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inspiring... advising... managing... adapting...

How to comply with your environmental permit.

Additional guidance for: mining waste operations (EPR6.14)

**and** Guidance on financial guarantees for mining waste facilities

Consultation Response Document

We are the Environment Agency. It's our job to look after your environment and make it **a better place** - for you, and for future generations.

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The Environment Agency. Out there, making your environment a better place.

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## **1 Introduction**

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This document is the Environment Agency's response to the consultation on our draft guidance 'How to comply with your environmental permit. Additional guidance for: mining waste operations' and guidance on 'financial guarantee for mining waste facilities'. We published our draft guidance for England and Wales in June 2009. We sought comments from those with an interest in mining waste operations. The 3 month consultation ended in September 2009.

The consultation responses are available by writing to:  
National Customer Contact Centre  
Environment Agency  
Rio House  
Waterside Drive, Aztec West  
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## **2 Overview of our guidance**

The technical guidance note has been developed for use by the mining waste sector in addition to our general Environmental Permitting Regulations guidance for applicants and on How to Comply with your Environmental Permit. It provides operational standards and measures, specific to the Mining Waste Directive (MWD), to help operators prevent pollution and comply with their permit. It also gives specific guidance on how to prepare a Waste Management Plan.

The guidance on financial guarantees for mining waste facilities is for operators of mining waste operations that include certain mining waste facilities. For new facilities a financial guarantee needs to be in place before use is started. A financial guarantee is required by 1<sup>st</sup> May 2014 for existing facilities. The financial guarantee is required to ensure that sufficient funds are available to meet the obligations of the permit (which include closure and aftercare provisions).

## **3 Consultation of our guidance**

As part of the consultation exercise we sent our draft guidance and questions directly to interested parties, including the main trade associations and regulatory bodies impacted by the implementation of the MWD. We received a total of 21 responses and those who were willing for their response to be disclosed are listed below.

Lafarge Aggregates Limited	Sibelco UK
FGB Surveys Ltd T/A Fennell Green & Bates	British Ceramic Confederation
Aggregate Industries	Cromwell Wood Estate Company Limited
Royal Institution of Chartered Surveyors	Banks Development
English Stone Forum	British Aggregates Association
Minerals and Waste Topic Group Planning Officers Society	Raymond Brown Minerals and Recycling Ltd
Confederation of UK Coal Producers (Coal Pro)	Goonvean Ltd
Devon County Council	CBI Minerals Group (CBIMG)
British Ceramic Confederation	Kaolin and Ball Clay
Scottish Environment Protection Agency (SEPA)	Norfolk County Council

3.1 Within the consultation we asked the following questions:

**Question 1a**

Are the standards and measures in the technical guidance note appropriate for the range of mining waste operations in England and Wales. If not, please specify which one(s) you consider not to be appropriate and why.

**Question 1b**

Is the guidance provided for Category A mining waste facilities sufficient? If not, please explain why.

**Question 2**

Is the guidance clear about what should be included in the waste management plan? If not, please explain why.

**Question 3**

In section 3.3.2 we have suggested that attenuation ponds that form part of the waste management facility are designed with a capacity for a 1 in 100 year return period storm of any duration. Existing facilities may not have been built to this standard. Please inform us whether or not your facilities meet this standard. If not, what steps will you have to take to achieve it.

**Question 4a**

We have interpreted the “survey of the condition of the land to be affected by the mining waste facility” (in section 2.2.9) to mean – identification of any aspects of the land which could potentially affect stability and lead to pollution of the environment or harm to human health. Do you agree with this interpretation?

**Question 4b**

Is it clear what information you would need to submit?

**Question 5**

Do the requirements of the technical guidance note mean that you will be able to rely on existing information provided to other regulators in order to produce a waste management plan?

**Question 6**

A list of inert extractive wastes which the confederation of British Industry Minerals Group has helped develop can be found in Appendix 4 of the technical guidance note.

a) Do you agree with the approach suggested

b) What, if any, other inert extractive waste do you consider should be included and why?

**Question 7a**

Do you consider the 60 year period over which we require a detailed estimate of aftercare costs in the financial guarantee guidance to be reasonable

**Question 7b**

If not do you consider different timeframes are required depending on the type of facility?

