



Circular No. WP1/10

8 January 2010

Re: Waste Management (Management of Waste from the Extractive Industries) Regulations 2009 (S.I. No 566 of 2009)

A Chara,

I am directed by the Minister for the Environment, Heritage and Local Government to state that he has signed the Waste Management (Management of Waste from the Extractive Industries) Regulations 2009 (S.I. No 566 of 2009)-a copy of these regulations is attached.

The regulations transpose Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC and in their order and character closely follow that of the Directive itself. A copy of this Directive is also attached for your information. You will note from the preambles the background and objectives of the directive-which are essentially preventing or reducing as far as possible any adverse effects on the environment from the management of waste from the extractive industries-which includes quarries and peat. The Directive, thus, aims to regulate the sector in order to prevent or reduce as far as possible harmful effects on the environment and any resultant effects to human health.

Under the terms of the Directive, the transposition should have been completed by 1 May 2008. The regulations have been made following a period of public consultation in 2008 and also consultations with both the CCMA and EPA.

A Screening Regulatory Impact Analysis on these draft regulations has also been published and is on the Department's website.

The Main points of the draft regulations are:

The designation of:

- ❑ The Environmental Protection Agency (EPA) as the competent authority for the implementation of the Directive in respect of category A waste facilities-see Annex III of the Directive-essentially high risk facilities,
- ❑ Local authorities in respect of non-category A facilities and Regulation 6-major accident prevention and information.
- ❑ The Minister for Communications, Energy and Natural Resources in respect of prospecting under the Minerals Development Acts 1940 to 1999.



There are effectively three types of facilities covered by these Regulations:

- 1) Category A waste facilities. These are facilities presenting major risk or containing hazardous waste or dangerous substances above a certain threshold. These facilities will require an Extractive Waste Licence from the Environmental Protection Agency.
- 2) Non-hazardous non-inert waste facilities. These facilities contain potentially dangerous waste material. The material is non-hazardous but it is also non-inert and so could represent a risk to the environment. This category would not contain just 'inert and unpolluted soils'. These facilities will, under the Regulations, require a permit from the local authority. The permitting regime is governed by Regulation 23(2).
- 3) Non-polluting inert facilities. These are facilities that contain nothing else but 'inert and unpolluted soils' and pose effectively no environmental risk. These facilities are covered by paragraph 1 of Regulation 2(4), and do not require authorisation by way of licence or permit but have other requirements such as set out in Regulations 4 and 5-such as requirements to prepare a waste management plan.

Agency Responsibilities –category A facilities-extractive waste licence required

All category A facilities covered by these regulations will, as stated, be required to have a licence granted by the EPA, in relation to the management of the waste from the extractive operations- all existing such facilities-at least the operating mines- are already licensed by the EPA and the requirements will be to bring these licenses into compliance with the Regulations-the vast bulk of the Regulations apply to such facilities. The Directive allows Member States to avoid duplication with existing licensing systems and the Regulations-specifically regulation 7-provides a mechanism to do this. For new facilities coming into operation after the coming into operation of the Regulations the EPA will deal with these under the licensing system set up by the Regulations-which mirrors the current IPPC system. The main thrust of the controls provided for in the Regulations concerning such facilities can be found in Regulations 4 to 14. These include:

- Provisions on public participation in the licensing process, including the access to documents received by the EPA- Regulation 8.
- A classification system for category A waste facilities –Regulation 9,
- Measures to deal with excavation voids-Regulation 10,
- Provisions relating to the construction and management of waste facilities- Regulation 11,
- Provisions relating to the closure and after-closure procedures for facilities. The operator will be responsible for the maintenance, monitoring, control and corrective measures in the after-closure phase for as long as may be required-Regulation 12,
- The operator of a facility will be required to put in place a financial guarantee to discharge all obligations required under the licence issued by the EPA- Regulation 14,
- The EPA will be required, by 1 May 2012, to prepare an inventory of closed waste facilities causing or liable to cause environmental problems.

Local authority responsibilities –non-category A facilities

Non-hazardous –non -inert waste facilities –waste facility permit required

It is possible that a very small number of sites exist which are non-hazardous non-inert and are non-Category A sites. In addition these may have existing waste facility permits at the date of commencement of the regulations –if so all such sites holding a current waste facility permit will be deemed to be in compliance with the Regulations but the waste facility is required to be registered by local authorities by 31 December 2010 and a new waste facility permit category will commence on 1 January 2011-see Regulations 1(3) and 23-in order to regulate such sites. Any such existing permits will require to be reviewed in compliance with these Regulations-this should be done in tandem with the coming into operation of the new permit category. Guidance on this aspect will also issue early in 2010. Permitted facilities will be subject to inspection requirements-Regulation 16. For facilities which are currently in operation but which are not permitted or which come into operation after these Regulations are in operation local authorities will be required to permit them by 1 January 2011-thus a lead in time is provided for such facilities to be regulated. Guidance on this will issue early in 2010.

External emergency planning

In addition certain aspects-in relation to external emergency planning -will remain with the local authority –as is the case currently -in relation to responses to major emergency management-see Regulation 6 (internal emergency planning is an operator responsibility).

Non-polluting inert facilities

Regarding non-category A non-polluting inert waste facilities, and for which local authorities will be responsible–primarily quarries and waste from peat extraction – there are no authorisation requirements but the following general requirements apply:

- The operator of such facilities has the responsibility to ensure that waste from the facility is managed without risk to the environment (Regulation 4 (1))(This is also, of course, a requirement for the non-hazardous non-inert waste facilities). The local authority will be responsible for ensuring that the operator carries out this duty and also for prohibiting uncontrolled dumping of extractive waste,
- The operator will be required to draw up a waste management plan for the minimisation, treatment, recovery and disposal of extractive waste-see Regulation 5. It is intended that guidance on this will also in 2010 so as to promote consistency in the type of plans, which will be expected from operators.

In addition, the following responsibilities rest with local authorities:

- Local authorities are to classify facilities, which are non- EPA licensed facilities into either category A or non-category A facilities-Regulation 9. Operators have until 30 September 2010 to carry out a risk assessment of their facility in order to help the local authority to carry out their task-guidance on this aspect will also issue in early 2010. Besides Annex III of the Directive, detailed criteria by which this assessment may be made are contained in Commission Decision 2009/337/EEC a copy of which is also attached. Where the local authority has doubts concerning whether a facility is a category A

facility or not they may refer to the Agency whose determination in the matter is final,

- By 31 December 2010 local authorities are required to prepare and maintain a register of all extractive industries operating within its functional area and local authorities may use existing data compiled in their section 261 planning registers-Regulation 19. Around 1,400 quarries are currently registered in the planning register. Guidance on this aspect will also issue in early 2010-the Agency will prescribe the particulars to be entered and maintained in the register.

The question of extractive waste/ non-waste may arise in deliberations on the implications of the Regulations. If so, relevant ECJ jurisprudence in such matters –for example, Case C-194/05-paragraphs 30-44 and which lists the main cases including, for example, Case C-9/00 *Palin Granit* should be referred to “...storage (of surplus materials) at the place of extraction for an indefinite length of time to await possible use for site restoration “is to be regarded as a waste material. The Agency may be consulted if there are continuing concerns.

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