

**EXPLANATORY MEMORANDUM TO**  
**THE MAJOR ACCIDENT OFF-SITE EMERGENCY PLAN (MANAGEMENT OF**  
**WASTE FROM EXTRACTIVE INDUSTRIES) (ENGLAND AND WALES)**  
**REGULATIONS 2009**

**2009 No. 1927**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 2. Purpose of the instrument**
  - 2.1 The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 (“the Regulations”) transpose specific elements of Article 6 of Directive 2006/21/EC on the management of waste from extractive industries (“the Mining Waste Directive”) in England and Wales. Article 6 of the Mining Waste Directive requires that measures are taken in respect of certain mining waste facilities (“Category A facilities”) where the risks of harm to human health and the environment are greatest - for example where a major accident such as the collapse of a heap or the bursting of a dam could lead to serious consequences for human health and the environment. The Regulations cover those elements of Article 6 of the Mining Waste Directive in relation to the need for external (off-site) emergency plans to be put in place and the related provision of information to the public and to the competent authority.
- 3. Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
- 4. Legislative Context**
  - 4.1 The majority of the provisions in the Mining Waste Directive are transposed in England and Wales through the Environmental Permitting (England and Wales) (Amendment) Regulations 2009 (S.I. No. 1799). However, elements of Article 6 of the Mining Waste Directive cover matters that are outside the scope of the environmental permitting regulatory regime, under which certain facilities need a permit to operate. Separate Regulations are therefore required in order to ensure that the Mining Waste Directive is fully and properly transposed.
  - 4.2 The Regulations transpose the provisions of the Mining Waste Directive in respect of:
    - (i) the requirement to prepare an off-site emergency plan;
    - (ii) provision and review of information to the public; and
    - (iii) provision of information in the event of a major accident.
  - 4.3 A transposition note is attached to this Explanatory Memorandum at Annex A setting out in more detail those elements of the Mining Waste Directive that are transposed by the Regulations.

## 5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

## 6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

- 7.1 A series of pollution incidents – including serious incidents in 1998 in Aznalcóllar/Spain and in 2000 in Baia Mare/Romania - led to increased public awareness of the environmental and human health risks associated with the extractive of minerals from mines and quarries. In response, the European Commission adopted (i) a Communication on 3 May 2000 on “*Promoting sustainable development in the EU non-energy extractive industry*”; and (ii) a Communication on 23 October 2000 addressing the “*Safe operation of mining activities: a follow-up to recent mining accidents*”. The second Communication reviewed the then existing environmental legislation applying to the extractive industries and set out priority actions to improve the management of waste from these industries including a proposal for the legislation now adopted as the Mining Waste Directive.
- 7.2 The Mining Waste Directive specifically covers the management of waste arising from the prospecting, extraction (including the pre-production development stage), treatment and storage of mineral resources on land and from the working of quarries. The Mining Waste Directive came into effect in April 2006 and member states were required to transpose it into national law by 1 May 2008. The framework provided by the Mining Waste Directive seeks to ensure that waste from such operations is prevented, reduced, or recovered (through recycling, re-use or reclamation) and that any residual waste is managed in a way which minimises harm to human health and the environment.
- 7.3 The majority of the provisions in the Mining Waste Directive are transposed in England and Wales through the Environmental Permitting (England and Wales) (Amendment) Regulations 2009 (S.I. No. 1799). However, there are elements of the Mining Waste Directive which cover matters outside the scope of the environmental permitting regulatory regime. In particular, Article 6 of the Mining Waste Directive requires that, for certain types of waste facilities (Category A facilities), off-site emergency plans need to be put in place in order to minimise the effects of harm to human health and the environment if there is a major accident or other incident at the Category A facility.
- 7.4 The Regulations make provision for the preparation of an off-site emergency plan for all mining waste facilities (for example a spoil heap or mine tailings dam) which are classified as Category A facilities under criteria set in a decision from the European Commission<sup>1</sup>. The Government has estimated that there will be only a limited number of such facilities - only 15-30 facilities among over 1,600 mining and quarrying sites in England and Wales. However, because defining a waste facility as a Category A facility will be made on the basis of a site specific assessment (in the first instance, by the mineral operator, and then confirmed by the Environment Agency under the permitting

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<sup>1</sup> Commission decision 2009/337/EC- see:  
<http://eurex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:102:0007:0011:EN:PDF>

process), it is not yet possible to identify specific sites, companies or types of operations where these off-site emergency plans will need to be produced.

- 7.5 Existing legislation is not sufficient to ensure full and effective transposition of the requirements of the Mining Waste Directive for such plans, notably because the objectives of such plans cover provisions in respect of both human health and safety and protection of the environment. Failure to bring into effect new legislation would therefore result in infraction proceedings from the European Commission.
- 7.6 The off-site emergency plans will set out the measures to be taken in the event of a major accident or other incident at a Category A facility. The plans will be prepared by local authority emergency planners, who are the competent authority for the purposes of the Regulations, in consultation with the Environment Agency, the Health and Safety Executive, the emergency services and the health authorities for the area covered by the plan.
- 7.7 The Regulations also transpose other elements of Article 6 of the Mining Waste Directive, in particular, those relating to the provision of information to members of the public on safety measures and action required in the event of an accident, and the need to provide information to the competent authority in the event of a major accident at a Category A facility.

## **8. Consultation outcome**

- 8.1 A consultation paper issued was published in January 2008 covering the transposition of the Mining Waste Directive in England and Wales<sup>2</sup>. As well as draft Regulations on the Government's preferred option for transposing the majority of the Mining Waste Directive through environmental permitting legislation, the consultation paper also contained draft Regulations outlining how the Government proposed to implement the requirements for off-site emergency plans under Article 6 of the Mining Waste Directive.
- 8.2 The consultation asked two questions in relation to the provisions for off-site emergency plans. The first of these sought views on who should be the competent authority under the Regulations and the second, more general views on the detail of the Regulations. Only a small number of consultation responses were received, and the majority of the consultation responses focussed on the Government's preferred option for transposition of other, more substantive, elements of the Mining Waste Directive rather than the Regulations for off-site emergency plans. A summary of the responses to the January 2008 consultation, and Government decisions in light of that consultation, is available at:
- <http://www.communities.gov.uk/publications/planningandbuilding/miningwastesummary>
- 8.3 The other main issue raised in the context of that consultation was by some industry responses which stressed the need for the Regulations to remain proportionate to the risk involved and that they should not duplicate other provisions – e.g. those regulated through the Control of Major Accident Hazard (“COMAH”) Regulations<sup>3</sup>. The Regulations are explicit in the fact that they do not apply where the COMAH provisions apply and the Government is of the view that they are the minimum necessary to ensure

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<sup>2</sup> A joint consultation by Communities and Local Government (CLG), the Department for Environment, Food and Rural Affairs (Defra) and the Welsh Assembly Government - see:

<http://www.communities.gov.uk/archived/publications/planningandbuilding/wastemanagement>

<sup>3</sup> Planning (Control of Major-Accident Hazards) Regulations 1999 (S.I. 1999/981).

that the requirements for Category A facilities set out in the Mining Waste Directive are met.

