

Brussels, 19 February 2004

**OPINION**

of the

Committee of the Regions

of 11 February 2004

on the

**Proposal for a Directive of the European Parliament and of the Council on the management of waste from the extractive industries**

(COM(2003) 319 final - 2003/0107 (COD))

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**THE COMMITTEE OF THE REGIONS**

**HAVING REGARD TO** the Proposal for a Directive of the European Parliament and of the Council on the management of waste from the extractive industries (COM(2003) 319 final - 2003/0107 (COD));

**HAVING REGARD TO** the Council's decision of 20 June 2003 to consult it on this subject, under Article 175(1) of the Treaty establishing the European Community;

**HAVING REGARD TO** its President's decision of 4 December 2002 to instruct the Commission for Sustainable Development to draw up an opinion on this subject;

**HAVING REGARD TO** the Communication from the Commission "Safe operation of mining activities: a follow-up to recent mining accidents" (COM(2000) 664 final);

**HAVING REGARD TO** the Resolution of the European Parliament on the Communication from the Commission "Safe operation of mining activities: a follow-up to recent mining accidents" (COM(2000) 664 final – C5-0013/2001-2001/2005(COS));

**HAVING REGARD TO** the explanatory memorandum of the Commission regarding adoption of the amendment to the Seveso II Directive (COM(2001) 624 final)

**HAVING REGARD TO** Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive);

**HAVING REGARD TO** Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community;

**HAVING REGARD TO** Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances;

**HAVING REGARD TO** Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, amended by Council Directive 97/11/EC of 3 March 1997 (EIA Directive);

**HAVING REGARD TO** Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC;

**HAVING REGARD TO** Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (IPPC Directive);

**HAVING REGARD TO** Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (Seveso II Directive);

**HAVING REGARD TO** Council Directive 75/442/EEC of 15 July 1975 on waste (Waste Framework Directive), as amended by Council Directive 91/156/EEC;

**HAVING REGARD TO** Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (Landfill Directive);

**HAVING REGARD TO** the judgments of the European Court of Justice of 18 April 2002 (C-9/00) and 11 September 2003 (C-114/01);

**HAVING REGARD TO** the adoption of the Council Decision on the conclusion of the Convention on the Transboundary Effects of Industrial Accidents<sup>1</sup>;

**HAVING REGARD TO** the Communication from the Commission "Promoting sustainable development in the EU non-energy extractive industry" (COM(2000) 265 final);

**HAVING REGARD TO** the Commission staff working paper of 7 July 2003 "Fourth Annual Survey on the implementation and enforcement of Community environmental law 2002" (SEC(2003) 804);

**HAVING REGARD TO** the draft opinion adopted on 12 December 2003 by the Commission for Sustainable Development (CdR 330/2003 rev. 1) (rapporteur: **Ms Sikora**, Member of the North Rhine-Westphalia Landtag, DE, PES);

**unanimously adopted the following opinion at its 53<sup>rd</sup> plenary session, held on 11 and 12 February 2004 (meeting of 11 February):**

**1. Views of the Committee of the Regions**

**The Committee of the Regions**

1. **welcomes** in principle the Commission's proposal to establish a specific legal framework for mining waste with a directive on the management of waste from the extractive industries in the EU. It is necessary to fix uniform minimum standards for waste management for the sake of the environment and thus for the health and well-being of EU citizens, especially in view of enlargement;
2. **is aware** that the Directive creates costs for companies in the extractive industries which may have serious economic implications. The resultant social impact on citizens and regions must be taken into account;
3. **notes** that it is important to avoid excessive paperwork and ensuing costs for the authorities of the Member States, as well as companies;
4. **considers** that in the light of the above points and with a view to establishing uniform, systematic European rules and avoiding inconsistencies,
  - the Directive should not contain any provisions on matters already definitively regulated at EU level,

- the definition of waste must be consistent with that set out in the Waste Framework Directive (75/442/EEC) and with ECJ judgments to date,
- the principle of sustainable development must be strictly respected,
- the mineral sector must not be placed at a disadvantage relative to other waste producers.

