



Directive on the management of waste from the extractive industries, COM(2003)319 final

European Parliament Second Reading on Council Common Position of March 2005, Rapporteur Jonas Sjöstedt

Briefing for Shadow Rapporteurs only: WWF & EEB
analysis of amendments tabled for Second Reading

30 June 2005



SUMMARY OF WWF & EEB PRIORITY RECOMMENDATIONS

1. In view of the weaknesses of the Council Common Position, WWF and EEB urge the European Parliament to reinstate vital amendments from its excellent First Reading position, to:
 - extend the scope of the Directive to ensure adequate management of ALL types of extractive waste
 - prevent “temporary”, unregulated, storage of extractive waste by de-coupling the definition of “waste facility” from storage time
 - establish measures to prevent pollution from existing extractive waste facilities during the transitional period and ensure that these apply to ALL existing facilities
 - adequately define “Category A” extractive waste facilities, which are the most dangerous for human life and the environment in case of accident
 - ensure pollution control measures for closed or abandoned extractive waste facilities that are currently polluting
2. WWF and EEB welcome and support the Rapporteur’s draft recommendations
3. WWF and EEB support further key amendments tabled for Second Reading such as on explicitly prohibiting direct discharges of extractive waste to continental and coastal waters

I. WWF & EEB priority areas and amendments to support

Adequate "Scope" for the Directive:

- Council has excluded some types of extractive waste - such as inert, non-hazardous waste - from certain key Articles of the Directive in what constitutes a large “loophole” in terms of protection. Inert waste may not be directly poisonous/toxic but can kill people and freshwater fauna and flora by smothering them¹. This waste makes up the bulk of the 600 million tonnes total EU extractive waste production and needs to be adequately managed in order to respect EU environmental objectives, such as those of the Water Framework Directive. It, therefore, needs to be included in provisions on: Permitting (Article 7), public participation (Article 8), stability (Article 11.3), waste facility closure (Article 12) and the financial guarantee associated to the rehabilitation of the site and the land affected by a waste facility upon its closure (Article 14).
- Council has also invented a new class of extractive waste: “Non hazardous/non inert”, which has absolutely no scientific basis. This new class only serves to further exempt certain types of extractive waste from the Directive and should be eliminated by supporting amendment 10 by the Rapporteur. This waste could - despite being labelled “non-hazardous” - have a physical impact, smothering and killing humans and aquatic organisms as well as – by being “non-inert” - dissolve in water and promote the release of “hazardous” substances (e.g. lead and zinc). Note that 268 people died in Stava (Italy) in 1985 in an accident involving a fluorite tailings pond. The fluorite was worked from an orebody containing hazardous substances but – under normal conditions - fluorite waste could have been classified as “ non-hazardous, non-inert”.

Please SUPPORT amendments:

- **1** to Recital 8 (*complementary to rejecting amendment 44, see Section II below*), **and**
- **45** (option 1) or **46 & 47** (option 2) or **8** (option 3) or **48 & 49** (option 4) to Article 2(3.1), **and**
- **50** (option 1) or **51** (option 2) or **9** (option 3) to Article 2(3.2), **and**
- To eliminate the non-hazardous/non-inert waste class: **37** (option 1) or **2** (option 2) to Recital 9, and **10** to Article 2(3.3)

Definition of extractive waste facility to be independent from storage time. The definition of a waste facility needs to stand independently, and not – as per Council’s text - be linked to a series of storage time periods (up to 3

¹ 144 people, mainly children, died at Aberfan (Wales, UK) in 1966 as a result of the collapse of a heap of inert waste from a coal mine.

years depending of the type of waste) during which the waste would not be adequately regulated. This is because the main focus of the Directive is improving the management of the extractive waste facilities and not so much of the extractive waste itself. (*Parliament's First Reading amendment needs re-instating*).

Please **SUPPORT** amendment **12** to Article 3(15).

Preventing pollution from all existing extractive waste facilities during the transitional period:

- Measures are needed to prevent existing extractive waste facilities (i.e. those that would be operational upon the entry into force of the Directive) from continuing to cause pollution, general environmental degradation and/or other negative effects during the transitional period provided by the Directive. (*Parliament's First Reading amendments need re-instating*).
- Council's life-long exemptions for certain existing facilities from key provisions of the Directive must be reversed, as this could provoke a rush of waste facility closures without adequate environmental and human health safeguards. This is particularly important in view of Romania and Bulgaria's EU Accession, since the extractive industry is an important industrial sector there and is generally not managed to high standards.

Please **SUPPORT** amendments:

- **71** (option 1) or **33** (option 2) to Article 24(2.a) (new), **and**
- **34** to Article 24(3), **and**
- **73** (option 1) or **72** (option 2) to Article 24(3.a) (new) and Article 24(a) (new) respectively.

Adequate definition of a "Category A" (the most dangerous) extractive waste facility. Council has changed the criteria for defining Category A waste facilities, making it more difficult for a facility to get this designation. This is risky, as it could effectively reduce the scope of the Directive - since fewer of the most dangerous waste facilities from a human and environmental safety point of view would be covered by ALL the provisions of the Directive without exception. (*Parliament's First Reading amendment needs re-instating*).

Please **SUPPORT** amendment **36** to Annex III.

