.

Amendment 78
Annex III, indent 3

– it contains substances or preparations classified as dangerous under Directives 67/548/EEC or 1999/45/EC ***above a certain threshold.***

– it contains substances or preparations classified as dangerous under Directives 67/548/EEC or 1999/45/EC .

Justification

Hazardous substances are used in huge quantities in the processes for treating minerals, and a large proportion end up in waste facilities. Furthermore, the classification criteria for waste facilities of Article 9 are based on the inherent qualities of the substances and are therefore not dependent on quantity. The references to thresholds should therefore be removed to ensure that the annex is consistent with the main text.

EXPLANATORY STATEMENT

The proposed directive on the management of waste from the extractive industries is needed for two reasons. Waste from the extractive industries represents a very large waste stream, one of the biggest in the EU. The environmental problems created if this waste is mismanaged are considerable. Major accidents in recent years involving collapsing mine dams in Spain and Romania, for example, show that mismanagement of waste can have a disastrous environmental impact. If the waste is not managed or stored in a correct manner, the result is significant discharges into the environment of heavy metals, for instance. Throughout the EU, there is a large, unknown number of landfill sites full of mining waste discharging significant quantities of pollutants into water and soil. Unless the landscape is restored and the waste properly managed once the activity has ended, the landscape is permanently scarred and the environment damaged. There are, therefore, significant environmental reasons for a separate directive on waste from the extractive industries.

At the present time, it is somewhat unclear, in legal terms, which EU legislation covers the extractive industries. Existing directives, including the framework directive on waste and the landfill directive, broadly apply but parts of that legislation are ill-suited to conditions in the mining industry, for example, and some provisions are in practice designed for other types of waste. There is, therefore, a need for a separate directive tailored to the particular conditions in the industry. The legal situation is further complicated by judgments handed down by the Court of Justice, notably in the Avesta-Polarit case, C-114/01. Greater legal clarity can be achieved through the new directive and it is highly important, therefore, that it is as comprehensive as possible in order to minimise the scope for further legal ambiguity. For that reason also general exemptions, such as for waste from prospecting and waste which is removed, should be avoided.

Much of the waste produced does not in itself constitute an environmental problem. A considerable amount is a resource, in road construction, for example, or in restoring mining sites. The directive, therefore, makes a distinction between inert and non-inert waste. Non-hazardous inert waste is covered by only some of the requirements laid down in the directive for non-inert waste. It is important to realise, however, that waste judged to be inert can cause considerable environmental problems and damage if managed in the wrong way. For example, interference with the natural environment, potential landslides and discharge of substances through leaching. Inert waste must also be covered by several of the provisions of the directive therefore.

Although the Commission's proposal is welcome, it can and should be strengthened in a number of areas. The scope of the directive and the treatment of inert waste are two examples. Another weak point of the directive is that it does not contain, as the Commission's proposal stands, sufficiently far-reaching obligations to map out and deal with the environmental impact of historical waste. At the same time, leakage from historical waste is often, at the present time, a bigger environmental problem than discharges from operational facilities. This applies particularly to leakage of heavy metals. The directive clearly states that this historical waste must be inventoried and dealt with.

Introducing sound environmental legislation will promote more sustainable production, less

waste production, long-term investment and a serious and sophisticated approach to the environment by companies. A surge of technical advances is also taking place in this sector and it is therefore not desirable to be shackled by the same directive to particular technical methods or solutions. For those researchers and companies in the EU working on mining environment issues, these new rules represent an opportunity to sell, develop and disseminate their know-how. The extractive industries operate and compete on a global scale. The most serious environmental problems relating to mining are often to be found in the developing countries. By taking the lead and developing environmental thinking in the industry, the EU can also give a boost to environmentally responsible mining elsewhere. The EU should, therefore, not contribute funding, either by way of its development policy or other channels for joint financing such as the EIB, to mining projects in other countries which do not fulfil the requirements laid down in this directive.

There are several areas in the proposal for a directive where the measures proposed could be strengthened, e.g. monitoring of dam installations. Experience gained from the accidents of recent years shows that monitoring and adapting to changes in production can be just as important as the basic construction of the dams. Another example of a desirable change is that plans to close and refit facilities should be taken into account in a clearer manner at the very outset when production is planned and started up. Another area is quality standards for leachate.