## 2. Recommendations of the Committee of the Regions

### Recommendation 1

#### Recital 4

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
In accordance with the objectives of Community policy on the environment, it is necessary to lay down minimum requirements in order to prevent or reduce as far as possible any negative effects on the environment or on human health which are brought about as a result of the management of waste from the extractive industries, such as tailings (i.e. the solids that remain after the treatment of minerals by a number of techniques), waste rock and overburden (i.e. the material that extractive operations move during the process of accessing an ore or mineral body), and topsoil (i.e. the upper layer of the ground).	In accordance with the objectives of Community policy on the environment, it is necessary to lay down minimum requirements in order to prevent or reduce as far as possible any negative effects on the environment or on human health which are brought about as a result of the management of waste from the extractive industries, <u>i.e. waste resulting from prospecting, extraction, treatment and storage of raw materials, such as tailings</u> (i.e. the solids <del>that remain after the treatment of minerals by a number of techniques</del> ), waste rock and <del>overburden</del> (i.e. the material that extractive operations move during the process of accessing an ore or mineral body), and topsoil (i.e. the upper layer of the ground).

#### Reason

Listing examples of typical mining waste gives the false impression that such deposits are always waste. This contradicts the definition given in the EU Waste Framework Directive 75/442/EEC (WFD), which also applies for the purposes of the current Directive (Art. 3(1)), and the restrictive criteria established for extraction of raw materials by the ECJ in its judgments of 18 April 2002 (C-9/00) and 11 September 2003 (C-114/01). What substances or materials are to be regarded as waste in any given case can only be decided on the basis of the criteria set out in the WFD with reference to the specific circumstances of that case.

According to the definition in the WFD, waste rock and overburden, and topsoil resulting from mining operations should not be classified as waste if – as is usually the case – they are re-used unaltered immediately after extraction.

### Recommendation 2

#### Recital 5

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Accordingly, this Directive should cover the management of waste from land-based extractive industries. However, such provision should reflect the principles and priorities identified in Council Directive 75/442/EEC of 15 July 1975 on waste which, in accordance with Article 2(1)(b)(ii) thereof, continues to apply to any aspects of the management of waste from the extractive industries which are not covered by this Directive.	Accordingly, this Directive should cover the management of waste from land-based extractive industries. However, such provision should reflect the principles and priorities identified in Council Directive 75/442/EEC of 15 July 1975 on waste which, in accordance with Article 2(1)(b)(ii) thereof, continues to apply to any aspects of the management of waste from the extractive industries which are not covered by this Directive. <u>This means waste from the extractive industries as defined in Article 1(a) of Directive 75/442/EEC. The definition must take into account the judgments of the European Court of Justice of 18 April 2002 (C-9/00) and 11 September 2003 (C-114/01).</u>

### Reason

The added text is intended to make it clear that in principle the Directive only covers materials which meet the definition in the WFD. For reasons of legal certainty it is also necessary to mention the most recent Court of Justice judgments on the question of when rock left over from mineral extraction should be classified as waste. This is also consistent with the interpretation of the Commission, which in footnote 21 of the Explanatory Memorandum refers to the first of the above-mentioned ECJ judgments.

### Recommendation 3

#### Recital 8

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Nor should the provisions of this Directive apply to waste resulting from the offshore extraction and treatment of mineral resources, to the deposit of unpolluted soil or to waste from the prospecting of mineral resources, while non-hazardous inert waste from the extraction and treatment of mineral resources should only be covered by a limited set of requirements due to its lower environmental risks.	Nor should the provisions of this Directive apply to waste resulting from the offshore extraction and treatment of mineral resources, to the deposit of unpolluted soil or to waste from the prospecting of mineral resources, while non-hazardous inert waste from the extraction and treatment of mineral resources should only be covered by a limited set of requirements due to its lower environmental risks. <u>They should not apply either to the activities set out in Article 11(3)(j) of the EU Water Framework Directive, which are dealt with definitively in that clause.</u>

## Reason

The sentence is added for the sake of clarification. The activities covered by Article 11(3)(j) of the EU Water Framework Directive do not fall within the scope of this Directive, because they do not concern waste disposal but re-injection into groundwater of water containing substances resulting from mining activities.