**Question 8**

Any other comments

## 4 Summary of our responses to comments

The comments received covered a wide range of issues. Some respondents used the questions in section 3.1 to structure their response and some did not. Some responses were relevant to these questions while others were of a general nature regarding implementation impacts.

Most comments related to:

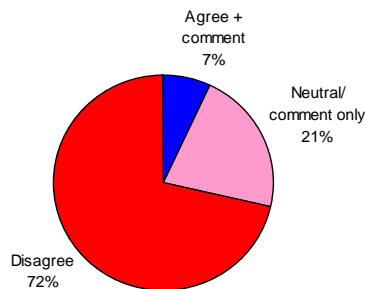
- Definition of waste and the application of the European Court of Justice judgement AvestaPolarit Chrome Oy (C-114/01)
- Regulation of inert and unpolluted soil
- What information to supply for the Waste Management Plan.
- Development of the list of inert extractive wastes
- Requirements of the financial guarantee
- Further guidance needed for Category A facilities
- Improved document clarification with the use of further examples
- Consistent use of terminology.

We have considered all of the issues raised in the consultation. We will change our draft guidance in line with the comments received where we agree the changes will improve our guidance. We will revise our guidance and publish it on our website in Spring 2010.

### 4.1 Question 1a

**Are the standards and measures in the technical guidance note appropriate for the range of mining waste operations in England and Wales. If not, please specify which one(s) you consider not to be appropriate and why.**

14 of 21 Respondents



Agree	Agree + comment	Neutral/comment only	Disagree	No opinion
0	1	3	10	0
0%	7%	21%	71%	0%

#### 4.1.1 Summary of Issues

There were many comments on this question, some of a broad nature and others more specific.

- 4.1.2 A high percentage of respondents were concerned about the implications of the European Court of Justice case 'AvestaPolarit Chrome Oy'. There were calls for further clarification within the guidance of the application of this judgment.

*Following recent discussions with government and industry representatives, we will be including our interpretation of the judgment outside of this guidance, in the form of a position statement. We will refer to this position statement within the technical guidance note and in our discussions with applicants.*

- 4.1.3 Many challenged the level of regulation this guidance imposed on certain materials such as unpolluted soils and inert extractive waste.

*Our regulatory position statement regarding these materials will indicate what is required and demonstrate that we are giving full effect to the derogations in the Directive. It will be referred to within the revised technical guidance.*

- 4.1.4 Mineral planners were concerned that that the relationship between themselves and the competent authorities for the implementation of the MWD was unclear in the guidance

*Government Guidance on the Mining Waste Directive has clarified the roles of the competent authorities. We are committed to working with our colleagues within other competent authorities, and may revise or create 'working together agreements' to set this out.*

- 4.1.5 It has been requested that clarification is given on the requirements surrounding point source discharge emissions to air, water and land, especially regarding Mining Waste Operations that include or do not include water discharge consents and the guidance requirements for dust, noise and vibration.

*The revised guidance will be updated with our latest position regarding Mining Waste Operations and point source emissions to surface water. Waste management plans should describe how emissions of noise, dust and vibration are managed and the risks should be assessed. Conditions on noise, dust etc will be included where the activity warrants it.*

- 4.1.6 Many questioned the extent to which closure provisions apply to inert waste and unpolluted soil.

*We will clarify when and how closure provisions apply to these materials.*

- 4.1.7 Some respondents stated the need for links to be strengthened between this guidance and other existing legislation, in particular the Major Accident Offsite Emergency Plan

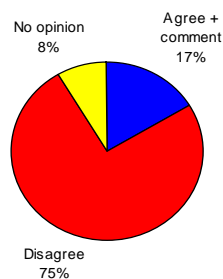
(Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 (External Emergency Plan Regulations)

*We will review our guidance and link to other relevant guidance accordingly.*

#### 4.2 Question 1b

**Is the guidance provided for Category A mining waste facilities sufficient? If not, please explain why.**

##### 12 of 21 Respondents



Agree	Agree + comment	Neutral/ comment only	Disagree	No opinion
0	2	0	9	1
0%	17%	0%	75%	8%

#### 4.2.1 Summary of issues

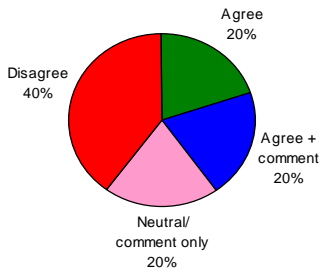
4.2.2 Although some respondents were happy with the guidance provided for Category A mining waste facilities, the majority felt that more information needed to be provided.

