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Mr Michael Owens  
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Dear Mr Owens

**Guidance to Local Authorities on the Waste (Management of Waste from the Extractive Industries) Regulations 2009**

The response of the Minerals Group of the Society of Chartered Surveyors Ireland (SCSI) to the above guidelines is set out below. Members of the Professional Group Committee were requested to consider the Draft Guidelines and each was requested to provide a response. The Committee members are all Chartered Minerals Surveyors and members of the Minerals and Waste faculty with extensive experience in minerals and waste matters. This includes the design and planning of mineral and waste sites. All have experience in dealing with Local Authorities over regulatory issues and each member will be dealing with the new Regulations. .

The response is in two parts. The first part presents an overall summary of the views of the Minerals Group Committee to the Guidelines. The second part contains additional specific points addressing particular issues contained in the Draft Guidelines. These points were raised by the Committee as individuals and as a result they are presented in different formats. Some of the points have been edited to avoid duplication.

Whilst I am aware that comments were requested to be provided in the Excel format on the EPA webpage they were received by me in varying formats. In the time available to me I have not been able to provide a coordinated response in the Excel format requested and I apologise for this.

It is my view that the General Response would not be appropriate for that format which is directed to specific points in the Draft. If you require the specific points to be provided in Excel in accordance with the EPA web page I will endeavour to do that. However, I will not be able to do that by today's deadline. Perhaps you would let me know if you require this.

## General Response:

It is the strong view of the Minerals Group of the SCSl that the Draft Guidelines in their present format do not provide practical or helpful guidelines for the implementation of the Regulations. The published Guidelines should provide clear and concise guidance on the application of the Regulations with a view to achieving consistency throughout the various Local Authorities and other agencies. They should also provide clear and readily understandable advice for the benefit of operators of extraction sites who are required to comply with the Regulations. They do not do this.

Far too much attention is given in the guidance to exploring and explaining aspects of the law on waste management. What the Guidelines should do is provide concise, simple and practical advice to Local Authorities (and by extension to quarry owners and operators) on how they are to implement the legislation in a consistent manner. Much of the detail in the draft document is irrelevant in the context of providing this advice.

Local Authorities do not require legal justification for this guidance to be provided in the main body of the document. If this information is considered necessary it would be more appropriate to provide the legal rationale for the guidance in a set of Appendices at the back of the document, to be consulted only as and if required.

Although detailed information and guidance is provided within the text, it is only with some difficulty that it is extracted. As a result, anyone requiring guidance on the regulations will need to spend significant time and effort to establish what it is they need to do.

The Guidelines need to be re-structured to provide concise, simple and practical advice which is easily accessible and which addresses:

- (i) Role / responsibilities of Local Authorities
- (ii) Implementation procedures to be followed by Local Authorities (with focus primarily on achieving a consistent approach across State)
- (iii) They need to identify
- (iv) Responsibilities of quarry operators.

Whilst the Draft Guidelines are correct to point out that the only body qualified to give a definitive interpretation of the law is the courts, the fact is that the Guidelines when published are likely to be used as evidence in any legal action taken with respect to the legislation. For this reason the published Guidelines should be more definitive and should seek to reduce as far as possible any ambiguities.

It is disappointing that the Draft Guidelines do not explain in any detail the various types of activities common within the mineral extraction sites that fall within the differing categories. This is considered to be more relevant to the Guidelines than some of the lengthy explanations as to the legal basis of the detail in the Draft Guidelines.

Whilst a number of other issues are contained in the second part of this response there are some which are considered to be more appropriately dealt with in this general response.

Much of the text is considered to be in terms that are too vague or too equivocal. An example is the use of the words *the EPA's view* without providing any basis for taking that view.

The EPA in a number of sections of the Draft Guidelines seeks to remove from Local Authorities discretionary elements of the Regulations. It does this on the vague pretext that it is the EPA's view that it should be done. If the EPA are, in effect, seeking to, negate parts of the Regulations that have only recently been put in place by the legislature it should have good reason to do so. These reasons should be made clear. It is not sufficient to state blandly that this is done because it is the EPA's view.

The Draft Guidelines recognise that as a result of the recession stock piles of product may remain on site for long periods. What is not recognised is that the extractive industry is cyclical and periods of high output followed by periods of low output are a normal feature of the industry. As the country comes out of recession, the material within the stockpiles will turn over faster. It is recognised that there may be sites which will close down permanently. However, by suggesting that stockpiles of product may after a period of time, be classified as a waste we are in danger of creating a bureaucratic absurdity.

For example if stockpiles of product were to be classified as waste; when eventually sold; would they then require to be transported by a haulier who was an authorised waste carrier? Could a stockpile that contains material that has been there for many years but which was being added to and taken from be classified as a waste.

Most soils stripped from mineral extraction sites are used to provide acoustic and visual barriers. They may remain as part of the fabric of the site or may be used in progressive restoration or final site restoration. This is not recognised in the Guidelines.