### Recommendation 4

Recital 10

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
In order to remain true to the principles and priorities identified in Directive 75/442/EEC and, in particular, in Articles 3 and 4 thereof, Member States should ensure that operators engaged in the extractive industry take all necessary measures to prevent or reduce as far as possible any negative effects, actual or potential, on the environment or on human health which are brought about as a result of the management of waste from the extractive industries.	In order to remain true to the principles and priorities identified in Directive 75/442/EEC and, in particular, in Articles 3 and 4 thereof, Member States should ensure that operators engaged in the extractive industry take all necessary measures to prevent or reduce as far as possible any negative effects, actual or potential, on the environment or on human health which are brought about as a result of the management of waste from the extractive industries, <u>subject to the requirements of sustainability.</u>

## Reason

Under EU law, the objective of the Directive set out in Recital 10 is subject to the three aspects of sustainability. This must be made explicit in the recital.

### Recommendation 5

Article 2(1) (Scope)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Subject to the provisions of paragraph 2, this Directive covers the management of waste from the extractive industries, hereinafter “extractive waste”, that is to say, waste resulting from the extraction, treatment and storage of mineral resources and the working of quarries.	<del>Subject to the provisions of paragraph 2, this Directive covers the management of waste from the extractive industries, hereinafter “extractive waste”, that is to say, waste resulting from the extraction, treatment and storage of mineral resources and the working of quarries.</del> <u>This Directive covers the management of waste from the extractive industries, hereinafter "extractive waste", that is to say waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries, in accordance with Article 1(a) and Article</u>

**Reason**

The purpose is to make it clear that the concept of waste must be consistent with that set out in the Waste Framework Directive and the ECJ judgments delivered on the basis of that directive.

**Recommendation 6**

Article 2(2) (Scope)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>The following shall be excluded from the scope of this Directive:</p> <p>a) waste which is generated by the extraction and treatment of mineral resources, but which does not directly result from those operations, such as food waste, waste oil, end-of-life vehicles, spent batteries and accumulators;</p> <p>b) waste resulting from the offshore extraction and treatment of mineral resources;</p> <p>c) the deposit of unpolluted soil resulting from the extraction, treatment and storage of mineral resources and the working of quarries;</p> <p>d) waste generated at an extraction or treatment site and transported to another location for the purposes of its deposit into or on to land;</p> <p>e) waste from the prospecting of mineral resources.</p>	<p>The following shall be excluded from the scope of this Directive:</p> <p>a) waste which is generated by the extraction and treatment of mineral resources, but which does not directly result from those operations; <del>such as food waste, waste oil, end-of-life vehicles, spent batteries and accumulators;</del></p> <p>b) waste resulting from the offshore extraction and treatment of mineral resources;</p> <p><del>c) the deposit of unpolluted soil resulting from the extraction, treatment and storage of mineral resources and the working of quarries;</del></p> <p>c) <del>d</del>) waste generated at an extraction or treatment site and transported to another location <u>outside the extractive industry</u> for the purposes of its deposit into or on to land;</p> <p><del>e) waste from the prospecting of mineral resources.</del></p>

**Reason**

(a) Examples should not be listed because the circumstances of each individual case determine whether or not waste is "extractive waste".

(c) This should be incorporated into Article 2(3) (see relevant reason).

(d) Waste that is taken to another mining site for disposal should also fall within the scope of this directive. Otherwise the customary central disposal of waste from different mining sites

would unjustifiably fall under the general provisions on waste, whereas waste disposal within the same site would fall under the present directive. This is not warranted either on technical or environmental grounds.

The proposed change makes it clear that the intention of the Directive is for mining waste disposed of outside the extractive industry to fall under the general waste provisions.

(e) For the sake of legal consistency, waste from prospecting should be covered by this specific Directive, because it is explicitly excluded from the WFD.

### **Recommendation 7**

Article 2(3) (Scope)

<i><b>Text proposed by the Commission</b></i>	<i><b>CoR amendment</b></i>
The deposit of non-hazardous inert waste shall only be subject to the provisions of Article 5 paragraphs 1 and 2, Article 11(2) points (a) to (e) and Article 13(1) points (a) to (c) of this Directive.	<p><del>The deposit of non-hazardous inert waste shall only be subject to the provisions of Article 5 paragraphs 1 and 2, Article 11(2) points (a) to (e) and Article 13(1) points (a) to (c) of this Directive.</del></p> <p><u>The disposal of unpolluted soil and non-hazardous inert waste from the extraction, treatment and storage of mineral resources and the working of quarries does not fall under the provisions of this Directive.</u></p>

#### **Reason**

Unpolluted soil and non-hazardous inert waste are also excluded from the scope of the landfill directive (1999/31/EC). There is therefore no reason to include such waste in the provisions of the present directive. In accordance with the subsidiarity principle, such waste should be covered by national legislation.

