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STATUTORY INSTRUMENTS

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**2009 No. 1927**

**HEALTH AND SAFETY, ENGLAND AND WALES  
ENVIRONMENTAL PROTECTION,  
ENGLAND AND WALES**

**The Major Accident Off-Site Emergency  
Plan (Management of Waste from Extractive  
Industries) (England and Wales) Regulations 2009**

*Made* - - - - 16th July 2009

*Laid before Parliament* 21st July 2009

*Coming into force* - - 12th August 2009

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the environment.

The Secretary of State makes these Regulations—

- (a) in the exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 15(1), (2), (3)(c), (6)(d) and (8), 18(2)(a), 43(2), (3) (4) and (6), 82(3) of, and paragraphs 1(1), 6, 15(1), 16 and 20 of Schedule 3 to, the Health and Safety etc at Work Act 1974<sup>(3)</sup>, (“the 1974 Act”), and
- (b) independently of any proposals submitted by the Health and Safety Executive under section 11(3) of the 1974 Act.

The Secretary of State has consulted the Health and Safety Executive and such other bodies as appear to the Secretary of State to be appropriate, as required by section 50(1AA)<sup>(4)</sup> of the 1974 Act.

**Citation, commencement and extent**

1. These Regulations—

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(1) The Secretary of State is so designated by [S.I. 2008/301](#).  
(2) [1972 c. 68](#).  
(3) [1974 c. 37](#). Sections 15(1) and 43(6) were amended by section 116 of, and by paragraphs 4, 6, 12 and 16 of Schedule 15 to, the Employment Protection Act [1975 c. 71](#). Sections 15(1) and 43(6) were also amended by article 5(2) of, and Schedule 2 to, [S.I. 2002/794](#). Section 15(6) was amended by section 65 of, and by Schedule 12 to, the Criminal Law Act [1977 c. 45](#). Section 82(3) was amended by section 105(3)(a) of the Railways and Transport Safety Act [2003 c. 20](#).  
(4) Section 50(1AA) was inserted by articles 3, 16(1) and (2) of [SI 2008/960](#).

- (a) may be cited as the Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009;
- (b) come into force on 12th August 2009; and
- (c) extend to England and Wales only.

## Interpretation

### 2. In these Regulations—

“Category A mining waste facility” means a mining waste facility which is classified as Category A under Article 9 of the Mining Waste Directive;

“competent authority” means, in relation to—

- (a) London, the London Fire and Emergency Planning Authority;
- (b) an area where there is a fire and civil defence authority, that authority;
- (c) the Isles of Scilly, the Council of the Isles of Scilly;
- (d) an area in the rest of England, the county council for that area, or where there is no county council for that area, the district council for that area;
- (e) an area in Wales, the county council or the county borough council for that area;

“emergency services” means those police, fire and ambulance services who are liable to be required to respond to a major accident, and, where appropriate, Her Majesty’s Coastguard;

“health authority” means—

- (a) in relation to England, a Primary Care Trust established under section 18 of the National Health Service Act 2006<sup>(5)</sup>;
- (b) in relation to Wales, a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006<sup>(6)</sup>;

“major accident” has the same meaning as in the Mining Waste Directive;

“Mining Waste Directive” means Directive [2006/21/EC](#)<sup>(7)</sup> of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive [2004/35/EC](#);

“mining waste facility” means a “waste facility” as defined in Article 3(15) of the Mining Waste Directive but excludes those facilities mentioned in Article 24(2) or in the first paragraph of Article 24(4) of that Directive;

“operator” has the meaning given in regulation 7 of the Environmental Permitting (England and Wales) Regulations 2007<sup>(8)</sup>;

“the public” and “the public concerned” have the same meanings as in the Mining Waste Directive; and

“site” means the whole area under the control of the operator where a mining waste facility is present, and for this purpose two or more areas under the control of the same person and separated only by a road, railway or inland waterway are to be treated as one whole area (and on-site and off-site are to be construed accordingly).

(5) [2006 c. 41](#).

(6) [2006 c. 42](#).

(7) OJ No L 102, 14.04.2006, p 15.