- 8.4 Following consultation and further discussions with stakeholders, the Government agreed that it would be more appropriate for the competent authority to be the emergency planning authority for the area concerned. That is now reflected in the Regulations.
- 8.5 Communities and Local Government have held further discussions with representatives of local authority emergency planners and the minerals industry during the process of finalising the draft Regulations. The Environment Agency and the Health and Safety Executive have also been provided with the opportunity to comment. Comments received have been taken on board as far as possible within the constraint of the need to ensure that the requirements of the Mining Directive are fully and properly transposed.
- 8.6 In the course of Parliament's consideration of the draft Regulations now in force as the Environmental Permitting (England and Wales) (Amendment) Regulations 2009 (S.I. No. 1799), issues were raised about the relationship between paragraph 14(2) of Schedule 18B to those Regulations and this instrument. In response, the Government agreed to place in the public domain a summary of the representations made in the course of the discussions referred to in paragraph 8.4 above. The summary provided by the Government is attached to this memorandum as Annex B.

## **9. Guidance**

- 9.1 The Government intends to produce guidance on matters relating to the preparation and content of off-site emergency plans; and to consult on a draft of that guidance in the late autumn of 2009.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is:
- (i) the cost incurred by the competent authority (and other bodies undertaking work on behalf of the competent authority i.e. the Health and Safety Executive, the Environment Agency, the emergency services and the health authority on behalf of the competent authority) in producing, maintaining and testing the off-site emergency plan. These costs will all be recharged to business (i.e. the mineral operator); and
  - (ii) the costs incurred by mineral operators in providing information to the public.
- 10.2 The impact on the public sector is nil on the basis that, under the Regulations, all reasonable costs incurred by public bodies will be recovered from mineral operators through charges and fees payable to the competent authority. The competent authority is then obliged to pass on any fees that it recovers that are attributable to work done by another body on behalf on the competent authority.
- 10.3 An Impact Assessment is attached to this memorandum at Annex C, which sets out the costs that are expected to fall to business as a result of the Regulations.

## **11. Regulating small business**

- 11.1 The legislation applies to small business. However, it is unclear at this stage which mineral operations will include Category A facilities (see paragraph 7.4 above) and so how many small businesses, if any, are directly affected by the Regulations.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to ensure that the requirements in the Regulations are the minimum necessary to ensure full and effective transposition of the Mining Waste Directive which applies to all mineral and quarrying operations irrespective of their size.
- 11.3 The basis for the final decision on what action to take to assist small business has been to ensure that the costs involved for small business in implementing the requirements of Article 6 of the Mining Waste Directive are the minimum necessary whilst ensuring that the Mining Waste Directive is properly transposed. There is no possibility of allowing an exemption for small businesses given that the Mining Waste Directive applies to all mining and quarrying operations irrespective of company size. Regular discussion has been held with representatives of the minerals industry (the CBI Minerals Group) throughout the process of transposing the Mining Waste Directive to ensure that the impacts on all businesses have been considered.

## **12. Monitoring & review**

- 12.1 The Environmental Permitting (England and Wales) (Amendment) Regulations 2009 (S.I. No. 1799) require that applications for permits for existing mining waste facilities classified as Category A should be submitted by 1<sup>st</sup> May 2011. This ensures that both the permits for such waste facilities and the off-site emergency plans required under the Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 are in place by the deadline of 1 May 2012 set by the transitional provisions in Article 24(1) of the Mining Waste Directive. Monitoring and review of both Regulations will therefore take place in the second half of 2012.

## **13. Contact**

- 13.1 John MacIntyre at the Department for Environment, Food and Rural Affairs can answer any enquiries about the instrument. Tel: 020 7238 4353 or e-mail: [john.macintyre@defra.gsi.gov.uk](mailto:john.macintyre@defra.gsi.gov.uk)

**Annex A: Transposition Note for Provisions of the Mining Waste Directive in Respect of External Emergency Plans**

Provision of Directive	Provision in Regulations	Comments
<p><b>Article 6(2) and Article 16(3)</b></p> <p>Reference to adverse effects on health/environment, transboundary effects and the provision of information to other Member States in the event of a major accident</p>	<p><b>Regulations 8(2) and 8(3)</b></p>	<p>Article 6(2) (last line) requires that transboundary effects are taken into account when considering how to limit the consequences of accidents. Article 16(3) requires the competent authority (as defined in regulation 2) to send information provided in the event of a major accident at a Category A waste facility to another EEA state where they are likely to be affected or if requested by them. These requirements are transposed through regulation 8(2) and 8(3).</p>
<p><b>Article 6(3)</b></p> <p>Third paragraph covering drawing up of external emergency plan and provision of information by operator as part of this process</p>	<p><b>Regulation 4</b></p>	<p>Article 6(3) requires the competent authority to prepare an external emergency plan specifying the measures to be taken off-site in the event of an accident. This is transposed through regulation 4(2) which requires the competent authority to draw up the external emergency plan. Regulation 4(7) sets the timescale for that process. The trigger for requiring an external emergency plan to be produced is the receipt of information on the application for an Environmental Permit for a Category A waste facility from the Environment Agency as Regulator (regulation 4(1)).</p> <p>The last sentence of Article 6(3) requires the operator of a waste facility to provide information to the competent authority to enable them to draw up the external emergency plan. This is transposed by regulation 4(1) where information will be received from the Regulator as part of the application for an Environmental Permit. Regulations 4(3), 4(4), 4(5), 4(6) and 4(7) cover the process for obtaining further information from the operator in addition to that already provided as part of that permit application.</p>
<p><b>Article 6(4)</b></p> <p>Objectives of emergency plans and provision of information in the event of a major accident</p>	<p><b>Regulations 5 and 8(1)</b></p>	<p>The first paragraph of Article 6(4) sets out the objectives for emergency plans and is transposed through regulation 5. The second paragraph of Article 6(4) requires the operator to provide the competent authority with information to minimise the consequences of a major accident and is transposed through regulation 8(1).</p>
<p><b>Article 6(5)</b></p> <p>Public participation in the preparation of an external emergency plan</p>	<p><b>Regulation 6</b></p>	<p>Article 6(5) sets out provisions for giving the public the opportunity to participate in the preparation or review of an emergency plan. This is transposed through regulation 6 which replicates the wording of Article 6(5).</p>

Provision of Directive	Provision in Regulations	Comments
<p><b>Article 6(6) and Section 2 of Annex I</b></p> <p>Information on safety measures and action to be taken in the event of an accident</p>	<p><b>Regulation 7</b></p>	<p>Article 6(6) requires Member States to ensure that information on safety measures and on action required in the event of an accident is provided free of charge to the public concerned and to review that information every three years. The minimum information requirements are set out in section 2 of Annex I of the Directive. These requirements are transposed through regulation 7.</p>
<p><b>Article 19</b></p> <p>Penalties</p>	<p><b>Regulation 9</b></p>	<p>Article 19 of the Directive requires Member States to ensure that penalties are laid down for infringement of legislation adopted pursuant to the Directive. These penalties shall be effective, proportionate and dissuasive. In the context of external emergency plans, these penalties relate to the information requirements placed on mineral operators and are transposed through regulation 9 which uses provisions set out in the 1974 Health and Safety etc at Work Act. These are subject to the maximum penalty provisions set out in regulation 9(4).</p>

## **Annex B**

### **Minerals industry representations on (a) the draft Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 and (b) paragraph 14(2) of Schedule 18(B) to the draft Environmental Permitting (England and Wales) Regulations 2009**

#### **Background**

An initial discussion between the CBI Minerals Group and officials in Communities and Local Government (CLG) and the Department for Food, Environment and Rural Affairs (Defra) on the draft external Emergency Plan Regulations and their relationship with the draft Environmental Permitting Regulations 2009 was held on 21 April 2009. An early draft of the External Emergency Plan Regulations was provided at that meeting, along with a procedural note which set out the relationship between the Emergency Plan Regulations and the Environmental Permitting Regulations.