### **Recommendation 8**

Article 2(4) (Scope)

<i><b>Text proposed by the Commission</b></i>	<i><b>CoR amendment</b></i>
4. Without prejudice to other Community legislation, waste which falls within the scope of this Directive shall not be subject to Directive 1999/31/EC.	4. Without prejudice to other Community legislation, waste which falls within the scope of this Directive, <u>or which in accordance with point 3 of this article is not covered by it,</u> shall not be subject to Directive 1999/31/EC.

#### **Reason**



The phrase must be added because otherwise the landfill directive would cover waste referred to in point 3.

**Recommendation 9**

Article 3(12) (Definitions)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
"leachate" means any liquid percolating through the deposited waste and emitted from or contained within a waste facility, including polluted drainage, which may adversely affect the environment if not appropriately treated;	"leachate" means any liquid percolating through the deposited waste and emitted <u>or contained within the waste facility</u> <del>from or contained within a waste facility, including</del> polluted drainage, which may adversely affect the environment if not appropriately treated;

**Reason**

The definition of leachate provided in Article 2(i) of the landfill directive should be used.

**Recommendation 10**

Article 3(13) (Definitions)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
"waste facility" means any area designated for the accumulation or deposit of waste, whether in a solid or liquid state or in solution or suspension, for a period of more than one year, and being deemed to include any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and also to include, but not be limited to, heaps and ponds, but excluding excavation voids into which waste is replaced after extraction of the mineral;	"waste facility" means any area designated for the accumulation or deposit of waste, whether in a solid or liquid state or in solution or suspension, for a period of more than <u>three years</u> <del>one year</del> , and being deemed to include any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and also to include, but not be limited to, heaps and ponds, but excluding excavation voids into which waste is replaced after extraction of the mineral;

**Reason**

The proposed storage period of one year is not adequate. In the case of larger mining operations in particular, it may make sense, in terms of ensuring a sustainable re-use of mined areas, to store waste for a longer period and then use it for revegetation. The storage period for mining waste facilities must therefore be at least three years, as set out in Article 2(g) of the landfill directive with respect to treatment of waste. Otherwise the implementation of certain measures required under legal provisions or mining requirements will be unnecessarily hampered or compromised.

## Recommendation 11

### Article 3(14) (Definitions)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
"major accident" means an occurrence on site, that seriously endangers human health or the environment, whether immediately or over time, on-site or off-site;	"major accident" means <u>an accident as defined in Article 3(5) of Directive 96/82/EC</u> <del>an occurrence on site, that seriously endangers human health or the environment, whether immediately or over time, on-site or off-site;</del>

#### Reason

This term is already defined in the Seveso II Directive.

## Recommendation 12

### Article 3(18) (Definitions)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
"rehabilitation" means the treatment of the land affected by a waste facility in such a way as to restore the land to a satisfactory state, with particular regard to pre-working soil quality, wild life, natural habitats, freshwater systems, landscape and appropriate beneficial uses;	"rehabilitation" means the treatment of the land affected by a waste facility in such a way as to restore the land to a satisfactory state, with particular regard to pre-working soil quality, wild life, natural habitats, freshwater systems, landscape <del>and</del> <u>or</u> appropriate beneficial uses;

#### Reason

It is not always possible to restore affected land to its pre-working state or turn it into a natural habitat. A better alternative is to provide for a form of subsequent use in accordance with land-use planning and individual circumstances.

## Recommendation 13

### Article 5(2) (Waste management plan)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
The objectives of the waste management plan shall be:	<u>Taking environmental, economic and social factors into account</u> , the objectives of the waste management plan shall be:

#### Reason

The objectives set out in Article 5(2) must take into account the principle of sustainability, which requires that EU law give equal consideration to environmental, economic and social factors.

