STATUTORY RULES OF NORTHERN IRELAND

2010 No. 64

PLANNING

The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010

Made - - - -	*5th March 2010*
Coming into operation-	*1st April 2010*

The Department of the Environment, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the environment, makes the following Regulations in exercise of the powers conferred by that section.

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010 and shall come into operation on 1st April 2010.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

"best available techniques" has the same meaning as in Article 2(11) of Council Directive 96/61/EC(**4**) of 24th September 1996 concerning integrated pollution prevention and control;

"Category A waste facility" means a facility so classified in Schedule 3;

(**1**) S.I. 2008/301
(**2**) 1972 c.68. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51)
(**3**) 1954 c.33 (N.I.)
(**4**) O.J. No. L257, 10.10.1996, p.26-40

"competent person" means a person with sufficient training, experience, knowledge and other qualities to enable that person to undertake the duties assigned to them relative to these Regulations;

"dam" means an engineered structure designed to retain or confine either water or waste or both within a pond;

"dangerous substance" means a substance, mixture or preparation which is dangerous within the meaning of Directive 67/548/EEC(**5**)or Directive 99/45/EC(**6**);

"the Department" means the Department of the Environment;

"the Directive" means Council Directive 2006/21/EC(**7**) of 15th March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC(**8**);

"Directive 91/689/EEC"(**9**) means Council Directive 91/689/EEC of 12th December 1991 on hazardous waste;

"Directive 67/548/EEC" means Council Directive 67/548/EEC of 27th June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances;

"Directive 99/45/EC" means Directive 99/45/EC of the European Parliament and of the Council of 31st May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations;

"Directive 2000/60/EC"(**10**) means Directive 2000/60/EC of the European Parliament and of the Council of 23rd October 2000 establishing a framework for Community action in the field of water policy;

"extractive waste" means waste produced from an extractive industry and resulting from the winning, working, treatment and storage of minerals but does not include the following—

(a) waste which is generated by the winning, working and treatment of minerals but which does not directly result from those operations;

(b) waste resulting from the offshore winning, working and treatment of minerals; or

(c) the injection of water and re-injection of pumped groundwater as defined in the first and second indents of Article 11(3)(j) of Directive 2000/60/EC, to the extent authorised by that Article;

"extractive waste site" means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension, for the following time periods—

(a) a period of six months or less for sites for hazardous waste generated unexpectedly;

(b) a period of one year or less for sites for non-hazardous, non-inert waste;

(c) a period of three years or less for sites for unpolluted soil, non-hazardous waste resulting from the winning of minerals, waste resulting from the working, treatment and storage of peat and inert waste;

but does not include any area which falls within a waste facility;

and such a site is deemed to include—

(**5**) O.J. No. L196, 16.8.1967, p.1-98
(**6**) O.J. No. L200, 30.7.1999, p.1-68
(**7**) O.J. No. L102, 11.4.2006, p.15-34
(**8**) O.J. No. L143, 30.4.2004, p.56-75
(**9**) O.J. No. L377, 31.12.1991, p.20-27
(**10**) O.J. No. L327, 22.12.2000, p.1-73

(i) any dam or other structure serving to contain, retain, confine or otherwise support the extractive waste site;

(ii) (but not to be limited to), heaps and ponds,

but excludes excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes;

"financial guarantee" means the guarantee required by regulation 8;

"hazardous waste" has the meaning given to it in Article 1(4) of Council Directive 91/689/EEC;

"heap" means an engineered facility for the deposit of solid waste on the surface;

"inert waste" means waste which satisfies the following requirements—

(a) it does not undergo any significant physical, chemical or biological transformations;

(b) it does not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health;

(c) the total leachability and pollutant content of the waste is insignificant, in particular not such as to endanger the quality of either surface water or groundwater or both; and

(d) the ecotoxicity of the leachate is insignificant, in particular not such as to endanger the quality of either surface water or groundwater or both;

"leachate" means any liquid percolating through the deposited waste and emitted from or contained within an extractive waste site or waste facility, including polluted drainage, which may adversely affect the environment if not appropriately treated;

"major accident" means an occurrence on-site in the course of an operation involving the management of extractive waste in any establishment covered by these Regulations, leading to a serious danger to either human health or the environment or both, whether immediately or over time, on-site or off-site;

"minerals" includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working, except that it does not include turf cut for purposes other than sale;

"offshore" means that area of the sea and seabed extending from the low water mark of ordinary or medium tides outwards;

"operator" means the person who is or will be responsible for the management of extractive waste, including in respect of temporary storage of extractive waste as well as the operational and after-closure phases;

"planning permission" means permission under Part IV of the 1991 Order;

"pond" means a natural or engineered facility for disposing of fine grained waste, normally tailings, along with varying amounts of free water, resulting from the treatment of minerals and from the clearing and recycling of process water;

"the public" means one or more natural or legal persons and associations, organisations or groups made up of such persons;