An important part of the directive is the requirement of a financial guarantee from producers. The costs in respect of the waste and restoration of the production site after operation are parts of the costs of production for which the producers are fully responsible. A system of financial guarantees is proposed to enforce this. It is important that this system is secure so that the authorities concerned have direct access to the funds and so that those funds cannot be jeopardised in the event of bankruptcies, for example. The amount of the guarantee must be regularly adjusted to meet the costs of restoration at the relevant phase of production concerned.

2 December 2003

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on the Environment, Public Health and Consumer Policy

on the proposal for a European Parliament and Council directive on the management of waste from the extractive industries
(COM(2003) 319 – C5-0256/2003 – 2003/0107(COD))

Draftsman: Marjo Matikainen-Kallström

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Marjo Matikainen-Kallström draftsman at its meeting of 10 July 2003.

It considered the draft opinion at its meetings of 9 September 2003, 4 November 2003 and 2 December 2003.

At the last meeting it adopted the following amendments by 31 votes to 1, with 1 abstention.

The following were present for the vote Luis Berenguer Fuster (chairman), Jaime Valdivielso de Cué (vice-chairman), Marjo Matikainen-Kallström (draftsman), Gordon J. Adam (for Massimo Carraro), Konstantinos Alyssandrakis, Sir Robert Atkins, Guido Bodrato, Giles Bryan Chichester, Nicholas Clegg, Willy C.E.H. De Clercq, Concepció Ferrer, Norbert Glante, Alfred Gomolka (for Peter Michael Mombaur), Michel Hansenne, Roger Helmer (for John Purvis), Hans Karlsson, Rolf Linkohr, Erika Mann, Eryl Margaret McNally, Bill Newton Dunn (for Colette Flesch), Seán Ó Neachtain, Paolo Pastorelli, Samuli Pohjamo (for Elly Plooij-van Gorsel), Imelda Mary Read, Mechtild Rothe, Christian Foldberg Roving, Paul Rübzig, Esko Olavi Seppänen, Gary Titley, Claude Turmes, Alejo Vidal-Quadras Roca, Myrsini Zorba, Olga Zrihen Zaari.

SHORT JUSTIFICATION

THE SCOPE OF THE PROPOSED DIRECTIVE

This Proposal has its origins in a Communication issued by the Commission in October 2000 entitled "Safe operation of mining activities: a follow-up to recent mining accidents" and is related to recent mining accidents in Spain and Romania.

It covers waste coming from all sectors of the extractive industry. The Proposal contains the following elements: a range of conditions to be attached to operating permits, a range of general obligations covering waste management, the obligation to characterise waste before disposing of it or treating it, measures to ensure the safety of waste management facilities, a requirement to draw up closure plans for waste management facilities and an obligation to provide for an appropriate level of financial security.

In principle, the Extractive Industries acknowledge and support the new proposal as it would provide an appropriate tool to regulate and accommodate the sector's specific needs and techniques of the environmentally sound and practically feasible recovery and disposal of waste, which would otherwise be covered by the Waste Framework Directive or by the Landfill Directive whose technical provisions are economically, technically and environmentally detrimental if applied to the extractive industry sector.

THE SOCIO-ECONOMIC IMPACT OF THE EXTRACTIVE INDUSTRIES - THE CASE OF NORTHERN EUROPE

The Fennoscandian Shield in Northern Europe (Finland, Norway, Russia and Sweden) contains one of the largest and most promising mineral potential region in the World. The Fennoscandian Shield's mineral resources are still under-explored. They are equal to the rich deposits of Canada, Australia and South Africa. Besides rich ore, the area's layered intrusions have a potential for world-class platinum, basic metals, gold, diamonds along with other industrial minerals and high-class building stones. Bearing in mind that Europe is the largest consumer of minerals in the world, depending on imported minerals and metals for 75% of its consumption, the extractive industry in Europe will provide in the future a remarkable added value for the European Union.

The socio-economic impact of the new-coming extractive industry will be of crucial importance, especially for sparsely populated and peripheral regions. Example: Junior mining companies operating small scale gold mines in the Northern Finland will employ directly 100-200 employees and together with indirect employment the number will rise up to 150-300 employees per mine. Normally, the mine is the sole reason why a certain community is established.