### Recommendation 14

Article 5(2)(a)(iii) (Waste management plan)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
iii) placing waste back into the excavation void after extraction of the mineral, as far as is practically feasible and environmentally sound;	iii) placing waste back into the excavation void after extraction of the mineral, as far as is <u>practically technically</u> feasible, <u>financially viable</u> and environmentally sound, <u>provided this does not conflict with the public interest in respect of future land use</u> ;

### Reason

It is particularly important that placing waste back into the excavation void be made conditional on the operation being technical feasible and financially viable. The EU principle of ensuring sustainability must also be observed here.

### Recommendation 15

Article 6 (Major accident prevention and information)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
1. The provisions of this Article shall apply to Category A waste facilities, as defined in Article 9 save for those waste facilities falling within the scope of Directive 96/82/EC.	<del>1. The provisions of this Article shall apply to Category A waste facilities, as defined in Article 9 save for those waste facilities falling within the scope of Directive 96/82/EC.</del>
2. Without prejudice to other Community legislation, and in particular Council Directive 92/91/EEC and Council Directive 92/104/EEC, Member States shall ensure that major-accident hazards are identified and the necessary features are incorporated into the design, construction, operation and maintenance of the waste facility in order to prevent such accidents and to limit their adverse consequences for human health and the environment, including any transboundary impacts.	<del>2. Without prejudice to other Community legislation, and in particular Council Directive 92/91/EEC and Council Directive 92/104/EEC, Member States shall ensure that major-accident hazards are identified and the necessary features are incorporated into the design, construction, operation and maintenance of the waste facility in order to prevent such accidents and to limit their adverse consequences for human health and the environment, including any transboundary impacts.</del>
3. For the purposes of the requirements under paragraph 2, each operator shall draw up a major-accident prevention policy for waste and put into effect a safety management system	<del>3. For the purposes of the requirements under paragraph 2, each operator shall draw up a major-accident prevention policy for waste and put into effect a safety management system</del>

<p>implementing it, in accordance with the elements set out in point 1 of Annex I. As part of that policy, the operator shall appoint a safety manager responsible for the implementation and periodic supervision of the major-accident prevention policy. The operator shall draw up an internal emergency plan of the measures to be taken on site in the event of an accident.</p> <p>The competent authority shall draw up an external emergency plan for the measures to be taken off site in the event of an accident. The operator shall provide the competent authority with the information necessary to enable the latter to draw up that plan.</p> <p>4. The emergency plans referred to in paragraph 3 shall have the following objectives:</p> <p>a) to contain and control major accidents and other incidents so as to minimise their effects, and in particular to limit damage to human health or to the environment and property;</p> <p>b) to implement the measures necessary to protect human health, the environment and property from the effects of major accidents and other incidents;</p> <p>c) to communicate the necessary information to the public and to the services or authorities concerned in the area;</p> <p>d) to provide for the rehabilitation, restoration and clean-up of the environment following a major accident. Member States shall ensure that, in the event of a major accident, the operator immediately provides the competent authority with all the information required to help minimise its consequences for human health and to assess and minimise the extent, actual or potential, of the environmental damage.</p> <p>5. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the preparation or review of the external emergency plan to be</p>	<p><del>implementing it, in accordance with the elements set out in point 1 of Annex I. As part of that policy, the operator shall appoint a safety manager responsible for the implementation and periodic supervision of the major-accident prevention policy. The operator shall draw up an internal emergency plan of the measures to be taken on site in the event of an accident.</del></p> <p><del>The competent authority shall draw up an external emergency plan for the measures to be taken off site in the event of an accident. The operator shall provide the competent authority with the information necessary to enable the latter to draw up that plan.</del></p> <p><del>4. The emergency plans referred to in paragraph 3 shall have the following objectives:</del></p> <p><del>to contain and control major accidents and other incidents so as to minimise their effects, and in particular to limit damage to human health or to the environment and property;</del></p> <p><del>to implement the measures necessary to protect human health, the environment and property from the effects of major accidents and other incidents;</del></p> <p><del>to communicate the necessary information to the public and to the services or authorities concerned in the area;</del></p> <p><del>to provide for the rehabilitation, restoration and clean-up of the environment following a major accident. Member States shall ensure that, in the event of a major accident, the operator immediately provides the competent authority with all the information required to help minimise its consequences for human health and to assess and minimise the extent, actual or potential, of the environmental damage.</del></p> <p><del>5. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the preparation or review of the external emergency plan to be drawn up in accordance with paragraph 3. To</del></p>
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<p>that end, the public concerned shall be informed about any such proposal and relevant information shall be made available, including inter alia information about the right to participate in the decision-making process and about the competent authority to which comments and questions may be submitted. Member States shall ensure that the public concerned is entitled to express comments within reasonable timeframes and that, in the decision on the external emergency plan, due account is taken of these comments.</p> <p>6. Member States shall ensure that information on safety measures and on the action required in the event of an accident, containing at least the elements listed in point 2 of Annex I, is provided, free of charge and as a matter of course, to the public concerned.</p> <p>That information shall be reviewed every three years and, where necessary, updated.</p>	<p><del>informed about any such proposal and relevant information shall be made available, including inter alia information about the right to participate in the decision-making process and about the competent authority to which comments and questions may be submitted. Member States shall ensure that the public concerned is entitled to express comments within reasonable timeframes and that, in the decision on the external emergency plan, due account is taken of these comments.</del></p> <p><del>6. Member States shall ensure that information on safety measures and on the action required in the event of an accident, containing at least the elements listed in point 2 of Annex I, is provided, free of charge and as a matter of course, to the public concerned.</del></p> <p><del>That information shall be reviewed every three years and, where necessary, updated.</del></p> <p><u>Waste management facilities are covered by the provisions of Directive 96/82/EC, in so far as they fall within the scope of that Directive.</u></p>
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## Reason