"the public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making under Parts 3 or 5 and non-governmental organisations promoting environmental protection and meeting any requirements under national legislation are deemed to have such an interest;

"receiving body of water" means surface waters, groundwater, transitional waters and coastal water as defined in Article 2(1), (2), (6) and (7) of Directive 2000/60/EC;

"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 soil quality, wildlife, natural habitats, freshwater systems, landscape and appropriate beneficial uses;

"relevant development" means development comprising mining operations involving the management of extractive waste;

"substantial change" means a change in the structure or operation of a waste facility that, in the opinion of the Department, may have significant negative effects on human health or the environment or both;

"tailings" means the waste solids or slurries that remain after the treatment of minerals by separation processes (e.g. crushing, grinding, size-sorting, flotation and other physico-chemical techniques) to remove the valuable minerals from the less valuable rock;

"the 1991 Order" means the Planning (Northern Ireland) Order 1991(**11**);

"treatment" means the mechanical, physical, biological, thermal or chemical process, or combination of processes, carried out on extracted material, with a view to extracting the mineral, including size change, classification, separation and leaching, and the re-processing of previously discarded waste, but excluding smelting, thermal manufacturing processes (other than the burning of limestone) and metallurgical processes;

"unpolluted soil" means soil that is removed from the upper layer of the ground during extractive activities and that is not "deemed to be polluted under national or community law";

"waste" means anything that is waste for the purposes of Council Directive 2006/12/EC(**12**) of 5th April 2006 on waste;

"waste facility" means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension, for the following time periods—

(a) no time period for Category A waste facilities and facilities for waste characterised as hazardous in the waste management plan;

(b) six months for facilities for hazardous waste generated unexpectedly;

(c) one year for facilities for non-hazardous, non-inert waste;

(d) three years for facilities for unpolluted soil, non-hazardous waste resulting from the winning of minerals, waste resulting from the working, treatment and storage of peat and inert waste;

and such a facility is deemed to include any dam or other structure serving to contain, retain, confine or otherwise support the facility but not to be limited to, heaps and ponds, but excludes excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes;

"waste management plan" has the meaning given by regulation 6;

"weak acid dissociable cyanide" means cyanide and cyanide compounds that are dissociated with a weak acid at a defined pH;

(3) Notwithstanding paragraph (2), expressions used in these Regulations and in the Directive and not otherwise defined in these Regulations shall, unless the context otherwise requires, have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

Amendment to the 1991 Order

3. In Article 2(2) of the 1991 Order for the definition of "mining operations" substitute—

""mining operations" means—

(**11**) S.I. 1991/1220 (N.I. 11) as amended by S.I. 2003/430 (N.I. 8) and S.I. 2006/1252 (N.I. 7)
(**12**) O.J. No. L114, 27.4.2006, p.9-21

(a) the winning and working of minerals in, on or under land whether by surface or underground working; and

(b) the management of waste resulting from the winning, working, treatment and storage of minerals

and, for the purposes of paragraph (b), "treatment" does not include smelting, thermal manufacturing processes (other than the burning of limestone) and metallurgical processes;.".

PART 2

GENERAL PROVISIONS

Prohibition on the grant of planning permission or deemed grant of planning permission for relevant development without prior approval of a waste management plan and conditions on such permission

4.—(1) Subject to regulation 5—

(a) planning permission for relevant development shall not be granted on or after the date of coming into operation of these Regulations unless a waste management plan has been submitted to and approved by the Department in accordance with regulations 6 and 7;

(b) every planning permission granted for relevant development in respect of a waste facility on or after the date of coming into operation of these Regulations shall be subject to the conditions in regulations 8, 9, 10, 11, and 12;

(c) every planning permission for development comprising mining operations granted prior to the date of coming into operation of these Regulations shall be deemed, subject to the prior submission to and approval by the Department of a waste management plan in accordance with regulations 6 and 7, to include planning permission for relevant development and such permission, if it relates to relevant development in respect of a waste facility, shall be subject to the conditions in regulations 8, 9, 10, 11 and 12;

(d) every planning permission to which sub-paragraph (b) or (c) applies and which involves a Category A waste facility shall be subject to the conditions referred to in those respective sub-paragraphs, as applicable, and shall also be subject to the conditions in regulation 13; and

(e) every application for planning permission to which sub-paragraph (d) applies shall be accompanied by such information as is necessary to enable the Department to draw up an external emergency plan in accordance with regulation 18.

(2) If planning permission for relevant development is granted without the conditions required by these Regulations, as appropriate, it shall be deemed to have been granted subject to such conditions.

Exemptions, reductions and waiver

5.—(1) Nothing in these Regulations shall apply to relevant development carried out in extractive waste sites or in waste facilities which closed on or before 1st May 2008 and which remain closed.

(2) Regulation 4(d) shall not apply to those waste facilities falling within the scope of Directive 96/82/EC(**13**).

(**13**) O.J. No. L010, 14.1.1997, p.13-33