It is our view that within the Guidelines, the use of tables and/or graphical aids (in the form of flow charts and/or decision trees) should be considered. This will help to enhance the clarity and utility of the document and in particular will help to explain the responsibilities, decision-making processes and implementation procedures. In this respect it may be useful to refer to the guidance produced by the UK Environment Agency and the CBI Mineral Group. Decision trees would be particularly helpful in explaining:

- (i) What quarries / waste facilities the regulations apply to
- (ii) Whether materials held on site are extractive waste or not
- (iii) How to classify extractive waste as inert, non-hazardous or hazardous

- The EPA should also consider developing standard questionnaires and forms for use by Local Authorities to ensure consistency in approach and implementation of these Regulations across the State.

## **ADDITIONAL RESPONSES**

### **Appendix A (Meaning of Extractive Waste)**

- Appendix A provides long, over-legalistic and ultimately obtuse guidance on what constitutes extractive waste. There needs to be greater clarity (understandable to quarry operators) as to what on-site constitutes extractive waste and what not. Presenting legislation and European case law and advising that each site should be assessed on a case by case is not particularly helpful.
- Regulation 27 of the EC (Waste Directive) Regulations (SI126 of 2011) transposes Article 5 of the EU Waste Directive (2008/98/EC) into Irish law. This regulation outlines a series of tests whereby materials may be classified as by-products rather than waste. It is arguable that some of these tests could be applied to materials generated by quarrying activity (as in the UK Guidance produced by the Environment Agency). The Agency's extractive waste guidelines should clearly identify whether, if and how the Agency considers these tests should be applied in assessing whether materials generated by quarrying activity constitute waste or not.
- The set of principles to be used to identify extractive waste which are distilled out of the legislation and case law on Page 84/85 of the draft guidelines are somewhat subjective and would benefit from some further simplification into a flow chart / decision tree presenting a series of clear, practical and readily understood tests or assessment criteria. Such an approach would facilitate more consistent implementation of the regulations by Local Authorities and quarry operators.
- It would also be helpful if the guidance could identify those materials / features / facilities which the Agency deems to typically constitute or hold extractive waste (in the context of a typical operational quarry / mine) and which, by extension, are subject to the extractive waste regulations.
- Rather than push any practical guidance on what constitutes extractive waste to the back of the document, the Agency should bring it to the front. It is fundamental, and everything else in the regulations and guidance flows from it. If the Agency feels it is valuable / necessary to do so, it can provide the legal justification for any interpretation it makes in later sections of the guidance or in an Appendix.

### **Chapter 10 (inert Waste)**

- The bulk of the extractive waste addressed by these regulations is inert and generated by conventional quarry operations. It is unclear from the guidance

provided (in Para 5, Page 45) what tests are to be applied by the Local Authority / quarry operator to establish or verify that extractive waste can be classified as inert. The draft guidance is ambiguous about whether or not soil quality testing is required. In the absence of guidance, it is likely Local Authorities will adopt inconsistent approaches to this issue.

- The guidance should clarify
  - (i) is soil quality testing necessary to verify material is inert?
  - (ii) if so, what specific parameters should soil be tested for?
  - (iii) if not, what tests will be applied in practice to establish it is in fact inert?
  - (iv) what criteria / threshold values should soil test results be screened against? (Ireland has no national prescribed threshold limits for contaminated land).
  - (v) what the Agency's position is in respect of soil which has naturally high background levels of particular elements?
  
- The inert threshold limit of 0.1% for sulphide sulphur (specified in Commission Decision 2009/359/EC) is relatively low and many quarries (particularly in non-calcareous strata) are likely to have values higher than this. The extractive waste guidance needs to provide greater clarity on the Agency's requirements for
  - (i) testing for sulphide sulphur and
  - (ii) classification / management of extractive waste with >0.1% sulphur sulphides in non-calcareous lithologies or >1% sulphide sulphur in calcareous lithologies.

## **Chapter 5 (Regulation 5)**

- Regulation 5(6) requires Local Authorities to approve extractive waste management plans. The Agency has provided little or no guidance for officials or operators on Pages 22 and 23 as to the level of detail which it considers should be provided to satisfy objectives set out in Regulation 5(2). How are Local Authorities to judge that plans of sufficient quality to meet these objectives? Regulation 5(3) only lays down the minimum requirements for a plan. Some sample questions which occur include .
  - who for example should be responsible for stability assessments?
  - how is the composition of the waste to be established? And its leachability?
  - how is the quantity of waste to be estimated? Is a survey required?
  - what potential human health impacts should be addressed?
  - what management / mitigation measures are acceptable in principle?

- what level of detail should be provided in a CRAMP?
- does evidence of a discharge licence need to be provided when addressing impacts on water?

This level of detail is required so operators can determine whether they have the resources in-house to prepare a plan or whether they need assistance from external service providers. Failure to provide a greater level of detail in guidance will result in a degree of subjectivity, lack of consistency and delay in the approval process for extractive waste management plans across Local Authorities.

- As regards Regulation 5(6), the guidelines should identify a target frequency for inspections / audits of waste facilities by Local Authorities, or whether the frequency of monitoring should be dependent on a risk based assessment. In the absence of such guidance, it is unlikely to be done.
- It would be helpful if the Agency could provide a simplified example of an Extractive Waste Management Plan as an illustration of what quarry operators are expected to provide (in the same way that a sample Closure Restoration and Aftercare Management Plan was included in EPA Guidance on Environmental Liability, Risk Assessment, Residuals Management Plans and Financial Provision).