Following the meeting on 21 April, a revised version of the external Emergency Plan Regulations was provided to the CBI Minerals Group, together with the proposed wording of the new paragraph 14 of Schedule 18B to the draft Environmental Permitting Regulations.

The main representations subsequently received on the issue raised by the Emergency Plan Regulations and paragraph 14(2) of the Environmental Permitting Regulations came from the CBI Minerals Group, the Kaolin and Ball Clay Association and Mills and Reeve LLP. The main substance of the comments received and the Government's response to these are set out below.

#### **Representations**

##### **Expertise of Emergency Planners and Guidance**

Concerns were expressed that local authority emergency planners will not have the necessary expertise to adequately assess any potential risk and judge what information they need in preparing external emergency plans. Industry considers it essential that detailed guidance for implementation the Regulations is prepared and consulted upon as a matter of urgency. The guidance must also ensure that emergency planners adopt a consistent approach across the country. Industry would support the establishment of a lead local authority that is adequately resourced to deal with the preparation of external plans in an expeditious manner. It is vitally important that the guidance provides clear advice to emergency planners to engage in meaningful pre- application discussions to enable operators to establish what information is required from them to prepare the emergency plan at an early stage.

#### **Government Response**

The Government has discussed these proposals with representative of emergency planners. Many of the waste facilities that will be dealt with under these regulations will be tailings dams where the risks posed from physical failure are similar to those associated with reservoirs, where local authority emergency planners are already involved in the preparation of external emergency plans.

The Government has agreed to produce guidance on emergency plans and will ensure that the minerals industry and emergency planners are fully involved in its production. Consistency of approach towards preparing plans may be included in guidance to the extent that this is possible given the varying nature of mining waste facilities. The



guidance will emphasise the need for early engagement between emergency planners and mineral operators to ensure that information requirements are established promptly.

The matter of whether there should be a lead authority for the preparation of external emergency plans is a matter for the LGA and Emergency Planners in the first instance, but the regulations ensure that the cost of producing plans can be recovered from the minerals operator.

### **“Sufficient Information”**

It was suggested that more clarity was needed in the Emergency Plan Regulations about what constitutes “sufficient information”. Representations suggested that there should be a regulation to indicate what information, from an objective standpoint, is required in order to ensure consistency across England and Wales.

### Government Response

The Directive requires as part of the application for a permit, the operator must provide the competent authority with the information necessary to enable the latter to draw up the emergency plan. The Emergency Plan Regulations ensure that any information needed in addition to that in the permit application is provided thereby ensuring that an emergency plan can be prepared to meet the requirements of the Directive. The Government considers that this is the most appropriate approach given that by necessity there is a need to work with separate competent authorities for permits and external emergency plans. The Government does not think that the issue of what constitutes a reasonable information request can be covered through the Regulations, but it may be a matter that can be addressed by guidance.

### **Minimum Time Period to Request Further Information**

Concern was expressed that the minimum time period still allowed emergency planners to serve a notice on the operator requiring additional information at any time where it considers that it does not have sufficient information”. Guidance was needed to make it clear that emergency planners should use all reasonable endeavours to decide if it has sufficient information as early as possible during the process.

### Government Response

The Government has extended the minimum period for provision of information from 21 to 30 days. This period cannot extend beyond the date for issuing a notice under regulation 4(6). There is also a duty on emergency planners to serve any notice under regulation 4(3) as soon as practicable. The Government will consider what else can be said in guidance on the point about the need for emergency planners to ensure any requests for information are made as early as possible.

### **Provision of Further Information**

Concern was raised that if after eight months the competent authority considers that the operator has not provided sufficient information to enable it to draw up the off-site emergency plan it must give written notice to Environment Agency to that effect. But it does not specify the position if third parties have not provided any information required from them. Assurance was needed that if sufficient information has not been provided within the specified period by third parties over which the operator has no control, that this will not result in a notice being served on the regulator with the resultant refusal of the permit application.

## Government Response

The requirement in the Mining Waste Directive is that the operator will provide to the competent authority the information necessary for the latter to draw up the plan. There are no provisions in respect of provision of information from third parties. The expectation is that any information requested from operators by the emergency planners will be information that operators are in a position to provide. Early engagement between the operator and the emergency planners should ensure that formal requests for information under regulation 4(3) should not result in unreasonable formal requests being made under regulation 4(3) over which the operator has no control.

### **Implications of definition of “public concerned”**

The definition of “the public concerned” in the Emergency Plan Regulations includes “non-governmental organisations promoting environmental protection”. Concern was raised that there needed to be clarity as to what extent these NGOs must be consulted. - on a nationwide or local basis and how will it be decided which NGOs are to be consulted. Concern was also raised about the competent authority giving the public “reasonable time” to respond and the impact of this on the overall timescale for the preparation of the plan. There should be a specified period for responses and the competent authority should be required to inform the public immediately on receipt of the initial information from the regulator.

## Government Response

This regulation follows the wording in the Directive e.g. in the use of the word “reasonable”. “The public concerned” is defined in Article 3(23) of the Directive. The Government does not think, therefore, that it would be appropriate in the Regulations to specify what particular NGOs should be consulted, or to define what is “reasonable”. But this may be a point that can be picked up in guidance.

### **Implications of Making Information Public**

Concerns were expressed about the extent of the information to be made publically available. It was felt that this could have security implications could make the operator or his employees the target for “paper terrorism”. There should be the right for operators to have details removed for commercially sensitive reasons and for individuals to have their details removed from information provided to the public.

## Government Response

The wording in the Emergency Plan Regulations replicates that in the Directive. The Government does not believe that the security issue is a problem. The Regulations require the name of an operator (this will usually be a company name) and the address of the waste facility. It also asks for the identification, *by position held*, of the person providing the information. This should not involve revealing a person’s name or address - identification is by position held in the company (e.g. safety manager). The Government has also considered the point about commercial confidentiality, but does not believe that the information requirements set out in regulation 7 of the Emergency Plan Regulations will be an issue given much of this information will be required as part of the EP permit application.

## **Recovery of Costs of Producing Emergency Plan**

Concerns were raised that the cost recovery provisions could result in having a "blank cheque" for the preparation and testing of the plan. Guidance to accompany the regulations must set out clearly the work for which the competent authority may levy charges. These charges must be set at national level to ensure a level playing field across England and Wales.

Clarification was also sought as to whether the variation of an emergency plan would necessitate a variation of the permit, thereby resulting in a variation fee to the Environment Agency for a permit as well as the costs of revision of the emergency plan.

### Government Response

The Government considers that the differing nature of emergency plans to be prepared means that detailed specification of what are reasonable costs in the regulations is not practicable, and it would not be appropriate for such charges to be set at a national level. Individual mineral operators will have the option for judicial review if they consider the actions of emergency planners in respect of such charges are unreasonable.

Variations in an emergency plan (e.g. as a result of testing) should not require a consequential variation in the Environmental Permit. The requirement for a permit is that an emergency plan can be put, or is, in place. A change to the emergency plan should not in any way invalidate that permit.

## **Refusal of Permit where Information Requested is not Received (Regulation 14 of Environmental Permitting Regulations)**

Considerable concerns were raised about the requirement in the Environmental Permitting Regulations that a permit must be refused if the regulator receives a notice to say that the operator has not provided sufficient information and the lack of any appeal mechanism against such decisions. Representations noted that similar provisions did not exist where there were other cases of dual consent regimes operating alongside each other (e.g. the requirements for Habitats or EIA Assessment and a planning permission). It was also felt that the refusal of a permit and subsequent closure of a waste facility without proper closure facilities could actually raise the risk of environmental harm.

