

2009 No. 1799

**ENVIRONMENTAL PROTECTION, ENGLAND AND
WALES**

**The Environmental Permitting (England and Wales)
(Amendment) Regulations 2009**

Made - - - - *3rd July 2009*

Coming into force - - *7th July 2009*

These Regulations are made in exercise of the powers conferred by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999(a).

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of that Act consulted—

- (a) the Environment Agency;
- (b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate; and
- (c) such other bodies or persons as they consider appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) and (e) of that Act(b).

Accordingly, the Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make the following Regulations.

Citation, commencement and extent

1. These Regulations—

- (a) may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2009;
- (b) come into force on 7th July 2009; and
- (c) extend to England and Wales only.

(a) 1999 c. 24. Functions of the Secretary of State under section 2 (except in relation to offshore oil and gas exploration and exploitation), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 3 of S.I. 2005/1958. Those functions were then transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006, c. 32.

(b) The reference in section 2(8) to approval by each House of Parliament has effect in relation to exercise of functions by the Welsh Ministers as if it were a reference to approval by the National Assembly for Wales by virtue of paragraph 33 of Schedule 11 to the Government of Wales Act 2006, c. 32.

Amendment of the Environmental Permitting (England and Wales) Regulations 2007

2. The Environmental Permitting (England and Wales) Regulations 2007^(a) are amended in accordance with regulations 3 to 27.

Amendment of regulation 2 (interpretation: general)

3.—(1) Paragraph (1) of regulation 2 (interpretation: general) is amended as follows.

(2) After the definition of “appropriate authority”, insert—

““Category A mining waste facility” means a mining waste facility that is classified as Category A under Article 9 of the Mining Waste Directive;”.

(3) For paragraph (e) of the definition of “emission”, substitute—

“(e) in relation to—

(i) a waste operation not falling within paragraph (a) to (d), or

(ii) a mining waste operation,

the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources related to the operation into the air, water or land;”.

(4) After the definition “exemption registration authority”, insert—

““existing mining waste facility” means a mining waste facility in operation on 1st May 2008;

“extractive waste” means waste within the meaning of Article 2(1) of the Mining Waste Directive, except where it is excluded from the scope of that Directive by Article 2(2)(a) and (b);”.

(5) For the definition of “the IPPC Directive”, substitute—

““the IPPC Directive” means Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control^(b);”.

(6) At the end of the definition of “landfill”, insert—

“, but does not include any operation excluded from the scope of that Directive by Article 3(2)”.

(7) After the definition of “local authority”, insert—

““the Mining Waste Directive” means Directive 2006/21/EC^(c) of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive 2004/35/EC;

“mining waste facility” means a “waste facility” as defined in Article 3(15) of the Mining Waste Directive but excludes those facilities mentioned in Article 24(2) or in the first paragraph of Article 24(4) of that Directive;

“mining waste facility closure notice” means a closure notice served under paragraph 10 of Schedule 18B to these Regulations;

“mining waste operation” means the management of extractive waste, whether or not involving a mining waste facility, but does not include the activities in Article 2(2)(c) of the Mining Waste Directive;”.

(8) After the definition of “regulator”, insert—

““regulator initiated variation” means the variation of an environmental permit on the initiative of the regulator under regulation 20(1);”.

(a) S.I. 2007/3538 as amended by S.I. 2009/890.

(b) OJ No L 24, 29.1.2008, p8.

(c) OJ No L 102, 11.4.2006, p15.

Amendment of regulation 8 (interpretation: regulated facility)

4.—(1) Regulation 8 (interpretation: regulated facility) is amended as follows.

(2) After paragraph (1)(d), add—

“,

(e) a mining waste operation”.

(3) Omit paragraph (2) and substitute—

“(2) An exempt waste operation is not a regulated facility within paragraph (1)(a) where it is an activity falling within section 5.3 or section 5.4 of Chapter 5 of Part 2 of Schedule 1 or a directly associated activity of that activity.

(3) An exempt waste operation is not a regulated facility within paragraph (1)(b) to (d).”.

Amendment of regulation 12 (requirement for an environmental permit)

5. For regulation 12 (requirement for an environmental permit), substitute—

“12.—(1) No person may operate a regulated facility except under and to the extent authorised by an environmental permit.

(2) Paragraph (1) is subject to the transitional provisions in regulation 71A.”.

Amendment of regulation 17 (single site permits etc.)

6. For regulation 17 (single site permits etc.), substitute—

“17. The regulator may authorise under a single environmental permit, the operation by the same operator—

(a) of more than one regulated facility on the same site;

(b) of more than one mobile plant; or

(c) of more than one standard facility (other than a standard facility to which the IPPC Directive applies),

but may not otherwise authorise the operation of more than one regulated facility under a single environmental permit.”.