*We are currently in discussion with industry representatives and other competent authorities regarding the development of further guidance. We will update our guidance accordingly.*

#### 4.3 Question 2

**Is the guidance clear about what should be included in the waste management plan? If not, please explain why.**

15 of 21 Respondents



Agree	Agree + comment	Neutral/comment only	Disagree	No opinion
3	3	3	6	0
20%	20%	20%	40%	0%

**4.3.1 Summary of issues**

4.3.2 A number of respondents indicated that the guidance did not make clear what information should be submitted for the waste management plan, especially having regard to any existing information used to comply with other legislative requirements.

*We acknowledge these comments and will clarify the information we require and in what format.*

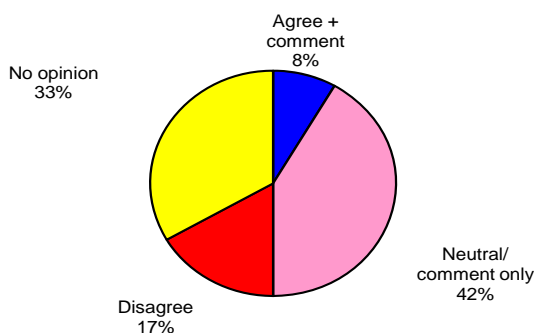
4.3.3 A number of respondents suggested that more examples of waste management plan would be useful for different facilities/waste types.

*We aim to work with industry representatives to extend the examples given in the guidance.*

**4.4 Question 3**

**In section 3.3.2 we have suggested that attenuation ponds that form part of the waste management facility are designed with a capacity for a 1 in 100 year return period storm of any duration. Existing facilities may not have been built to this standard. Please inform us whether or not your facilities meet this standard. If not, what steps will you have to take to achieve it.**

**12 of 21 Respondents**



Agree	Agree + comment	Neutral/comment only	Disagree	No opinion
0	1	5	2	4
0%	8%	42%	17%	33%

**4.4.1 Summary of Issues**

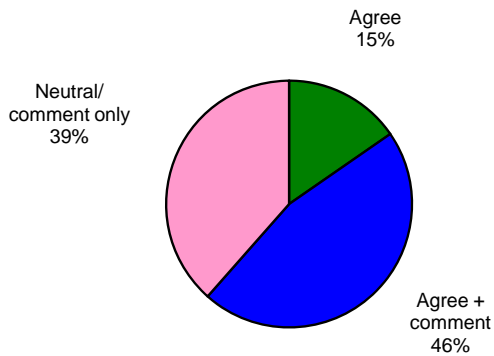
4.4.2 Many responded that few existing facilities meet such a standard and it would be inappropriate to do so retrospectively. It was generally accepted that new facilities could meet the standards.

*We will review what is appropriate here and adjust our guidance accordingly.*

**4.5 Question 4a**

**We have interpreted the “survey of the condition of the land to be affected by the mining waste facility” (in section 2.2.9) to mean – identification of any aspects of the land which could potentially affect stability and lead to pollution of the environment or harm to human health. Do you agree with this interpretation?**

### 13 of 21 Respondents



Agree	Agree + comment	Neutral/comment only	Disagree	No opinion
2	6	5	0	0
15%	46%	38%	0%	0%

#### 4.5.1 Summary of Issues

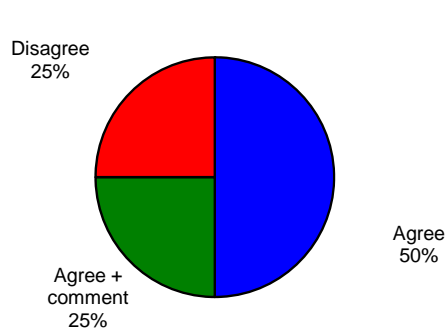
4.5.2 The majority of respondents accepted this interpretation.