Controlling existing pollution from closed or abandoned extractive waste facilities. Council accepts identifying extractive waste facilities that have been "badly" closed or abandoned and which are currently polluting. However, it surprisingly rejects tackling them and stopping the pollution. (*Parliament's First Reading amendments need re-instating*).

Please **SUPPORT** amendments **6, 30 and 31** to Recital 31 and Articles 20 and 21 respectively.

Explicit prohibition of direct discharges of extractive waste to continental and coastal waters. Clear provisions are needed to ensure that increased regulation on the management of extractive waste facilities will NOT lead to dumping of the waste into rivers, lakes, coastal and other waters etc. in order to escape the Directive's (new) obligations.

Please **SUPPORT** amendments:

- **39** (option 1) or **40** (option 2) or **41** (option 3) to Recital 25, **and**
- **66 & 67** (option 1) or **68** (option 2) to Article 13(4).

II. WWF & EEB priority amendments to reject

Please **REJECT** amendments:

- **42, 69 and 70** to Recital 26, Article 14(1.b) and Article 14(3) respectively. *These amendments could reduce the extent of the rehabilitation required to bring back the land affected by an extractive waste facility to a satisfactory state upon its closure. They restrict the funding available (financial guarantee) to do so to the "site" that is the responsibility of an extractive waste operator, instead of to all the land that could have been affected regardless whether this is inside or outside such a "site" (see also Section III below).*
- **44** to Article 2(2.c.a) (new). *This introduces a legal "loophole" as it exempts extractive waste from being managed under the provisions of this Directive if it is not "used or stored within a mining site". This could encourage illegal dumping of extractive waste. The same rules should apply to extractive waste regardless of where it gets finally deposited and the fact that such a place might or might not be the competence of the extractive industry.*

III. Other amendments to support, *including on excavation voids & financial guarantees*

14, 17, 18 & 38 - To promote waste prevention 19 – To allow for safe backfilling/waste re-use in excavation voids 20 - For a “nature friendly” location of extractive waste facilities 60 – To identify/inventorise new waste facilities 4, 21 & 63 – To improve safety/stability of waste facilities	13, 22, 23 & 55 – For a safe closure and/or adequate rehabilitation of waste facilities 54 (option 1) & 15 (option 2) – To prevent “walking away” from a waste facility in the after-closure phase 16, 24, 25, 26, 64 & 65 - On water protection, including dealing with pollution from excavation voids	5, 28 & 29 – For an adequate financial guarantee in relation to rehabilitation 32 – To shorten the period for transposition 74 & 75 – For an adequate waste characterisation protocol <u>Also:</u> 43, 52, 56, 57, 58, 59 & 61
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Excavation voids. These are the large holes remaining after mineral extraction, which very often contain toxic waste rock, metal tailings or similar. They can give rise to water pollution and stability problems (collapse).

- *Water pollution:* Pollution prevention from excavation voids is vital in view of the increasing numbers of close and/or abandoned extractive sites across Europe. Research shows that where these large voids are allowed to flood after closure, without controls, the resulting polluted water is a far more important source of pollution to freshwater and soil than the closed/abandoned extractive waste facilities by themselves. It can be the main source of freshwater pollution in general depending on the area, as shown by the first river basin district characterisation studies that are being carried out by Member States as part of the implementation of the Water Framework Directive. Council did not accept Parliament's First Reading amendment to introduce preventive measures against pollution from these voids, and this needs to be re-instated.
- *Stability:* Excavation voids can be used for placing extractive waste back into them for rehabilitation and construction purposes, a practice that is called backfilling. Council calls for the backfilled waste to be made stable in order to prevent structural collapse, but this does not make any sense without calling for the excavation void (being backfilled) itself to be made stable as well. Council did not accept Parliament's First Reading amendment to stabilise the excavation void, and this needs to be re-instated

Please **SUPPORT** amendments:

- **19** to Article 10 [*on stability*], and
- **26** to Article 13 (4a) (new) [*on water pollution*]

An adequate financial guarantee for rehabilitation. A financial guarantee is important because it ensures funds will always be available for the rehabilitation of the land affected by an extractive waste facility upon its closure, even if the operator has gone, or is bankrupt. The guarantee will be in the form of money or equivalent (e.g. industry-sponsored mutual guarantee funds) and is required by the competent authority in order to grant the permit to operate the extractive waste facility.

Council wants to restrict the use of this money to rehabilitate the "site" that is the responsibility of an extractive waste operator only. However, as acknowledged by Council's own definition of "rehabilitation" in Article 3(20), it needs to extend to any "land affected by a waste facility" even if this is beyond such a "site".

Please **SUPPORT** amendments:

- **45** (option 1) or **46 & 47** (option 2) to Article 2(3.1). *These require a financial guarantee for facilities storing inert waste, to allow for adequate rehabilitation of the land affected by the facility upon its closure*
- **13** on Article 3(20) and **55** to Article 5(3 ga) (new). *These define the type of rehabilitation to be covered by the financial guarantee*
- **5** [to Recital 26], **28** [to Article 14(1b)] and **29** [to Article 14(1b)]. *These ensure the financial guarantee is sufficient to rehabilitate adequately the land affected by an extractive waste facility upon the facility's closure, regardless of whether this land is inside or outside the actual "site" that is the responsibility of an extractive waste operator. Supporting these is complementary to **rejecting** amendments **42, 69 and 70** as explained in Section II above.*

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