It is crucial that an explicit Minerals Policy for the European Union is drawn up taking into account environmental *and* economic aspects. In some countries of the EU the extractive industry is technologically on high level even in global comparison. A new Directive for the Management of Waste must not discourage the opening of new mines. Otherwise the whole mining industry will be out-flagged from the EU with negative consequences for society, contrary to the principles of sustainable development.

The potential in the Swedish part of the Fennoscandian Shield has been studied in detail by Gellivare Hard Rock Research GKRR financed by GEORANGE. The study estimates the potential to be between 4,500 million € to 5,500 million €. This is just the Swedish part. The Finnish figures should be added. This 4.5-5.5 billion Euro is something we can not ignore.

As far as new mining projects in Lycksele and Storuman in Västerbotten, Northern Sweden are concerned, the study shows that for every hundred jobs created in the mines another 68 jobs are created in the rest of the economy. In these cases 2,140 jobs will be created in the mining industry and 1,460 in other industrial sectors.

MAIN ELEMENTS OF THE AMENDMENTS PROPOSED BY THE DRAFTSPERSON

As mentioned above, the extractive industries do, in principle, welcome the proposal as it will contribute to the improvement of environmental practices throughout the forthcoming enlarged Europe and provide operators with legal certainty in this sector.

However, there are three main points on which a modification of the proposal is needed:

* The **definition of "waste" and "non waste"** is a crucial issue for the purpose of this Directive. A recent ruling of the European Court of Justice has clarified this issue and needs to be taken into account (see amendment on recital 4).

* The financial guarantee in the form of a **financial deposit**, which will be required prior to the commencement of any operation, will be a potential threat for the economic viability of this industry- also in view of enlargement.

It is therefore important to underline that this financial guarantee applies only to the deposit of mining waste and not to the mining site as such. Moreover, there are no objective reasons why the relevant provisions on financial guarantees should be more restrictive than those laid down in the Landfill Directive. Therefore, the amendment proposed on Article 14 aims at adjusting the proposal to the wording of the Landfill Directive.

* The **transition period** for existing mining sites (article 14) and the **period for transposing the provisions** by Member States (article 18): The amendments aim at giving the concerned industry the absolutely necessary time for adjusting to the new Directive without threatening the economic viability of this sector. Again on this point, the proposal is more stringent than the Landfill Directive. Your draftsman proposes a possible compromise between the much longer deadlines set in the Landfill Directive and the deadlines in the proposal.

AMENDMENTS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on the Environment, Public Health and Consumer Policy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Recital 4

(4) In accordance with the objectives of Community policy on the environment, it is necessary to lay down minimum requirements in order to prevent or reduce as far as possible any negative effects on the environment or on human health which are brought about as a result of the management of waste from the extractive industries, ***such as tailings (i.e. the solids that remain after the treatment of minerals by a number of techniques), waste rock and overburden (i.e. the material that extractive operations move during the process of accessing an ore or mineral body), and topsoil (i.e. the upper layer of the ground).***

(4) In accordance with the objectives of Community policy on the environment, it is necessary to lay down minimum requirements in order to prevent or reduce as far as possible any negative effects on the environment or on human health which are brought about as a result of the management of waste from the extractive industries, ***i.e. waste generated in the course of prospection, extraction, treatment and storage of mineral resources.***

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

Self-explanatory.

Amendment 2

Recital 17 a (new)

(17a) The wording and technical terms translated into other member languages must be checked and verified in co-operation with professionals of extractive industries in order to avoid misinterpretations and vagueness in the applications of the proposed directive on national level.

Justification

Self-explanatory.

¹ OJ C ... / Not yet published in OJ..