Article 6 should be recast in order to avoid duplication and legal uncertainty.

After long discussions in the Council and Parliament, the Seveso II Directive has been amended to include the accidents referred to in this Directive, which means that mining waste disposal sites are now included in the Seveso II Directive.

This means that there is no need for new rules.

## Recommendation 16

### Article 8 (Public participation)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>1. The public shall be informed, by public notices or other appropriate means, such as electronic media where available, of the following matters early in the procedure for granting a permit or, at the latest, as soon as the information can reasonably be provided:</p>	<p><del>1. The public shall be informed, by public notices or other appropriate means, such as electronic media where available, of the following matters early in the procedure for granting a permit or, at the latest, as soon as the information can reasonably be provided:</del></p>

a) the application for a permit or, as the case may be, the proposal for the updating of a permit in accordance with Article 7;

b) where applicable, the fact that a decision is subject to consultation between the Member States in accordance with Article 15;

c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

d) the nature of possible decisions or, where there is one, the draft decision;

e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;

f) an indication of the times and places where, or the means by which, the relevant information will be made available;

g) details of the arrangements for public participation and consultation made pursuant to paragraph 5.

2. Member States shall ensure that, within appropriate time frames, the following is made available to the public concerned:

a) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public were informed in accordance with paragraph 1;

b) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information, any information in addition to that referred to in paragraph 1 of this Article which is relevant for the decision in accordance with Article 7 of this Directive and which only becomes available after the time

~~a) the application for a permit or, as the case may be, the proposal for the updating of a permit in accordance with Article 7;~~

~~b) where applicable, the fact that a decision is subject to consultation between the Member States in accordance with Article 15;~~

~~e) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;~~

~~d) the nature of possible decisions or, where there is one, the draft decision;~~

~~e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;~~

~~f) an indication of the times and places where, or the means by which, the relevant information will be made available;~~

~~g) details of the arrangements for public participation and consultation made pursuant to paragraph 5.~~

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~~a) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public were informed in accordance with paragraph 1;~~

~~b) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information, any information in addition to that referred to in paragraph 1 of this Article which is relevant for the decision in accordance with Article 7 of this Directive and which only becomes available after the time~~