Amendment of regulation 24 (notification of the surrender of an environmental permit)

7. In paragraph (1)(b) of regulation 24 (notification of the surrender of an environmental permit), after “installation”, insert “, except to the extent that it relates to a waste operation”.

Amendment of regulation 31 (appeals to an appropriate authority)

8.—(1) Regulation 31 (appeals to an appropriate authority) is amended as follows.

(2) In paragraph (1)—

(a) for sub-paragraph (d), substitute—

“(d) a person who is aggrieved by a decision not to authorise the closure procedure mentioned in—

(i) Article 13 of the Landfill Directive after a request referred to in Article 13(a)(ii) of that Directive, or

(ii) Article 12 of the Mining Waste Directive after a request referred to in Article 12(2)(b) of that Directive;”.

(b) in sub-paragraph (e), after “suspension notice” insert “, mining waste facility closure notice.

(3) For paragraph (2) substitute—

“(2) Paragraph (1) does not apply—

- (a) where the relevant decision or notice implements a direction of the appropriate authority given under—
 - (i) regulation 61(1),
 - (ii) regulation 62(1),
 - (iii) regulation 62(6), or
 - (iv) paragraph (4); or
- (b) where an application for the grant or variation of an environmental permit in relation to a Category A mining waste facility that is an existing mining waste facility is refused pursuant to paragraph 14(2) of Schedule 18B.”.

Amendment of regulation 32 (discharge of functions)

9.—(1) Regulation 32 (discharge of functions) is amended as follows.

(2) At the start of paragraph (2), insert “Subject to paragraph 2A,”.

(3) After paragraph (2), insert—

“(2A) Functions in relation to a waste operation carried out at a Part B installation are exercisable by the Agency.”.

(4) After paragraph (5), add—

“(6) Functions in relation to a mining waste operation are exercisable by the Agency.”.

Amendment of regulation 33 (direction to a regulator: discharge of functions by a different regulator)

10.—(1) Regulation 33 (direction to a regulator: discharge of functions by a different regulator) is amended as follows.

(2) For paragraph (4), substitute—

“(4) A direction under paragraph (1)(b) may not be made in relation to—

- (i) a waste operation carried out other than at an installation or by means of mobile plant,
- (ii) a mining waste operation.”.

Amendment of regulation 35 (provision in relation to types of regulated facility)

11. At the end of regulation 35 (provision in relation to types of regulated facility), add—

“;

(n) Schedule 18B (provision in relation to mining waste operations)”.

Amendment of regulation 38 (offences)

12. In paragraph (1)(c) of regulation 38 (offences), after “suspension notice” insert “, a mining waste facility closure notice”.

Amendment of regulation 42 (enforcement by the High Court)

13. In regulation 42 (enforcement by the High Court), after “suspension notice” insert “, mining waste facility closure notice”.

Amendment of regulation 46 (duty of the regulator to maintain a public register)

14. After paragraph (7) of regulation 46 (duty of the regulator to maintain a public register), insert—

“(7A) Where information of any description is excluded from any public register under regulation 48, a statement must be entered in the register indicating the existence of information of that description.”.

Amendment of regulation 63 (directions to the Agency: installations outside the United Kingdom)

15.—(1) Regulation 63 (directions to the Agency: installations outside the United Kingdom) is amended as follows.

- (2) In paragraph (1), for “Article 17(1)”, substitute “Article 18(1)”.
- (3) In paragraph (2), for “Article 17(2)”, substitute “Article 18(2)”.

Amendment of regulation 71 (transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant)

16.—(1) Regulation 71 (transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant) is amended as follows.

(2) For the cross heading “Transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant”, substitute—

“Transitional provision: conversion of PPC permits, disposal licences or waste management licences resulting from applications in relation to existing Part A installations and mobile plant”

(3) After paragraph (3), insert—

“(3A) If an application to which this regulation applies relates to the operation of a landfill and the determination date for that application falls within sub-paragraphs (b) or (c) of paragraph 6 of Schedule 3 to the 2000 Regulations and occurs on or after 7th July 2009, paragraph (3B) applies.

(3B) On the determination date the disposal licence or waste management licence which authorised the operation of the landfill immediately before that date is deemed to be an environmental permit granted under regulation 13(1) to the extent that it contains closure and after-care obligations.”.

(4) For paragraph (4), substitute—

“(4) In this regulation—

- (a) “existing” and “determination date” have the meanings given at the relevant time by paragraph 6 of Schedule 3 to the 2000 Regulations; and
- (b) “closure and after-care obligations” means—
 - (i) any condition which implements Article 13 of the Landfill Directive, or
 - (ii) any condition which is otherwise related to closure and after-care of the landfill site or to ensuring it does not cause pollution, and includes any such condition inserted following a variation under regulation 20 after the determination date.”.