Amendment 3
Recital 22

(22) The operator of a waste facility servicing the extractive industries should be required to lodge a financial ***deposit or equivalent by way of an adequate*** guarantee ensuring that all the obligations flowing from the permit will be fulfilled, including those relating to the closure and after-closure of the site. The financial guarantee should be sufficient to cover the cost of rehabilitation of the site by a suitable qualified and independent third party. It is also necessary for such a guarantee to be provided prior to the commencement of deposition operations in the waste facility and to be periodically adjusted. In addition, in accordance with the polluter pays principle and with Directive .../.../EC of the European Parliament and the Council on environmental liability with regard to the prevention and remedying of environmental damage, it is important to clarify that operators engaged in the extractive industries are subject to appropriate liability in respect of environmental damage caused by their operations or the imminent threat of such damage.

(22) The operator of a waste facility servicing the extractive industries should be required to lodge a financial guarantee ***or equivalent*** ensuring that all the obligations flowing from the permit will be fulfilled, including those relating to the closure and after-closure of the site. The guarantee should be sufficient to cover the cost of rehabilitation of the site by a suitable qualified and independent third party. It is also necessary for such a guarantee to be provided prior to the commencement of deposition operations in the waste facility and to be periodically adjusted. In addition, in accordance with the polluter pays principle and with Directive .../.../EC of the European Parliament and the Council on environmental liability with regard to the prevention and remedying of environmental damage, it is important to clarify that operators engaged in the extractive industries are subject to appropriate liability in respect of environmental damage caused by their operations or the imminent threat of such damage.

Justification

See amendment on article 14, paragraph 1.

Amendment 4
Article 2, paragraphs 2 and 3

2. The following shall be excluded from the scope of this Directive:

(a) waste which is generated by the extraction and treatment of mineral resources, but which does not directly result from those operations, such as food waste, waste oil, end-of-life vehicles, spent

2. The following shall be excluded from the scope of this Directive:

(a) waste which is generated by the extraction and treatment of mineral resources, but which does not directly result from those operations, such as food waste, waste oil, end-of-life vehicles, spent

batteries and accumulators;

(b) waste resulting from the offshore extraction and treatment of mineral resources;

(c) the deposit of unpolluted soil resulting from the extraction, treatment and storage of mineral resources and the working of quarries;

(d) waste generated at an extraction or treatment site and transported ***to another location*** for the purposes of its deposit into or on to land;

(e) waste from the prospecting of mineral resources.

3. The ***deposit of non-hazardous inert waste*** shall only be subject to the provisions of Article 5 paragraphs 1 and 2, Article 11(2) points (a) to (e) ***and*** Article 13(1) points (a) to (c) of this Directive.

batteries and accumulators;

(b) waste resulting from the offshore extraction and treatment of mineral resources;

(d) waste generated at an extraction or treatment site and transported, for the purposes of its deposit into or on to land, ***to another location that is not under the control of an operator of the extractive industry as defined in Article 3(21);***

3. The ***following substances, as far as they are waste according to Article 1(a) of Directive 74/442/EEC***, shall only be subject to the provisions of Article 5 paragraphs 1 and 2, Article 11(2) points (a) to (e), Article 13(1) points (a) to (c) ***and Article 13(2)*** of this Directive:

(a) the non-hazardous waste and the unpolluted soil resulting from the extraction, treatment and storage of mineral resources;

(b) waste from the prospecting of mineral resources.

Justification

Paragraph 2: The exclusion of unpolluted soil is questionable: either unpolluted soil is considered as waste and therefore its exclusion from the present Directive would put it under the scope of the Landfill Directive, or it is not waste and so there is no need to exclude it as it does not fall under the scope of the presently proposed Directive (see amendment to Recital 4).

The same holds true for the waste from the prospecting of mineral resources: its exclusion from this Directive would put it under the scope of the Landfill Directive. Industry would prefer to have such waste covered by this proposal as it is especially designed to take account of the specificity of the waste from the extractive industry.

Paragraph 3: Acknowledging the low environmental impact of unpolluted soil and waste from the prospecting of mineral resources, it does not seem to be appropriate for these materials to fulfil all the requirements of the Directive. Therefore, we suggest moving these to Article 2,

point 3.

On point e: Waste transported to another mine operation for disposal should also come under the scope of this directive. Otherwise the customary practice of disposing centrally of waste from various mining operations would unfairly come under the general waste regulations, while this directive would be applicable to waste disposed in the same mining operation. The proposed amendment clarifies the directive's purpose of ensuring that mining waste disposed outside the extractive industry comes under the general law for disposal of waste.

