
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 60

**The Management of Extractive
Waste (Scotland) Regulations 2010**

PART 2

APPLICATION OF THESE REGULATIONS

General application

4. Subject to regulation 5 (transitional provisions), no operator shall commence or continue operation of an extractive waste area or waste facility unless that area or facility has been granted planning permission in accordance with the provisions of these Regulations.

Transitional provisions

5.—(1) Nothing in these Regulations shall apply to a waste facility which closed before 1st April 2010 and which remains closed.

(2) Regulation 4 shall not apply to any of the following areas or facilities if, on 1st April 2010, that area or facility is in operation and it is not a Category A waste facility, but an operator of the area or facility may not commence or continue operations after 30th April 2012 unless that operator has obtained the approval of the planning authority for a waste management plan in respect of it (except where paragraph (6) applies and the requirement for such a plan has been waived)—

- (a) an extractive waste area;
- (b) a waste facility, where the extractive waste is inert waste resulting from the prospecting, extraction, treatment or storage of mineral resources;
- (c) a waste facility, where the extractive waste is unpolluted soil resulting from the prospecting, extraction, treatment or storage of mineral resources;
- (d) a waste facility, where the extractive waste is non-hazardous waste generated from the prospecting of mineral resources, except oil and evaporites other than gypsum and anhydrite; or
- (e) a waste facility, where the extractive waste is waste resulting from the extraction, treatment or storage of peat.

(3) An operator who requires approval of a waste management plan in terms of paragraph (2) must submit a plan that addresses the requirements of regulation 11 (waste management plan) to the planning authority, which authority shall—

- (a) consult with SEPA;
- (b) evaluate the operator's ability to meet the objectives of the plan, taking account of the extent to which compliance will be secured through other national or Community legislation;
- (c) when it is content that the plan complies with the requirements of regulation 11, impose a planning condition under this regulation that extractive waste be managed in accordance

with that plan and the planning condition required by regulation 16(2) (review of waste management plan);

- (d) if an existing planning condition conflicts with the planning conditions imposed under sub-paragraph (c), vary the existing condition to ensure that extractive waste is managed in accordance with the plan; and
- (e) notify the operator that the plan is approved and the applicable condition or conditions.

(4) The operator of a waste facility to which paragraph (2) does not apply and which is in operation on 1st April 2010 must by 1st May 2012 obtain planning permission in accordance with the provisions of these Regulations for the continued operation of that facility.

(5) In relation to an operator to whom paragraph (4) applies—

- (a) in the application of regulations 11(3) and 18(1), for “prior to start of operation of that facility” there shall be substituted “prior to a decision by the planning authority to approve the waste management plan”;
- (b) regulation 14 (mandatory conditions: general) shall not apply, and the operator must provide the documentation referred to in that regulation along with the application for planning permission;
- (c) the condition set out in regulation 15 (provision of a financial guarantee) shall not require provision of a financial guarantee until 1st May 2014, and
- (d) in the application of regulation 23(5)(b) (maximum concentration of weak acid dissociable cyanide in discharge to a pond) for “does not exceed 10 parts per million” there shall be substituted “will not exceed 50 parts per million prior to 1st May 2013, will not exceed 25 parts per million from 1st May 2013 to 30th April 2018, and thereafter will not exceed 10 parts per million”.

(6) Where any extractive waste area or waste facility is in operation when these Regulations commence and the extractive waste is—

- (a) non-hazardous waste generated from the prospecting of mineral resources, except oil and evaporites other than gypsum and anhydrite;
- (b) unpolluted soil, or
- (c) waste resulting from the extraction, treatment and storage of peat,

the planning authority may waive the requirement in paragraph (2) for approval of a waste management plan, or reduce the requirements of regulation 11, if it is satisfied that the extractive waste will be managed without endangering human health and without using processes or methods which could harm the environment, and in particular without—

- (i) risk to water, air, soil and fauna and flora;
- (ii) causing a nuisance through noise or odours;
- (iii) causing unacceptable effects to the landscape or places of special interest; and
- (iv) resulting in the abandonment, dumping or uncontrolled depositing of extractive waste.

(7) In this regulation, “in operation” includes having a grant of planning permission that would allow operations to commence.