### Government Response

The Government recognises the concerns expressed by the minerals industry on this issue. However, it takes the view that the automatic refusal of a permit for existing waste facilities following the failure to provide necessary information to prepare the emergency plan should be retained. Article 24(1) of the Directive requires Member States to ensure that any waste facility that was in operation on 1 May 2008 ("existing mining waste facility") complies with the provisions of the Directive by 1 May 2012. These provisions include the requirement in Article 7(1) that says that no waste facility shall be allowed to operate without a permit and the requirement for an external emergency plan to be put in place for a Category A facility. Given that applications for permits for existing mining waste facilities will not have to be made until 1 May 2011, the timetable for then ensuring that existing mining waste facilities comply with the Directive is a tight one. Delay in provision of information will mean that it may not be possible to put a permit in place by the May 2012 deadline. Category A facilities are, by definition, those where there is the greatest potential harm to health and the

environment in the event of an accident. It is therefore felt that the risks of harm that could arise from the operations at a Category A facility being allowed to continue whilst information for the emergency plan continues to be sought (possibly over a long time period) are unacceptable.

The Government does not think it likely that such notices resulting in automatic refusal of a permit should ever need to be issued and that there should be no need to close waste facilities because of this. Early engagement with emergency planning teams, even before formal applications for EP permits are made, should ensure that the information requirements for emergency plans can be established and that information provided at an early stage in the process as part of the EP permit application. In turn, this should ensure that permits can be issued for such waste facilities by May 2012 as required by the Directive.

In terms of the representations about the situation with other consent regimes, such as EIA and the Habitats Regulations, the Government does not accept that parallels exist with what is proposed for the Mining Waste Directive. Where a planning authority is considering an application for a planning consent involving EIA or requiring a Habitats Regulations assessment, no development will normally have taken place (it will not yet be consented) and so the issue of harm to human health or the environment does not exist (in this respect, the position is the same for new mining waste facilities). But under the Mining Waste Directive, waste facilities subject to the permitting regime are already operational and there is a clear deadline for compliance set by the Directive. On that basis, refusal of the permit, thereby preventing the operation of the facility, is considered to be an appropriate sanction for failure to provide information necessary for the preparation of such a plan.

**Annex C : Impact Assessment on the transposition of the requirements for External Emergency plans and associated matters under Article 6 of EU Directive 2006/21/EC on the management of waste from extractive industries (known as the Mining Waste Directive) in England and Wales.**

## Summary: Intervention & Options

<b>Department /Agency:</b> 1. Environment, Food and Rural Affairs	<b>Title:</b> 2. Impact Assessment of Transposition of the Requirements for External Emergency Plans and associated matters under Article 6 of the EU Mining Waste Directive in England and Wales	
<b>Stage: Draft Final Proposal</b>	<b>Version: 1.5</b>	<b>Date: 5 May 2009</b>
Related Publications: Consultation paper on proposals for transposition of the Directive in England and Wales (January 2009) and related summary of consultation responses and Government decisions.		

### Available to view or download at:

<http://www.communities.gov.uk/archived/publications/planningandbuilding/wastemanagement>

**Contact for enquiries:** Davica Farrell-Evans

**Telephone:** 020 7238 3205

### What is the problem under consideration? Why is government intervention necessary?

The UK was required to transpose into national law EU Directive 2006/21/EC on the management of waste from extractive industries - known as the Mining Waste Directive - by 1 May 2008. Article 6 of the Directive requires that, for certain types of waste facilities (Category A facilities), external emergency plans need to be put in place in order to minimise the effects if there is a major accident at the waste facility. Article 6 of the Directive cannot be fully transposed through existing national law. New implementing Regulations are required for this purpose.

### What are the policy objectives and the intended effects?

Effective and timely transposition of Article 6 of the Mining Waste Directive in England & Wales, in accordance with the UK Government's policy on transposing European directives.

Intended effects: Article 6 of the Directive is transposed to the satisfaction of the European Commission; external emergency plans are put in place for Category A facilities which ensure that the consequences for the environment and human health of any major accident at the waste facility are minimised.

### What policy options have been considered? Please justify any preferred option.

1: Rely on existing national legislation.

2: Transpose Article 6 of the Directive through new legislation: The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009".

Option 2 is preferred as Option 1 would not properly transpose the MWD and most likely lead to infraction proceedings and significant fines (in other cases these have amounted to over €50m) for the UK imposed by the European Court of Justice. Option 1 is therefore not viable.

No other options that ensure the requirements for external emergency plans under Article 6 of the Directive are met have been identified, although some variations on the proposed provisions have been considered.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Late 2012 - 2013 (once initial external emergency plans have been produced)

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

Dan Norris

.....Date: 16th July 2009

## Summary: Analysis & Evidence

<b>Policy Option: 2</b>	<b>Description: Transposition through new legislation: The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009”</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by ‘main affected groups’ See Annex 1 to evidence base for details of cost calculations
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 97,800 - 238,800	1	
	<b>Average Annual Cost</b> (excluding one-off)		
£ 31,667 - 78,933	2- 10	<b>Total Cost (PV)</b>	<b>£343,950 – 851,990</b>
Other <b>key non-monetised costs</b> by ‘main affected groups’			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by ‘main affected groups’ No monetised benefits, but would avoid the fines from the European Court of Justice under the ‘do nothing’ Option 1 base case (see Annex 2 to the evidence base).
	<b>One-off</b>	<b>Yrs</b>	
	£ -		
	<b>Average Annual Benefit</b> (excluding one-off)		
£ -		<b>Total Benefit (PV)</b>	<b>£ -</b>
Other <b>key non-monetised benefits</b> by ‘main affected groups’ UK’s reputation on transposing EU Directives. Brings consistent environmental and health & safety standards for Category A waste facilities across the EU potentially aiding competitiveness. Ensuring emergency plans are in place will mean that there will be an improved response to any accident at a mining waste facility, thereby reducing the harm to the environment and risks to human health (e.g. from pollution that may arise as a result of a tailings dam failure) Ensures responsibility for preparing external emergency plans lies with appropriate body (local authority emergency planners)			

**Key Assumptions/Sensitivities/Risks** key assumptions made - 15-30 Category A sites requiring external emergency plans across England and Wales; time/cost for preparing plans will be similar to those for off-site plans for reservoirs. Sensitivities - costs in Annex 1 include ranges to cover lower number of waste facilities requiring plans

Price Base Year	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ -	<b>NET BENEFIT (NPV Best estimate)</b> £-343,950 to -851,990
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What is the geographic coverage of the policy/option?	England and Wales
On what date will the policy be implemented?	June 2009
Which organisation(s) will enforce the policy?	Local authorities
What is the total annual cost of <b>enforcement</b> for these organisations?	£0 (costs recharged)
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No



Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>			(Increase - Decrease)
Increase of	£0	Decrease	£0
		<b>Net Impact</b>	<b>£ 343,950 – 851,990</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