<p>with paragraph 1 of this Article.</p> <p>3. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.</p> <p>4. The results of the consultations held pursuant to this Article shall be taken into due account in the taking of a decision.</p> <p>5. The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public concerned to prepare and participate effectively.</p> <p>6. When a decision has been taken the competent authority shall, in accordance with the appropriate procedures, inform the public concerned and shall make the following information available to the public concerned:</p> <p>a) the content of the decision, including a copy of the permit;</p> <p>b) the reasons and considerations on which the decision is based.</p>	<p><del>with paragraph 1 of this Article.</del></p> <p><del>3. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.</del></p> <p><del>4. The results of the consultations held pursuant to this Article shall be taken into due account in the taking of a decision.</del></p> <p><del>5. The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public concerned to prepare and participate effectively.</del></p> <p><del>6. When a decision has been taken the competent authority shall, in accordance with the appropriate procedures, inform the public concerned and shall make the following information available to the public concerned:</del></p> <p><del>a) the content of the decision, including a copy of the permit;</del></p> <p><del>b) the reasons and considerations on which the decision is based.</del></p> <p><u>Public participation in an authorisation procedure under Article 7 is governed by the provisions of Directive 2003/4/EC.</u></p>
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## Reason

To avoid duplication and legal uncertainty, Article 8 should refer to the provisions of Directive 2003/4/EC on public access to environmental information, which also includes waste facilities.

## Recommendation 17

Article 9 (Classification system for waste facilities)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>For the purposes of this Directive, Member States shall classify waste facilities which are either heaps or engineered ponds in one of the following categories, depending on their hazard potential:</p>	<p><del>For the purposes of this Directive, Member States shall classify waste facilities which are either heaps or engineered ponds in one of the following categories, depending on their hazard potential:</del></p>

(1) Category A: a waste facility whose failure or incorrect operation would present a significant accident hazard;	<del>(1) Category A: a waste facility whose failure or incorrect operation would present a significant accident hazard;</del>
(2) Category B: any waste facility not included in Category A.	<del>(2) Category B: any waste facility not included in Category A.</del>
The criteria for determining the classification of a waste facility in Category A are set out in Annex III.	<del>The criteria for determining the classification of a waste facility in Category A are set out in Annex III.</del>

### Reason

The purpose of such a classification system is not clear, especially since the provision chiefly concerns prevention of major accidents, which is covered in Article 6.

Moreover, it is not possible to undertake an adequate classification based on the criteria set out in Annex III. Since risk to workers can never be completely eliminated, all facilities would, on the basis of the first criterion, fall into Category A.

### Recommendation 18

#### Article 10 (Excavation voids)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Member States shall ensure that the operator, when considering placing waste back into the excavation voids, takes appropriate measures in order to:	Member States shall ensure that the operator, when considering placing waste back into the excavation voids, takes appropriate measures in order to:
(1) secure the stability of such waste in accordance with Article 11(2);	(1) secure the stability of such waste in accordance with Article 11(2);
(2) prevent the pollution of surface and groundwater in accordance with paragraphs 1 and 2 of Article 13;	(2) prevent the pollution of <u>soil and</u> surface and groundwater in accordance with paragraphs 1 and 2 of Article 13;
(3) monitor such waste in accordance with paragraphs 4 and 5 of Article 12 .	(3) monitor such waste in accordance with paragraphs 4 and 5 of Article 12, <u>if there is a risk of damage to the biosphere.</u>

### Reason

Once mining waste has been filled into excavation voids, it is generally impossible for technical reasons to monitor it, because the waste is no longer accessible once the operation



has been completed. Since it requires much time and money, regular monitoring is only justified if there is a risk of damage to the biosphere.

### Recommendation 19

Article 13(1)(b) (Prevention of water and soil pollution)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
prevent leachate generation and surface water or groundwater from being contaminated by the waste;	<del>prevent</del> <u>minimise</u> leachate generation and <u>prevent soil</u> , surface water or groundwater from being contaminated by the waste;

#### Reason

It is generally impossible to prevent the formation of leachate in practice. Leachate is produced anyway on heaps just through natural precipitation, and can only be collected and if necessary treated.

### Recommendation 20

Article 13(2) (Prevention of water and soil pollution)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Where, on the basis of an assessment of environmental risks, taking into account, in particular, Council Directive 76/464/EEC, Council Directive 80/68/EEC or Directive 2000/60/EC, as applicable, the competent authority has decided that collection and treatment of leachate is not necessary or it has been established that the waste facility poses no potential hazard to soil, groundwater or surface water, the requirements set out in points (b) and (c) of paragraph 1 may be reduced or waived accordingly.	Where, on the basis of an assessment of environmental risks, <del>taking into account, in particular,</del> <u>and in accordance with Council Directive 76/464/EEC, Council Directive 80/68/EEC or Directive 2000/60/EC</u> , as applicable, the competent authority has decided that collection and treatment of leachate is not necessary or it has been established that the waste facility poses no potential hazard to soil, groundwater or surface water, the requirements set out in points (b) and (c) of paragraph 1 <u>are not applicable</u> <del>may be reduced or waived</del> accordingly.