(8) [S.I. 2007/3538](#) as amended by [S.I. 2009/890](#) and [S.I. 2009/1799](#).

## Application

3. These Regulations apply in relation to any Category A mining waste facility, save for one which falls within the scope of Directive [96/82/EC\(9\)](#) of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances.

## Requirement for off-site emergency plan

4.—(1) This regulation applies where the competent authority receives any off-site emergency plan information from the Environment Agency in relation to a mining waste facility in its area.

(2) The competent authority must draw up an emergency plan (in these Regulations referred to as an “off-site emergency plan”) in respect of that mining waste facility which—

- (a) specifies the measures to be taken off-site in the event of an accident; and
- (b) is adequate to secure the objectives specified in regulation 5.

(3) If at any time the competent authority considers that it does not have the information necessary to be able to draw up the off-site emergency plan (“necessary information”), it must as soon as is practicable give written notice to the operator of that mining waste facility in compliance with the requirements set out in paragraph (4).

(4) The requirements in this paragraph are—

- (a) the notice must require the operator to provide such additional information as is specified in the notice (“specified additional information”) to the competent authority by the date specified in the notice (“specified date”) which must be at least 30 days from the date on which the notice was given; and
- (b) where paragraph (9) applies, the notice must be given at least 9 weeks before the date by which that paragraph requires the off-site emergency plan to be drawn up.

(5) The operator must provide the specified additional information to the competent authority by the specified date.

(6) When the competent authority considers that it has the necessary information, it must as soon as practicable give written notice to the Environment Agency to that effect.

(7) If, one month before the date by which paragraph (9) requires the off-site emergency plan to be drawn up, the competent authority considers that the operator has not provided the necessary information, it must give written notice to the operator indicating—

- (a) that the competent authority intends to give a notice to the Environment Agency stating the operator has not provided the necessary information;
- (b) the date on which the competent authority intends to give that notice which must be at least 15 days after the competent authority gives notice to the operator under this paragraph (“intended date”);
- (c) that if the operator provides the necessary information before the intended date, the competent authority will not give a notice to the Environment Agency.

(8) If, on the intended date, the competent authority considers that the operator has not provided the necessary information, it must on that date give written notice to that effect to the Environment Agency.

(9) Subject to paragraph (10), the off-site emergency plan must be drawn up by the competent authority no later than six months (or such longer period, not exceeding nine months, as the competent authority may agree with the operator in writing) after the relevant date.

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(9) OJ No L 010, 14.01.97, p 13, last amended by Regulation [\(EC\) No. 1137/2008](#) (OJ No L 311, 21.11.08, p 1).

(10) If the competent authority gives a notice under paragraph (8), the duty in paragraph (9) ceases to apply.

(11) The competent authority must consult the operator, the Environment Agency, the Health and Safety Executive, the emergency services and each health authority for the area in the vicinity of the mining waste facility on the preparation of the off-site emergency plan.

(12) The off-site emergency plan must be tested by the competent authority to the extent necessary to ensure that the plan is adequate to secure the objectives specified in regulation 5.

(13) In this regulation—

“off-site emergency plan information” means information mentioned in the second sentence of the third paragraph of Article 6(3) of the Mining Waste Directive; and

“relevant date” means the date the off-site emergency plan information is received by the competent authority.

### **Objectives for off-site emergency plan**

5. The objectives for the off-site emergency plan are—

- (a) to contain and control major accidents and other incidents so as to minimise their effects, and in particular to limit damage to human health and the environment;
- (b) to implement the measures necessary to protect human health and the environment from the effects of major accidents and other incidents;
- (c) to communicate the necessary information to the public and to the relevant services or authorities in the area;
- (d) to provide for the rehabilitation, restoration and clean-up of the environment following a major accident.

### **Public participation in preparation and review of off-site emergency plan**

6.—(1) The competent authority must ensure that the public concerned are given early and effective opportunities to participate in the preparation or review of the off-site emergency plan.

(2) The competent authority must inform the public concerned about any proposed off-site emergency plan, and relevant information must be made available, including, but not limited to, information about the right to participate in the decision-making process and details of the competent authority to which comments and questions may be submitted.