### Introduction

1. This Impact Assessment (IA) relates to the need to transpose part of Article 6 of EU Directive 2006/21/EC<sup>4</sup> on the management of waste from the extractive industries (known as the Mining Waste Directive) into UK law in England and Wales. The Mining Waste Directive was adopted by the European Parliament and the Council of the European Union on 15 March 2006 and entered into force on 1 May of that year. Along with other Member States, the UK was required to transpose the Directive into national law by 1 May 2008.
2. Article 6 of the Directive requires that member states make specific provisions for certain types of waste facilities (known as Category A facilities). These are those waste facilities where the risks to the environment or human health in the event of an accident are greatest - for example where a collapse of a heap or the bursting of a dam could lead to a major accident, where the waste in the facility is classified as hazardous, or where the waste contains substances or preparations classified as dangerous.
3. A particular requirement of Article 6 of the Directive is the need to draw up an external emergency plan specifying the measures to be taken off-site in the event of an accident at the waste facility. This IA has been prepared to accompany the laying before parliament of final draft Regulations to transpose the requirements to prepare such plans and associated issues such as the provision of information by mineral operators.
4. In January 2007, the Government consulted on options for transposition of the main elements of the Directive. The Government's preferred option for transposing the majority of the Directive in England and Wales was through the Government's Environmental Permitting Programme (EPP). However, it was recognised at this stage that the EPP regime would not be an appropriate mechanism for the transposition of some of those elements of the Directive relating to major accident prevention and external emergency plans. The consultation paper therefore included an initial draft of freestanding Regulations to transpose those provisions of Article 6 of the Directive that could not be delivered through EPP. The consultation paper, together with a summary of the consultation responses and Government decisions following consultation can be viewed at:  
  
<http://www.communities.gov.uk/archived/publications/planningandbuilding/wastemanagement>
5. Since the conclusion of this consultation, discussions have been held with key stakeholders on the draft Regulations in respect of external emergency plans and possible changes to them. The main changes that have resulted are:
  - a change in the definition of the competent authority for the purposes of the Regulations (now the emergency planning authority for the area concerned);
  - changes to the process of preparing plans;
  - a requirement for the testing of the plan;
  - new provisions for enforcement by the competent authority where an operator of waste facility fails to provide information as required by the Regulations.

### Objective

6. The Objective to be achieved is the effective transposition of the requirements of Article 6 of the Mining Waste Directive in respect of external emergency plans, in accordance with the UK Government's policy on the transposition of European directives. In particular, to ensure that measures are in place to prevent or reduce harm to the environment and risks to human health arising from the management of extractive waste in those facilities defined as Category A facilities.

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<sup>4</sup> The text of the Directive can be found at:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:102:0015:0033:EN:PDF>

## Options

7. These are:

- (1) do nothing/rely on existing national legislation;
- (2) transpose the requirements of the Directive for external emergency plans through new secondary legislation - "The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009".

### **Option 1: Do Nothing/Rely on Existing National Legislation**

8. Whilst the 'do nothing' option would mean that the management of extractive waste from mining and quarrying (and other mineral extraction) operations in this country would continue to be subject to existing national town and country planning, health and safety and environmental Regulations, as appropriate, it would not provide the provisions that are needed to implement the requirements for the external emergency plans required by Article 6 of the Mining Waste Directive, as agreed by Member States, including the UK. In effect, for England and Wales, this option would mean that the UK Government would fail to meet its obligations under the Directive.

### **Option 2: Transpose the Requirements of the Directive for External Emergency Plans through New Regulations**

9. The Government's preferred option for transposition of the requirements for external emergency plans required by Article 6 is through a new set of Regulations, specifically, through "The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009". These provide the minimum level of regulation necessary to ensure that the requirements of the Directive are met.

### **Other Options Considered:**

10. No other suitable options for transposition of these provisions have been identified. The absence of suitable existing legislation covering such mining waste facilities and the need to prepare external emergency plans for them means that new legislation is the only means of ensuring that the UK meets the requirements of the Directive.

11. Some variations to the Regulations now proposed have been considered in terms of how specific elements of the requirements of the Directive will be met. These included:

- an alternative competent authority suggested at consultation stage (discounted following consultation);
- alternative proposals for enforcement mechanisms (eg possibility of enforcement of all the information requirements by the Environment Agency through their permitting procedures for waste facilities).

In some cases, the alternatives have no impact on costs - eg the cost of preparing an external emergency plan is likely to be similar whichever body is the competent authority. In other cases, the alternatives considered have been discounted for other legal or policy reasons - eg the possibility of the Environment Agency acting as the enforcement body was discounted because of the difficulties arising from enforcing legislation on behalf of a third party (i.e. local authority emergency planners). For these reasons, no further consideration is given to these matters in this final IA.

### **Responses to Consultation**

12. Although the consultation paper issued in January 2007 contained draft Regulations outlining how the Government proposed to implement the requirements for external emergency plans under Article 6 of the Directive, the substantive issue, and the one focussed on by responses to the consultation, was on the Government's preferred option for transposition of other, more substantive, elements of the Directive.

13. The consultation asked two questions in relation to the provisions for external emergency plans. The first of these sought views on who should be the competent authority under the Regulations and the second, more general views on the detail of the Regulations.
14. Following consultation and further discussions, the Government agreed that it would be more appropriate for the competent authority to be the emergency planning authority for the area concerned, as opposed to the Environment Agency and Health and Safety Executive. That is now reflected in the draft final Regulations. On the Regulations more generally, the only other issue raised was by some industry responses who stressed the need for the Regulations to remain proportionate to the risk involved and that they should not duplicate other provisions (eg those under COMAH<sup>5</sup>). The Government remains of the opinion that these Regulations are the minimum necessary in order to ensure that the Directive's requirements are fully and effectively transposed into national legislation.

## Option 1: Costs and Benefits

### Costs

15. The failure to properly transpose and implement the requirements of the Mining Waste Directive under this option would leave the UK in breach of its obligations under the Directive. As a consequence, the UK would be open to infraction proceedings by the Commission, potentially leading to very significant fines. The European Court of Justice (ECJ) is able to impose financial sanctions on any Member State which fails to implement a judgement from the ECJ establishing an infringement of Community law. The Commission has warned that it will usually recommend both a penalty for each day between the judgement of the Court that there has been an infringement and compliance with the Directive, together with a lump sum penalising the continuation of the infringement between the first judgement on non-compliance and the judgement delivered under Article 228 of the European Community (EC) Treaty. Annex 2 provides information on the potential size of these fines (and therefore the costs of this option) from infractions of other Directives.

### Benefits

16. None have been specifically identified.
17. In view of the costs and benefits set out above, the Government does not consider that the "do nothing" option is a realistic proposition in this instance.

## Option 2: Costs and Benefits

### Costs

18. The main costs associated with this option fall to mineral operators whose waste facilities are identified as Category A facilities in terms of the Mining Waste Directive.
19. The competent authority (local authority emergency planners), the Health and Safety Executive (HSE), and the Environment Agency (EA) will also incur costs under these Regulations. These costs will be mainly, if not fully, covered by the charging proposals set out in regulation 10 that allow full recovery of costs from minerals operators for functions undertaken by the competent authority or on behalf of the competent authority by HSE or EA.
20. The main costs associated with this option are:
  - (i) the preparation, testing, and maintenance/review of the external emergency plan by the competent authority, including consultations with the EA, HSE, the emergency services, health authorities, and the general public (Regulation 4), and any requests for further

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<sup>5</sup> COMAH - Control of Major Accident Hazard Regulations

information from the operator to allow the plan to be prepared; and the costs of public participation in the preparation and review of the emergency plan (Regulation 6).

- (ii) provision and review of information to the public by the minerals operator on safety measures and action required in the event of an accident (Regulation 7);
- (iii) provision of information by the operator to the competent authority in the event of an accident (Regulation 8).