*We will not make any changes to the guidance regarding the interpretation.*

#### 4.6 Question 4b

**Is it clear what information you would need to submit?**

#### 4 of 21 Respondents



Agree	Agree + comment	Neutral/comment only	Disagree	No opinion
2	1	0	1	0
50%	25%	0%	25%	0%

#### 4.6.1 Summary of Issues

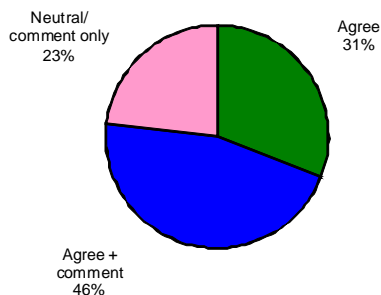
4.6.2 Although most respondents accepted our interpretation, they felt that the guidance failed to include sufficient information for existing sites where there may be a lack of information.

*We will consider this comment and review our guidance accordingly.*

#### 4.7 Question 5

**Do the requirements of the technical guidance note mean that you will be able to rely on existing information provided to other regulators in order to produce a waste management plan?**

#### 13 of 21 Respondents



Agree	Agree + comment	Neutral/comment only	Disagree	No opinion
4	6	3	0	0
31%	46%	23%	0%	0%

#### 4.7.1 Summary of Issues

4.7.2 The majority of respondents agreed that they will be able to rely on existing information in order to produce a waste management plan although this was seen as duplication in many cases.

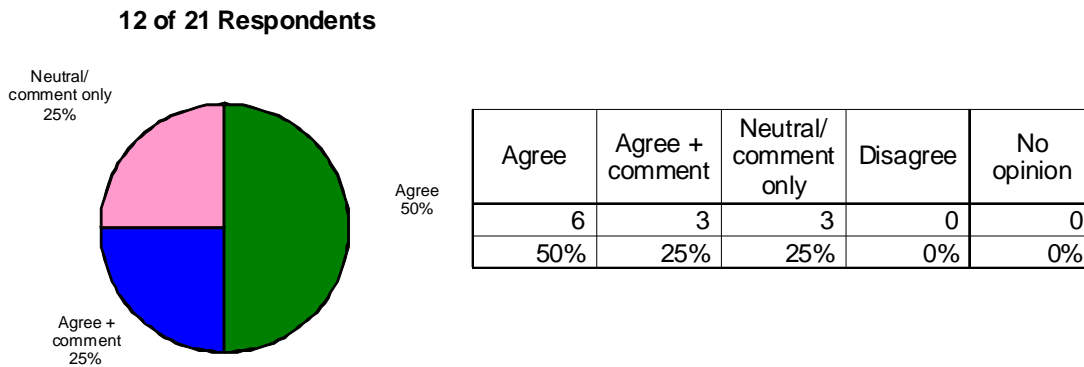
*We will be reviewing this part of the guidance to make it clearer what information we will require and in what format. Please note that for those operations that only require a standard permit, we will not need to see the waste management plan at the application stage.*

#### 4.8 Question 6

**A list of inert extractive wastes which the confederation of British Industry Minerals Group has helped develop can be found in Appendix 4 of the technical guidance note.**

**a) Do you agree with the approach suggested**

**b) What, if any, other inert extractive waste do you consider should be included and why?**



#### 4.8.1 Summary of issues:

4.8.2 On the whole all were supportive of the list of extractive wastes found in Appendix 4 of the technical guidance note.

4.8.3 A number highlighted that there should be a mechanism to add or remove items from the list.

*The technical guidance note will be updated occasionally and changes to the list can be made.*

4.8.4 A number of respondents highlighted that material stored on site for environmental mitigation and restoration under a planning permission is not extractive waste and therefore not a waste facility.