(3) The competent authority must allow a reasonable time frame for the public concerned to express comments, and must take due account of these comments in reaching a decision on the contents of the plan.

### **Provision and review of information to the public**

7.—(1) Information on safety measures and on the action required in the event of an accident, containing at least the elements listed in paragraph (2), must be provided by the operator to the public concerned free of charge.

(2) The elements are—

- (a) name of the operator and address of the mining waste facility;
- (b) identification, by position held, of the person providing the information;
- (c) confirmation that the mining waste facility is subject to these Regulations and, when applicable, that the information relevant to the elements referred to in Article 6(2) of the Mining Waste Directive has been submitted to the competent authority;

- (d) an explanation in clear and simple terms of the activity or activities undertaken at the site;
- (e) the common names or the generic names or the general danger classification of the substances and preparations involved at the mining waste facility as well as waste which could give rise to a major accident, with an indication of their principal dangerous characteristics;
- (f) general information relating to the nature of the major-accident hazards, including their potential effects on the surrounding population and environment;
- (g) adequate information on how the surrounding population concerned are to be warned and kept informed in the event of a major accident;
- (h) adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident;
- (i) confirmation that the operator is required to make adequate arrangements on-site, in particular liaison with the emergency services, to deal with major accidents and to minimise their effects;
- (j) a reference to the off-site emergency plan drawn up to cope with any off-site effects from an accident, which should include advice to co-operate with any instructions or requests from the emergency services at the time of an accident;
- (k) details of where further relevant information can be obtained, subject to any duty of confidentiality which prohibits disclosure.

(3) In preparing the information required to be supplied in accordance with paragraph (1), the operator must consult the competent authority in whose area the mining waste facility is situated but the operator remains responsible for the accuracy, completeness and form of the information so supplied.

(4) The operator must review and where necessary update the information referred to in paragraph (1) at least every three years.

### **Provision of information in the event of a major accident**

8.—(1) In the event of a major accident, the operator must immediately provide the competent authority with all the information required to help minimise the consequences for human health and to assess and minimise the extent, actual or potential, of the environmental damage.

(2) Paragraph (3) applies where the competent authority is aware that the operation of a mining waste facility is likely to have significant adverse effects in the environment of, and any resultant risks to human health in, another EEA State, or where an EEA State likely to be thus affected so requests.

(3) In the event of a major accident, the competent authority must immediately forward the information provided under paragraph (1) to the other EEA State in order to help minimise the consequences of the accident for human health and to assess and minimise the extent of the actual or potential environmental damage.

### **Enforcement**

9.—(1) To the extent that they would not otherwise do so and excluding any provisions that relate only to Scotland, sections 33 to 42 (provisions as to offences) of the 1974 Act apply, subject to paragraphs (2), (3) and (4) of this regulation and with any necessary modifications, to these Regulations as if they were health and safety regulations for the purposes of that Act, except that those sections do not apply to duties placed on the competent authority under these Regulations.

(2) The enforcing authority for the purposes of these Regulations is not the Health and Safety Executive.

(3) The competent authority is the enforcing authority for the purposes of these Regulations but, for the purposes of regulation 8(1), only to the extent that the duty to provide information mentioned in regulation 8(1) is not otherwise enforceable by the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2007.

(4) The maximum penalty for an offence under this regulation is—

- (a) on summary conviction, imprisonment for a term not exceeding 3 months or a fine not exceeding £5,000; and
- (b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine, or both.

### **Charges and fees payable by operator**

**10.**—(1) A fee is payable by the operator to the competent authority for the performance by the competent authority or on its behalf by the Health and Safety Executive, the Environment Agency, the emergency services or the health authority for the area in the vicinity of the mining waste facility concerned (“the other bodies”) of any function conferred on the competent authority by these Regulations.

(2) The fee in paragraph (1) must not exceed the sum of the costs reasonably incurred by the competent authority and the other bodies for the performance of a function in paragraph (1).

(3) When requiring payment of the fee, the competent authority must send or give to the operator a detailed statement of the work done and costs incurred, including—

- (a) the dates of any visits to the mining waste facility; and
- (b) the period to which the statement relates.