Details for these costs are set out in Annex 1. In summary, for this option costs for *each Category A mining waste facility* are initial costs in the range of £6,520 - £7,960 (£5,520 - £6,960 for preparation of the plan and £1,000 for information provision) and subsequent costs for testing of plans (£4,020 - £4,860 every 3 years), annual maintenance costs of £660-£900, and a possible additional one-off cost of £1,000 for further information provision. Paragraphs 24-32 below set out the key assumptions that have been used in calculating the total costs of this option.

21. In addition there may be other contingency costs associated with this option that are very unlikely to arise, most probably would be minimal, and have therefore not been quantified. In particular, in order to ensure compliance with the Directive the Regulations provide for enforcement powers in the event that an operator does not provide information to the competent authority. The expectation is that these powers are never likely to be needed, but if they were to be used, then costs could be incurred by the competent authority. In the first instance these would be minimal - the competent authority would require that the information be provided through a formal notice. If this was not complied with then failure to provide that information would become an offence with costs arising to both the competent authority and the operator. However, the Government does not consider that any enforcement action would ever reach this stage in practice, and so has disregarded these costs for the purpose of this IA.

## Benefits

22. The main benefits of transposition through this option are that Government's obligation to transpose the Mining Waste Directive in England and Wales is fully met, in line with the Government's general transposition policy.
23. Although there have been only a few incidents at UK mining waste sites in the past, this option also ensures that risks of harm to the environment and human health arising from the failure of Category A facilities are properly identified and planned for. The Regulations under this option will ensure that emergency plans are in place which will ensure an improved response to any accident at a Category A facility. This in turn should ensure that any resulting harm to the environment and risks to human health (e.g. from pollution that may arise as a result of a tailings dam failure) will be minimised or prevented. A consistent approach taken to similar facilities across Europe also potentially aids competitiveness by providing a 'level playing field'.

## Summary

24. Option 2 is preferred as we anticipate the likely infraction costs under Option 1 to be greater than the net costs (£343,950 - £851,990) of implementing this directive as set out in Option 2 and summarised in Table 3 below.

## Key Assumptions Made

### Number of Category A Waste Facilities

25. The key assumption made in this IA concerns the number of waste facilities likely to be classified as Category A facilities under the Directive and to which these Regulations will therefore apply. Annex III of the Directive sets out the basic criteria for determining the classification of waste facilities. In addition, under the implementing and amending measures in Article 22 of the Directive, the European Commission was required to bring forward a "definition of the criteria for

the classification of waste facilities in accordance with Annex III". That definition has now been adopted by the Commission and published.<sup>6</sup>

26. Having appraised the Commission Decision, the Government's view is that there are likely to be only a small number of Category A facilities in England and Wales given the nature of the minerals extracted in the UK and the types of wastes that arise from such mineral operations. The Commission Decision on classification of waste facilities adopts a risk based approach that means that waste facilities will be defined as Category A where:
- (i) loss of structural integrity or incorrect operation of a waste facility could lead to a non-negligible potential for loss of life; serious danger to human health; or serious danger to the environment.
  - (ii) it contains waste classified as hazardous under Directive 91/689/EEC<sup>7</sup> - where the amount of hazardous waste is above 50% the facility will be classified as Category A; where it is between 5% and 50% then it will be classified as Category A unless a site specific risk assessment considering the consequences of a failure of the waste facility means that this would not be necessary.
  - (iii) it contains substances or preparations classified as dangerous under Directives 67/548/EEC<sup>8</sup> or 1999/45/EC<sup>9</sup>.
27. The Government's assessment is that Category A facilities in England and Wales will only be classified on the basis of criteria (i) and (ii) above as there are no known waste facilities where dangerous substances or preparations are likely to be present. Furthermore, the majority of waste facilities are likely to comprise of spoil heaps or tips which are already regulated under existing national legislation (eg the Mines and Quarries (Tips) Act 1969 and associated Regulations<sup>10</sup>) to ensure that risks from loss of structural integrity are minimised. The most likely candidates for Category A status will therefore be tailings dams (under criteria (i) above and any waste facilities with a high percentage of wastes defined as hazardous (under criteria (ii) above). However, the risk-based approach to identification of Category A facilities mean that initial decisions on these will be based on a site specific assessment. The number and type of Category A sites cannot therefore be specified in any level of detail.
28. For the purposes of the IA undertaken alongside consultation on the main transposition options in January 2008, an assumption was made that there could be between 25-50 Category A existing waste facilities in England and Wales. In light of the Commission Decision and further discussion with the Environment Agency, it is now considered that this range may have been too high. Therefore, for the purposes of this IA, the number of existing waste facilities likely to be classified as Category A is assumed to be in the range of 15-30.
29. Given this small number of existing waste facilities that may have Category A status, the likelihood of there being any significant number of new waste facilities being categorised as Category A facilities in the future is considered to be very small - both because of the nature of wastes produced in the UK from mineral operations and because for new waste facilities, it will be in the operator's interest to manage waste and design waste facilities in a manner than means it will not require a Category A classification. Therefore this IA assumes that only 1 new facility is likely to come forward every 5 years and that the range assumed in paragraph 27 above represents the total number of both existing and new facilities ( between 15 and 30).

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<sup>6</sup> See : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:102:0007:0011:EN:PDF>

<sup>7</sup> Directive 91/689/EEC of 12 December 1991 on hazardous waste - see:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0689:EN:HTML>

<sup>8</sup> Directive on Dangerous Substances - see:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31967L0548:EN:HTML>

<sup>9</sup> Directive on Dangerous Preparations - see:

<http://eur->

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1999L0045:20070601:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1999L0045:20070601:EN:PDF)

<sup>10</sup> In particular, The Quarries Regulations 1999 (SI 1999 No 2024)

## **Costs of Preparing External Emergency Plans**

30. Given that the requirement to prepare external emergency plans for Category A mining waste facilities is a new one, there is no directly comparable model on which to calculate the costs for preparing the plans. But there are new requirements for the preparation of off-site emergency plans for reservoirs, where the consequences of failure in terms of emergency planning have some degree of similarity to mining waste facilities such as tailings dams. The costs for preparing external emergency plans for Category A mining waste facilities have therefore been based broadly on the cost information for developing off-site plans for reservoirs as provided by LGA/Emergency Planners - see Annex 1. Ranges have been added to the hours suggested to cater for variations in the types of mining waste facilities that may be classified as Category A (see paragraph 2 of Annex 1). Additional costs have been included to cover work undertaken by other organisations (the figures provided for off-site reservoir plans only cover local authority costs). The figure provided by LGA/Emergency Planners of £60 per hour for staff costs has, in the absence of other information been used throughout.
31. For the purposes of the IA it has been assumed that preparation of the plans will be undertaken in Year 1, that there will be annual maintenance costs for the plan (eg ensuring contact details are kept up to date), and that testing/validation of the plan will be needed every three years (starting in year 2).
32. Costs of preparing, maintaining, and testing external emergency plans will initially fall on the public sector (emergency planners, EA, HSE and Emergency services). But the Regulations implementing these plans provide that these costs can be recovered from mineral operators through charges and fees. For the purposes of this IA, therefore, all costs associated with plan preparation are assumed to fall to the private sector.

## **Other Costs**

33. Paragraph 20 (ii) and (iii) and 21 above sets out the other costs that arise from the implementation of the requirements of Article 6 of the Directive through option 2. It is assumed for the purpose of this IA that the costs of meeting the requirements of regulations 7 and 8 will not require substantial additional evidence gathering by the operator and that the costs will mainly comprise the making available of existing information but in an appropriate format.