With respect to the Table of Content is difficult to read, it needs to be reformatted with appropriate line and paragraph spacing, with the use of bold/italic text to identify key points. The Guidance Document is a long document covering a complex piece of legislation so anything that improves its ease of use must be welcomed.

IPPC Licensing . Section 2, page 5, the second bullet point needs to clarify that that mineral in this context refers to scheduled minerals and not rock/sand/gravel etc. Suggested modification - Sites where more than either 200,000 tonnes per year or one million tonnes in total of scheduled minerals are extracted (insert footnote clarifying that the list of scheduled minerals in the Minerals Development Act excludes stone, gravel, sand or clay).

Regarding the sentence (page 13, Section 3) 'The result is that, provided the other elements of the definition of "waste facility" are met, this type of operation can be controlled in the same manner that applies to other site operations that satisfy the definition of "waste facility".' this could be misread to mean that the exclusion in the definition of "waste facility" for backfilling after extraction of the mineral, for rehabilitation and construction purposes can be circumvented or ignored. The following amendment would assist clarity - 'The result is that, provided the other elements of the definition of "waste facility" are met, this type of transient stockpiling operation can be controlled in the same manner that applies to other site operations that satisfy the definition of "waste facility".'

The inclusion in Section 3 (pages 13) of the definition of 'rehabilitation' here is inappropriate as this definition taken from Regulation 3(2) refers to the treatment of land affected by a waste facility, not the rehabilitation by backfilling an excavation void with extractive waste as referred to later under Regulation 3(2). Paragraphs 2 and 3 on page 13 should be deleted.

There is a slight contradiction in the text - at paragraph 4 on page 20 it states that extractive waste management plans must be drawn up by the entire sector. Then at

Paragraph 3 of page 21 the EPA's view is that EWMP should be submitted by all significant extractive site operators, when at the end of the same paragraph it is suggested that the entire sector develop such documents. Clarification as to the position of the EPA is needed.

Regarding the first bullet point criteria for designating an extractive waste site as a Category A facility on paragraph 3 of page 35. Is there provision for immediate remediation of the unstable heap or dam to prevent having the installation sent down the Category A route. Where remediation can circumvent any failure then the rationale of preventing harm to humans and the environment has been met.

On page 48, paragraph 6 it should be stated clearly that unpolluted soils used for landscaping or other environmental purposes (such as visual or acoustic screens) should not be classed as an extractive waste as the material is serving a useful purpose on the site. We suggest the following amendment - "unpolluted soils used for landscaping or other environmental purposes (such as visual or acoustic screens) should not be classed as an extractive waste as the material is serving a useful purpose on the site".

In Section 12 on page 63, fifth paragraph, we do not agree that "but the wording also seems clear that a Member State can apply the legislation in this manner if it so wishes". Regulation 21 (2) is quite clear, if the facility is closed by 1 May 2008 it does not fall under this legislation. Why include Regulation 21 (2) in the legislation if it is the intention of the legislators to include sites closed before that date. Our proposed modification is to delete the last part of paragraph "but the wording also seems clear that a Member State can apply the legislation in this manner if it so wishes".

Concerning the sentence "For example, the passing of waste to someone who is not authorised to receive it is an offence under Section 32(2)." Page 67, paragraph 5 - This raises a potential problem where the operator has a stockpile of "material that are remain on-site indefinitely as there is no market from them" (page 75, paragraph 5) which the local authority considers extractive waste, but is a product albeit of low value. The product remains available for sale, but has now become a waste resulting in any potential customer facing prosecution if they do not possess a valid collection permit. Question - does the occasional sale of a load of stockpiled material as described prevent the stockpile in question from falling into the "Waste Facility" category under Regulation 3(2)(d). In other words for it to be classed as a waste facility no material must have been drawn from the stockpile in any 3 year period. Clarification regarding (i) the sale of a product that was classified as extractive waste and (ii) classification of a stockpiles that are occasional drawn from, needs to be made in the Guidance document.

Page 5 states: *Given that the extractive sector is to be subject to two, quite independent, regulatory initiatives in the forthcoming months which are to be enforced by the same local authority, it is important that, where possible, a co-ordinated response is undertaken between the different sections of a local authority that are responsible for these regimes'.*

This statement is hidden in the guidelines. It should be the first thing Local Authorities read. It should also go further and provide information on how LA's should provide a *co-ordinated response'* e.g. If an operator is required to submit a substitute consent application then a waste management plan should be included with the application. These operators should not need to submit a separate waste management plan to comply with these Regulations.

Page 16: ~~As~~ *As there may not always be an opportunity to implement Regulation 4(3) and (4) via planning conditions, they need to be addressed by other regulatory means. For example, these provisions should be viewed as a relevant consideration that should be reflected in the conditions of any extractive waste site's discharge licence issued under the Local Government (Water Pollution) Act' – Would this legal?*

Please contact me if you wish to discuss any of the above.

Yours sincerely

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