(4) The fee becomes payable one month after the competent authority has issued the statement in paragraph (3), and is recoverable only as a civil debt.

(5) Any fee payable under this regulation does not include any costs connected with any criminal investigation or prosecution incurred (in either case) from the date any summons is obtained from a Magistrates’ Court.

(6) The competent authority must pay to each of the other bodies any such fee or part of any such fee it recovers as is attributable to work done by that body in performing the functions concerned.

16th July 2009

*Dan Norris*  
Parliamentary Under Secretary  
Department for Environment, Food and Rural  
Affairs

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations transpose Directive [2006/21/EC](#) of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive [2004/35/EC](#) (OJ L102, 14.04.2006, p15) (“the Mining Waste Directive”) in respect of the requirements in Article 6 of the Mining Waste Directive concerning the preparation of an off-site (external) emergency plan, which must specify the measures to be taken off-site in the event of an accident. Article 6 applies only to waste facilities that are classified as Category A. Waste facilities are defined in Article 3(15) of the Mining Waste Directive as areas designated for the accumulation or deposit of extractive waste (extractive waste is waste resulting from prospecting, extraction, treatment and storage of minerals and the working of quarries) and these are referred to as mining waste facilities in these Regulations. Mining waste facilities are classified as Category A under the Mining Waste Directive if they contain hazardous waste or dangerous substances, or where failure or incorrect operation of the facility could give rise to a major accident.

Article 6 requires competent authorities to produce an off-site emergency plan. The competent authority for an area is defined as the London Fire and Emergency Planning Authority, a fire and civil defence authority, county council or borough council. A site is defined as the whole area under the control of the operator where a mining waste facility is present (*regulation 2*).

However, those facilities which are subject to Directive [96/82/EC](#) on the control of major accident hazards involving dangerous substances (OJ L101, 14.01.97, p 13 amended by Directive [2003/105/EC](#), OJ L345, 31.12.2003, p97) (the relevant parts of which are transposed in domestic law by the Control of Major Accident Hazards (COMAH) Regulations 1999 ([S.I. 1999/743](#) as amended by [S.I. 2005/1088](#)), will continue to be subject to that Directive. Facilities which fall within the scope of Directive [96/82/EC](#) are excluded from the requirement to produce external emergency plans. As a result, the requirement in the COMAH Regulations for off-site emergency plans will continue to apply to those facilities, but there is no requirement for another off-site emergency plan to be produced under these Regulations (*regulation 3*).

Operators of mining waste facilities are required to obtain a permit under Article 7 of the Mining Waste Directive. This requirement is given effect to in the Environmental Permitting (England and Wales) Regulations 2007 ([S.I. 2007/3538](#) as amended by [S.I. 2009/1799](#)). Operators are required to provide information to the Environment Agency under those Regulations in order to obtain a permit, and the Environment Agency is then obliged to send that information to the competent authority. That authority is then obliged to draw up an off-site emergency plan, generally within 6 months, and to consult the specified parties on its preparation. There are provisions for obtaining further information from the operator, for notification to the Environment Agency and for testing of the plan (*regulation 4*).

The objectives for the plan are set out in regulation 5. The procedures for enabling the public to participate in the preparation or review of the plan are set out in regulation 6, and regulation 7 requires operators to provide information on safety measures and on the action required in the event of an accident to the public, and to review that information.

Regulation 8 places an obligation on operators to provide information to the competent authority in the event of a major accident, and for the competent authority to forward that information on to other EEA States where there are likely to be transboundary effects, in order to minimise the consequences of that accident for both human health and safety and the environment. Regulation 9 makes provision for enforcement, offences and penalties. It provides that the competent authority is responsible for

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enforcement of the Regulations and that the offence and penalty provisions section 33 to 42 of in the Health and Safety at Work Act 1974 apply subject to limits as to the maximum penalties which are set out in regulation 9(4). Regulation 10 provides for the charging of fees by the competent authority to the operator.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Waste Management Division, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London, SW1P 2AL and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website ([www.opsi.gov.uk](http://www.opsi.gov.uk)).