## Specific Impact Tests

### Competition Assessment

34. No formal competition assessment has been undertaken given the uncertainties involved at this stage in identifying which mineral operations are likely to have Category A waste facilities – a number of these may be china waste facilities, although that will only be confirmed when applications for permits are made. However the establishment of a consistent regulatory framework under the Directive across the European Community for the management of extractive wastes could potentially have some beneficial impact on UK competitiveness. This could arise in relation to any countries whose extractive industries are in competition with those in the UK, and where regulatory standards have previously been lower than those operating in the UK. Similarly, there could be a negative impact in relation to member states where standards for the management of extractive wastes already meet the requirements of the Directive, and where the additional costs that will be incurred in the UK will not apply, which may in part be offset by the net efficiency benefits of greater competition.

### Small Firms' Impact Test

35. The impact on small firms of transposition of the Directive as a whole was assessed as part of the consultants' 2007 study of the options for transposing the Mining Waste Directive<sup>11</sup>. Given the uncertainties about the number, type and location of waste facilities that will be defined as Category A, it is not possible to identify whether the costs and benefits arising from these Regulations will have any disproportionate impact on small firms.

### Legal Aid Impact Test

36. There will be no legal aid impact from this proposal.

### Sustainable Development

37. In overall terms, the provisions in the Regulations to implement the external emergency plan elements of Article 6 of the Directive will contribute to the goals of sustainable development by ensuring that measures are in place to prevent harm to human health and the environment from those mineral wastes that represent the greatest risk.

### Carbon Assessment

38. The Regulations to transpose Article 6 requirements for external emergency plans should not have any material carbon impact.

### Other Environment

39. A principal objective of the Mining Waste Directive as a whole is to prevent or reduce as far as possible any adverse effects on the environment, in particular, without risk to water, air, soil, fauna and flora and landscape. The Regulations transposing the requirements of Article 6 of the Directive in respect of external emergency plans will contribute to this and build on existing national regulatory controls to ensure effective protection of the environment.

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<sup>11</sup> See Annex of the Impact Assessment on transposition options contained in the January 2008 consultation paper - <http://www.communities.gov.uk/archived/publications/planningandbuilding/wastemanagement>



### **Health Impact Assessment**

40. A principal objective of the Mining Waste Directive as a whole is to prevent or reduce any resultant risks to human health, brought about as a result of the management of waste from the extractive industries. The Regulations transposing the requirements of Article 6 of the Directive in respect of external emergency plans will contribute to this objective.

### **Race, Disability and Gender Equality**

41. The Regulations transposing the requirements of Article 6 of the Directive in respect of external emergency plans will have no impact on race, disability or gender equality.

### **Human Rights**

42. The Regulations transposing the requirements of Article 6 of the Directive in respect of external emergency plans will have no impact on human rights.

### **Rural Proofing**

43. The Regulations transposing the requirements of Article 6 of the Directive in respect of external emergency plans will have no significant impact on rural areas.

## Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Note : Evidence base includes that prepared for the main impact assessment on options for transposing the Directive as a whole, in addition to the specific requirements of Article 6 of the Directive set out in this impact assessment.

# Annexes

## Annex 1:

### Option 2 - Details of Costs

Preparation, testing, and maintenance/review of the external emergency plan by the competent authority, including consultations, further requests for information from the operator and costs of public participation in the preparation and review of the emergency plan:

- The following table sets out the information provided by the LGA/Emergency Planners on the costs of preparing an off-site plan for reservoirs. This has formed the starting point for the calculation of the costs arising in the preparation of external emergency plans under the Mining Waste Directive.

**Table 1: Costs of Developing an Off-site Plan for Reservoirs**

<u>WORK REQUIRED</u>	<u>NO. HOURS</u>	<u>HOURLY RATE £</u>	<u>COST</u>	
<b><u>Plan Preparation (Initial One-off)</u></b>				
Plan scoping and meeting preparation	15	60	£900	
Planning meetings	18	60	£1,080	
Site visit	3	60	£180	
Writing plan	40	60	£2,400	
Plan publicity/briefing partners	12	60	£720	
<b>Total</b>	<b>88</b>		<b>£5,280</b>	
<b><u>Plan Validation (3 yearly)</u></b>				
Meetings to scope and plan exercise	10	60	£600	
Writing exercise	20	60	£1,200	
Exercise delivery	5	60	£300	
Write-up and issue exercise report	10	60	£600	
<b>Total</b>	<b>45</b>		<b>£2,700</b>	
<b><u>Plan Maintenance (Annual)</u></b>				
Writing to all stakeholders	10	60	£600	
Revising plan	10	60	£600	
Reissuing and publicising new plan	10	60	£600	
<b>Total</b>	<b>30</b>		<b>£1,800</b>	
<b>Costs over 4 Years</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>
<b>One-off initial cost</b>	<b>5,280</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Annual maintenance cost</b>	<b>0</b>	<b>1,800</b>	<b>1,800</b>	<b>1,800</b>
<b>Three-yearly exercise cost</b>	<b>0</b>	<b>0</b>	<b>2,700</b>	<b>0</b>
<b>TOTALS</b>	<b>£5,280</b>	<b>£1,800</b>	<b>£4,500</b>	<b>£1,800</b>

2. The costs in Table 1 assumed that smaller less complex sites might actually require less work, so costs would be lower. This would apply equally to some mining waste facilities, although in some cases, it is possible that the amount of work required may be greater. The varying nature of the risk posed by failure of mining waste facilities, and the fact that the size of facilities may vary, means that it is not considered appropriate to use a single "hours" figure for each task. Instead, for the purposes of this IA, a range has been used of approximately 10% either side of the figures in Table 1 above - for example, for 10 hrs, a range of 9-11 Hours has been used.
3. In addition, the costs set out in Table 1 only take account of the costs incurred by local authority planners in producing and testing the plan. In practice, other bodies will be involved in the preparation or testing of the plan - for example, the Environment Agency, the Health and Safety and the emergency services. These staff costs, with some estimates of the hours work needed, have therefore been added to the figures that were included in Table 1 to ensure that the full costs involved in the preparation and testing of the plan have been taken into account. The total costs for testing of plans are in line with those for a seminar or tabletop based exercise for sites regulated under COMAH<sup>12</sup>.
4. The costs expected to arise for the preparation, maintenance, and testing of an external emergency plan for a mining waste facility are set out in Table 2 below. In summary, the estimated costs per waste facility are expected to be:

Preparation of the plan :	£5,520 - £6,960 (one-off cost)
Testing of plans:	£4,020 - £4,860 (every 3 years)
Maintenance of plans:	£660 - £900 (ongoing - annual)

5. Costs are therefore expected to arise over the 10 year period as follows:

Year 1	:	Preparation of Plan
Years 2, 5 and 8	:	Maintenance of Plan and Testing of Plan
Years 3, 4, 6, 7, 9 and 10	:	Maintenance of Plan

6. Given an estimated 15-30 affected Category A waste facilities across England and Wales, this means total plan preparation, testing and maintenance costs are estimated to be in range of:
  - a) Initial year 1 costs: £82,800 – £208,800;
  - b) Testing costs in years 2, 5 and 8 of £60,300 - £145,800 for each of these years.
  - c) Annual plan maintenance costs of £9,900 - £27,000.