Amendment 5
Article 3, paragraph 3

(3) 'inert waste' means waste that does ~~not~~ undergo any significant physical, chemical or biological transformations. Inert waste 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. The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular not endanger the quality of surface water and/or groundwater;

Justification

This definition, which is directly taken from the Landfill Directive, is no more needed if the suggested changes for Article 2 are accepted.

Amendment 6
Article 3, paragraph 13

(13) 'waste facility' means any area designated for the accumulation or deposit of waste, whether in a solid or liquid state or in solution or suspension, for a period of more than **one year**, and being 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;

(13) 'waste facility' means any area designated for the accumulation or deposit of waste, whether in a solid or liquid state or in solution or suspension, for a period of more than **three years**, and being 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;

Justification

The proposed period for storing waste of one year is not appropriate. In the interest of environmentally friendly restoration of land used in mining, it may make sense to store waste for a longer period in the case of major mining projects, so as to use it for recultivation afterwards.

Amendment 7
Article 5, paragraph 1

1. Member States shall ensure that the operator draws up a waste management plan for the treatment, recovery and disposal of extractive waste.

1. Member States shall ensure that the operator draws up a waste management plan for the treatment, recovery and disposal of extractive waste ***taking into account its ecological, economic and social impact.***

Justification

Self-explanatory.

Amendment 8
Article 6

1. The provisions of this Article shall apply to Category A waste facilities, as defined in Article 9 save for those waste facilities falling within the scope of Directive 96/82/EC.

The provisions of Directive 96/82/EC shall apply to waste disposal facilities covered by this Directive, in so far as the facilities fall within that directive's scope.

2. Without prejudice to other Community legislation, and in particular Council Directive 92/91/EEC¹ and Council Directive 92/104/EEC², Member States shall ensure that major-accident hazards are identified and the necessary features are incorporated into the design, construction, operation and maintenance of the waste facility in order to prevent such accidents and to limit their adverse consequences for human health and the environment, including any transboundary impacts.

3. For the purposes of the requirements

¹ OJ L 348, 28.11.1992, p. 9.

² OJ L 404, 31.12.1992, p. 10.

under paragraph 2, each operator shall draw up a major-accident prevention policy for waste and put into effect a safety management system implementing it, in accordance with the elements set out in point 1 of Annex I.

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.

The operator shall draw up an internal emergency plan of the measures to be taken on site in the event of an accident.

The competent authority shall draw up an external emergency plan for the measures to be taken off site in the event of an accident. 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 paragraph 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 or to the environment and property;

(b) to implement the measures necessary to protect human health, the environment and property from the effects of major accidents and other incidents;

(c) to communicate the necessary information to the public and to the services or authorities concerned in the area;

(d) to provide for the rehabilitation, restoration and clean-up of the environment following a major accident.

Member States 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. Member States 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 paragraph 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.

Member States shall ensure that the public concerned is entitled to express comments within reasonable timeframes and that, in the decision on the external emergency plan, due account is taken of these comments.

6. Member States shall ensure that information on safety measures and on the action required in the event of an accident, containing at least the elements listed in point 2 of Annex I, is provided, free of charge and as a matter of course, to the public concerned.

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

Justification

To prevent duplication and legal uncertainty Article 6 should be re-drafted. The waste disposal facilities covered by this Directive are subject to the provisions of Directive 96/82/EC, in so far as they fall within their scope.

Amendment 9

Article 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

The provisions of Directive 2003/3/EC shall apply, mutatis mutandis, in the case of participation by the public in a procedure for granting a permit under Article 7.

as the information can reasonably be provided:

(a) the application for a permit or, as the case may be, the proposal for the updating of a permit in accordance with Article 7;

(b) where applicable, the fact that a decision is subject to consultation between the Member States in accordance with Article 15;

(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 or, where there is one, the draft decision;

(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 and consultation made pursuant to paragraph 5.

2. Member States shall ensure that, within appropriate time frames, the following is made available to the public concerned:

(a) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public were informed in accordance with paragraph 1;

(b) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information¹, any information in addition to that referred to in paragraph 1 of this Article which is relevant for the decision in accordance with Article 7 of this Directive and which only

¹ OJ L 41, 14.2.2003, p. 26.

becomes available after the time the public have been informed in accordance with paragraph 1 of this Article.

3. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.

4. The results of the consultations held pursuant to this Article shall be taken into due account in the taking of a decision.

5. The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public concerned to prepare and participate effectively.

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.

Justification

To prevent duplication and legal uncertainty there should be a reference to the provisions of Directive 2003/4/EC, which also covers waste disposal facilities.

Amendment 10 Article 10, paragraph 3

(3) monitor such waste in accordance with paragraphs 4 and 5 of Article 12 .

(3) monitor such waste in accordance with paragraphs 4 and 5 of Article 12 .

When material is placed back into the voids for technical and/or safety purposes, this does not constitute waste or waste management activity.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

Self-explanatory.

Amendment 11

Article 14, paragraph 1, subparagraph 1

1. The competent authority shall, prior to the commencement of any operations involving the deposit into or onto land of waste, require a guarantee, ***in the form of a financial deposit*** or equivalent, including industry-sponsored mutual guarantee funds, so that:

1. The competent authority shall, prior to the commencement of any operations involving the deposit into or onto land of waste, require a ***financial*** guarantee or equivalent, including industry-sponsored mutual guarantee funds ***on the basis of modalities to be decided by Member States*** so that:

Justification

This amendment aims at adjusting the Commission proposal to the provisions of the Landfill Directive (Art. 8 (a) (iv) of Directive 1999/31/EC).

There is no objective reason why the proposed Directive should be more restrictive than the Landfill Directive.

Amendment 12

Article 14, paragraph 5

5. The provisions of Directive .../.../EC on environmental liability with regard to the prevention and remedying of environmental damage shall apply mutatis mutandis in respect of environmental damage caused by the operation of any extractive waste facility, as well as in respect of any imminent threat of such damage occurring by reason of the operation of any such a facility.

5. In the case of environmental damage caused by the operation of waste disposal facilities falling within the scope of this Directive, the provisions of Directive .../.../EC on environmental liability with regard to the prevention and remedying of environmental damage shall apply.

Justification

Liability for environmental damage caused by waste disposal facilities falling within the scope of the directive should be governed by the provisions of the forthcoming environmental liability directive.

Amendment 13
Article 21, paragraph 2 a (new)

2a. The Committee shall inform the Technical Working Group involved in the drafting of the Best Available Techniques for the Management of tailings and waste-rocks in extractive industries making the following information available:

a) the content of a draft decision;

b) reasons and considerations on which such a decision is based.

The Technical Working Group shall have the right to provide scientific inputs before a final decision is taken.

Justification

Due to the overlap between the future tasks of the Technical Adaptation Committee, hereinafter "the Committee" and the work carried out by the Technical Working Group, it is necessary to ensure that an appropriate exchange of information is established on any issues related to technical aspects. This would enable efficient synergies between the experts of the Technical Working Group and the Committee.

Amendment 14
Article 22

Member States shall ensure that any waste facility which has been granted a permit or which is already in operation before or on [date of transposition] complies with the provisions of this Directive within **four** years after that date, save for those set out in Article 14(1) for which compliance must be ensured within six years after that date.

Member States shall ensure that any waste facility which has been granted a permit or which is already in operation before or on [date of transposition] complies with the provisions of this Directive within **six** years after that date, save for those set out in Article 14(1) for which compliance must be ensured within six years after that date.

Justification

The Landfill Directive provides for a transitional period of 8 years for existing landfill sites. There is no objective reason why the proposed Mining Waste Directive should set a period that is 50% shorter than the one laid down in the Landfill Directive.

A transitional period of at least 6 years seems to be more appropriate in order to allow for a reasonable and economically viable adjustment to the new provisions of this proposal.

Amendment 15
Article 23, paragraph 1, subparagraph 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than on [date of entry into force + **18** months]. They shall forthwith inform the Commission thereof.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than on [date of entry into force + **24** months]. They shall forthwith inform the Commission thereof.

Justification

It seems to be more appropriate to give the mining industries 2 years to adapt to the new provisions provided in this proposal. The period for the transposition by the Member States laid down in the Landfill Directive is also 2 years after its entry into force.