*Following recent discussions with government and industry representatives, we will be including our interpretation of the AvestaPolarit Chrome Oy judgment within a position statement.*

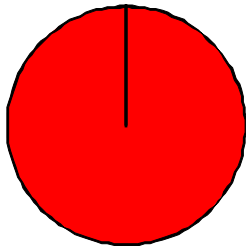
4.8.5 Some respondents stated that operators shouldn't have to demonstrate that listed waste in Appendix 4 meet the criteria in Section 2.2.2 of the technical guidance note

*Operators will need to demonstrate that their waste continues to have the characteristics that make a waste inert. We will check that the list will work for applicants through our discussions with industry representatives to produce further examples of waste management plans.*

**4.9 Question 7a**

**Do you consider the 60 year period over which we require a detailed estimate of aftercare costs in the financial guarantee guidance to be reasonable**

11 of 21 Respondents



Disagree  
100%

Agree	Agree + comment	Neutral/ comment only	Disagree	No opinion
0	0	0	11	0
0%	0%	0%	100%	0%

4.9.1 Summary of issues:

4.9.2 All of the respondents disagreed with the proposed 60 year aftercare period for waste facilities where financial guarantees are required, as they view it as inappropriate or not possible.

4.9.3 A number commented that mineral material is predictable unlike most landfill waste and therefore should not use the same timescale as landfill.

4.9.4 Some considered that their Category A assessment will be made on 1<sup>st</sup> Criterion of Annex III of MWD as their material is inert (no hazardous or dangerous substances) and therefore the aftercare period should reflect the different criterion used for assessment.

*We acknowledge these comments although it should be noted that some mining waste facilities will have long term obligations of aftercare and monitoring. We will reassess our draft guidance and review our approach in line with the risk to the environment and human health.*

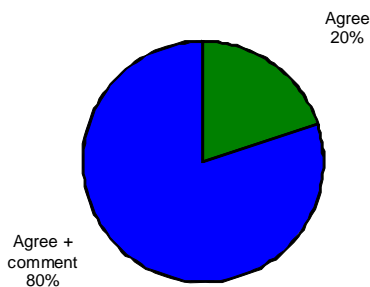
4.9.5 A number of respondents stated that aftercare and restoration of sites are dealt with by planning permissions.

*It should be noted that there is a distinction between our permit requirements regarding aftercare and those for planning permissions. The financial guarantee is an explicit requirement of the Mining Waste Directive that is not met by existing permissions.*

#### 4.10 Question 7b

**If not do you consider different timeframes are required depending on the type of facility?**

10 of 21 Respondents



Agree	Agree + comment	Neutral/ comment only	Disagree	No opinion
2	8	0	0	0
20%	80%	0%	0%	0%

##### 4.10.1 Summary of issues

4.10.2 All of those who responded agreed that different timescales should be considered depending on the type of facility.

*We acknowledge this comment and will reassess the guidance.*

4.10.3 It was suggested that 15 years should be used in line with the review of old mineral permissions.

*These reviews are undertaken during the extraction period only whereas the MWD includes requirements of aftercare provisions for certain facilities.*

## **4.11 Question 8**

<b>Any other comments</b>
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### **4.11.1 Summary of issues**

4.11.2 There was a general request for clarification as to which Mining Waste Operations require monitoring.

*We will review and amend our guidance accordingly to ensure this is clear.*

4.11.3 Some comments were made regarding the lack of clarification on when a Mining Waste Operations turns into MWF when material is stored for longer periods than first expected and what an operator should do.

*We will review our guidance in light of this comment.*

4.11.4 Clarification was sought in the guidance as to whether the use of flocculants in water treatment may move inert material into non hazardous material.

*We will review our guidance accordingly in light of this comment.*

4.11.5 It was felt by some that the relationship between Water Resources Act and environmental permitting needs to be made clearer in the guidance.

*We will review our guidance in light of this comment*

## **5 Next Steps:**

Individuals who wish to follow up their responses, or points made within this document, in more detail are welcome to contact us by writing to:

National Customer Contact Centre  
Environment Agency  
Rio House  
Waterside Drive, Aztec West  
Almondsbury, Bristol BS32 4UD

Once our guidance has been revised it will be reviewed by CBIMG and then submitted on our website.

Further information about the Mining Waste Directive can be found at our website at [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk).

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