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<sup>12</sup> Control of Major Accident Hazards - figures provided by local authority emergency planners suggest £2,500 to be the cost of a seminar exercise and £5,000 for a tabletop exercise

**Table 2: Breakdown of Costs for Preparation of External Emergency Plan**

<b>Work</b>	<b>Hours (range)</b>	<b>Hourly Rate</b>	<b>Cost</b>
<b><u>Initial Plan Preparation</u></b>			
<b>(i) Emergency Planners</b> (including plan scoping and meeting preparation, planning meetings, site visit, writing plan, publicity and briefing as per reservoirs example)	78-98	60	£4,680 - £5,880
<b>(ii) Environment Agency and Health and Safety Executive</b> (costs of responding to consultation on plans and provision of information)	7-9	60	£420 - £540
<b>(iii) Emergency Services (including Health Authorities)</b> (costs of responding to consultation on plans and provision of information)	7-9	60	£420 - £540
<b>Total:</b>			<b>£5,520 - £6,960</b>
<b><u>Plan Validation/Testing</u></b>			
<b>(i) Emergency Planners</b> (including meetings to scope and plan exercise, writing exercise, exercise delivery/testing of plan, and prepare and write up exercise report)	40-48	60	£2,400 - £2,880
<b>(ii) Environment Agency and Health and Safety Executive</b>	7-9	60	£420 - £540
<b>(iii) Emergency Services (including Health Authorities)</b>	20-24	60	£1,200 - £1,440
<b>Total:</b>			<b>£4,020 - £4,860</b>
<b><u>Plan Maintenance</u></b>			
<b>(i) Emergency Planners</b> (including writing to stakeholders, revising plan and re-issuing/publicising new plan)	9-11	60	£540 - £660
<b>(ii) Environment Agency and Health and Safety Executive</b>	1-2	60	£60 - £120
<b>iii) Emergency Services (including Health Authorities)</b>	1-2	60	£60 - £120
<b>Total:</b>			<b>£660 - £900</b>

### **Provision and review of information to the public by the minerals operator on safety measures and action required in the event of an accident**

7. The information required to be provided by the operator and the review of that information is not expected to be a substantial burden on mineral operators. The requirements set out in the Regulations specify that information - most, if not all of which will be readily available. In the main, therefore, the costs of this requirement will be in the dissemination of this information to members of the public.
8. The costs of dissemination of information will depend on the individual waste facility concerned and its location. For the purposes of this IA, the initial cost of providing this information is estimated to be £1,000 per waste facility. Ongoing costs will be dependent on the review of that information (required at least every three years under the Regulations). This IA assumes that this review may require revised information to be provided to the public once in years 2-10, giving rise to a further cost of £1,000 per waste facility
9. Thus total costs to mineral operators, based on the expected 15-30 Category A waste facilities are expected to be:

Total Initial costs in year 1            of £15,000 - £30,000  
Cost of providing revised information (once within the next 2-10 years) of £15,000 -  
£30,000

### **Provision of information by the operator to the competent authority in the event of an accident**

10. The number of accidents likely to occur at Category A Waste facilities over a 10 year period is expected to be very small. The requirement in the Directive and the Regulations is for the operator to provide "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.
11. The costs of making this information available will clearly depend on the type of accident that occurs and its consequences. It is not considered realistic to predict what these may be. However, the expectation is that the information that will be requested will be readily available or easily obtained and that there will be de-minimis costs incurred in providing that information to the competent authority. For that reason the costs under this option have not been quantified.

### **Costs to Mineral Operators of Option 2**

12. In summary, the expected costs for the estimated 15-30 of affected Category A facilities are shown in Table 3 below:

**Table 3: Summary of costs and present value calculation**

Year	Plan preparation	Plan validation	Plan maintenance	Review of information	Cost	Cost	Present Value	Present Value
1	£5,520 for 15 sites// £6,960 for 30 sites			£1,000 for 15 sites// £1,000 for 30 sites	97,800	238,800	97,800	238,800
2		£4,020 for 15 sites// £4,860 for 30 sites	£660 for 15 sites// £900 for 30 sites		70,200	172,800	67,826	166,957
3			£660 for 15 sites// £900 for 30 sites		9,900	27,000	9,242	25,205
4			£660 for 15 sites// £900 for 30 sites		9,900	27,000	8,929	24,352
5		£4,020 for 15 sites// £4,860 for 30 sites	£660 for 15 sites// £900 for 30 sites		70,200	172,800	61,175	150,585
6			£660 for 15 sites// £900 for 30 sites	£1,000 for 15 sites// £1,000 for 30 sites	24,900	57,000	20,965	47,992
7			£660 for 15 sites// £900 for 30 sites		9,900	27,000	8,054	21,965
8		£4,020 for 15 sites// £4,860 for 30 sites	£660 for 15 sites// £900 for 30 sites		70,200	172,800	55,177	135,819
9			£660 for 15 sites// £900 for 30 sites		9,900	27,000	7,518	20,504
10			£660 for 15 sites// £900 for 30 sites		9,900	27,000	7,264	19,811
<b>Total</b>					<b>382,800</b>	<b>949,200</b>	<b>343,950</b>	<b>851,990</b>

Present value calculation uses a discount rate of 3.5%.

## Annex 2: Fines levied by the European Court of Justice on non-compliant Member States

1. Article 228 of the European Community (EC) Treaty concerns the final stages of infringements of Community law (EC Directives). Since the implementation of the Maastricht Treaty in 1996 the European Court of Justice (ECJ) has been able to impose financial sanctions on any Member State which fails to implement a judgement from the ECJ establishing an infringement of Community law. While the final decision on the imposition of financial sanctions lies with the Court, the European Commission initiates Article 228 procedure and has published details of the principles on which it will base its recommendations to the Court for a financial penalty to be imposed. These principles can be viewed at:  
  
[http://ec.europa.eu/community\\_law/docs/docs\\_infringements/sec\\_2005\\_1658\\_en.pdf](http://ec.europa.eu/community_law/docs/docs_infringements/sec_2005_1658_en.pdf)
2. The Commission's recommendations are based on the following three criteria:
  - the seriousness of the infringement;
  - its duration; and
  - the need to ensure that the penalty itself is a deterrent to further infringements.
3. From 2005, the Commission has warned that it will usually recommend both a penalty for each day between the judgement of the Court that there has been an infringement and compliance with the Directive, together with a lump sum penalising the continuation of the infringement between the first judgement on non-compliance and the judgement delivered under Article 228. Subject to ratification by member states of the Treaty of Lisbon, it is expected that in 2009 the Article 228 procedure will change. As a result, the Commission will be able, more quickly than at present, to refer cases of non-compliance to the Court with a recommendation for a fine.
4. In three cases of Member States being fined since 2000, substantial and progressively greater penalties were imposed. In the first case, a fine of €20,000 was imposed for each day of delay in implementing measures required by a Directive. The second case resulted in a fine of €624,150 per year and per 1% of bathing areas not conforming to the Bathing Waters Directive for the year in question. In the third case, the fine was €57,761,250 for each period of six months from the date of the judgement, together with a lump sum penalty of €20,000,000.
5. Although difficult to be precise about the likely size of any possible fine, which is based on a case by case basis., we anticipate that the costs may range between €2m - €8m<sup>13</sup>.

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<sup>13</sup> See guidance on Article 228 Infraction procedure – fines. The calculation is based on seriousness of the breach (coefficient rating ranges 1 – 20), the duration of the breach (coefficient rating ranges between 1 – 3) and the deterrent factor in which the UK is 21.9 (Member State's ability to pay and the number of votes).