#### Reason

In deciding what requirements must be met by waste management facilities with respect to protection of surface waters and groundwater, the authority is bound by the provisions of the above-mentioned EU water directives. The authorities have no latitude in decision-making outside those provisions. As long as the waste facility poses no risk for soil or water, there is no objective reason for maintaining the requirements in paragraph 1(b) and (c).

### Recommendation 21

Article 14(1) (Financial guarantee and environmental liability)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>The competent authority shall, prior to the commencement of any operations involving the deposit into or onto land of waste, require a guarantee, in the form of a financial deposit or equivalent, including industry-sponsored mutual guarantee funds, so that:</p> <p>(a) all obligations under the permit issued pursuant to this Directive, including after-closure provisions, are discharged;</p> <p>(b) there are funds readily available at any given time for the rehabilitation of the land affected by the waste facility.</p>	<p>The competent authority shall, prior to the commencement of any operations involving the deposit into or onto land of waste, require a guarantee, <del>in the form of a financial deposit or equivalent, including</del> e.g. in the form of an industry-sponsored mutual guarantee funds, <u>or any other equivalent, on the basis of modalities to be decided by Member States,</u> so that:</p> <p>(a) all obligations under the permit issued pursuant to this Directive, including after-closure provisions, are discharged;</p> <p>(b) there are funds readily available at any given time for the rehabilitation of the land affected by the waste facility.</p>

**Reason**

This wording would correspond to Article 8(a)(iv) of the landfill directive (1999/31/EC), on which basis national decisions have already been taken.

**Recommendation 22**

Article 14(5) (Financial guarantee and environmental liability)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>The provisions of Directive .../.../EC on environmental liability with regard to the prevention and remedying of environmental damage shall apply mutatis mutandis in respect of environmental damage caused by the operation of any extractive waste facility, as well as in respect of any imminent threat of such damage occurring by reason of the operation of any such a facility.</p>	<p><del>The provisions of Directive .../.../EC on environmental liability with regard to the prevention and remedying of environmental damage shall apply mutatis mutandis in respect of environmental damage caused by the operation of any extractive waste facility, as well as in respect of any imminent threat of such damage occurring by reason of the operation of any such a facility.</del></p> <p><u>Environmental damage caused by the operation of an extractive waste facility falling within the scope of the present directive is covered by the provisions of Directive ..../EC on environmental liability with regard to the prevention and remedying of environmental damage.</u></p>

## Reason

Liability for environmental damage caused by waste facilities falling within the scope of the present directive should be consistent with the provisions of the future environmental liability directive, which is just awaiting publication.

### Recommendation 23

Article 22 (Transitional provision)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Member States shall ensure that any waste facility which has been granted a permit or which is already in operation before or on [date of transposition] complies with the provisions of this Directive within four years after that date, save for those set out in Article 14(1) for which compliance must be ensured within six years after that date.	<p>Member States shall ensure that any waste facility <del>which has been granted a permit or which is already in operation before or on [date of transposition] complies with the provisions of this Directive within four years after that date, save for those set out in Article 14(1) for which compliance must be ensured within six years after that date.</del></p> <p><u>which at the date of transposition is already in operation must comply with the provisions of this Directive within 10 years of that date, unless this is impossible for a valid reason or is unnecessary from an environmental point of view or too costly.</u></p>

## Reason

No retroactivity should be granted for decommissioned facilities authorised under current law. The extractive industry has existed for hundreds of years in innumerable locations, and the costs of retroactivity cannot be financed (since incorporating the new Länder, Germany for instance has already spent over € 10 billion on restructuring bismuth and lignite operations).

A longer transition period is needed for transposition to allow for planning and financing, especially since a substantially longer transition period is provided for in the landfill directive.

Brussels, 11 February 2004

The President

of the

The Acting Secretary-General

of the

Committee of the Regions

Committee of the Regions

**Peter Straub**

**Gerhard Stahl**

<sup>1</sup> OJ L 326 of 3.12.1998

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