(5) After regulation 71, insert—

“Transitional provision: existing mining waste operations

71A.—(1) Regulation 12(1) does not apply to an existing mining waste operation involving an existing mining waste facility until the date referred to in paragraph (2).

(2) The date referred to in this paragraph is—

- (a) if an application for the grant or variation of an environmental permit is made on or before 1st May 2011—
 - (i) if the application is granted, the date of the grant,

- (ii) if the application is refused, and the applicant appeals against the refusal in accordance with regulation 31(1), the date the appeal is determined or withdrawn,
- (iii) if the application is refused, and the applicant is entitled to appeal against the refusal in accordance with regulation 31(1) but does not do so, the day after the last day on which an appeal could have been brought, determined in accordance with paragraph 3(1) of Schedule 6, or
- (iv) if the application is for the grant or variation of an environmental permit in relation to a Category A mining waste facility that is an existing mining waste facility and the application is refused pursuant to paragraph 14(2) of Schedule 18B, the date of the refusal;

or

- (b) if no such application is made, 1st May 2011.

(3) Where an existing mining waste operation is not covered by paragraph (1), regulation 12(1) does not apply to that operation until the date referred to in paragraph (4).

(4) The date referred to in this paragraph is—

- (a) if an application for the grant or variation of an environmental permit is made on or before 30th December 2010—
 - (i) if the application is granted, the date of the grant,
 - (ii) if the application is refused, and the applicant appeals against the refusal in accordance with regulation 31(1), the date the appeal is determined or withdrawn, or
 - (iii) if the application is refused, and the applicant does not appeal against the refusal, the day after the last day on which an appeal could have been brought, determined in accordance with paragraph 3(1) of Schedule 6;

or

- (b) if no such application is made, 30th December 2010.

(5) In this regulation, “existing mining waste operation” means a mining waste operation subsisting on 1st May 2008.”.

Amendment of regulation 72 (savings)

17. In regulation 72, for paragraph (1) substitute—

“(1) Notwithstanding their repeal or revocation by these Regulations, the provisions of the 1990 Act, the 1994 Regulations, the 2000 Regulations and the Landfill (England and Wales) Regulations 2002(a) have effect for the purposes of—

- (a) determining an application for the grant of a PPC permit or a waste management licence which was outstanding at the relevant time;
- (b) giving effect to a notice served before the coming into force of these Regulations;
- (c) determining an appeal brought before the coming into force of these Regulations; and
- (d) bringing and determining an appeal, after the coming into force of these Regulations, in respect of—
 - (i) the determination of an application made, or
 - (ii) a notice served,
 under any of those provisions.”.

(a) S.I. 2002/1559.

Amendment of Schedule 1 (activities)

18.—(1) Schedule 1 (activities) is amended as follows.

(2) In section 1.1 of Part 2 of Schedule 1, under the heading “Interpretation and application of Part A(1), in paragraph 5, for the words “these Regulations”, substitute “regulation 8(1)(a)”.

Amendment of Schedule 3 (descriptions: exempt waste operations and other operations to which section 33(1)(a) of the 1990 Act does not apply)

19.—(1) Schedule 3 (descriptions: exempt waste operations and other operations to which section 33(1)(a) of the 1990 Act does not apply) is amended as follows.

(2) After paragraph 5(1)(b), add—

“, and

the appliance is only used to treat the waste listed in the definition of “excluded plant” in paragraph 1 of section 5.1 of Part 2 of Schedule 1.”.

(3) For paragraph 29(1), substitute—

“(1) Burning waste at the place where it is produced by the person producing it in an excluded plant within the meaning of section 5.1 of Part 2 of Schedule 1 with a capacity of less than 50kg per hour.”.

Amendment of Schedule 5 (environmental permits)

20.—(1) Schedule 5 (environmental permits) is amended as follows.

(2) In paragraph 1, omit the definition of “regulator initiated variation”.

(3) For paragraph 5(1), substitute—

“(1) Paragraph 6 applies to every application for the grant of an environmental permit except an application in relation to—

- (a) mobile plant;
- (b) a standard facility, unless the facility is a Part A installation; or
- (c) a mining waste operation not involving a mining waste facility to which Article 7 of the Mining Waste Directive applies.”.

(4) In paragraph 10(2)—

- (a) in sub-paragraph (a), for “Article 17 of the IPPC Directive” substitute “the relevant Directive Article”;
- (b) in sub-paragraph (b), for “relevant matters”, substitute “relevant information”.

(5) For paragraph 10(4), substitute—

“(4) In this paragraph—

“member State” includes Iceland, Liechtenstein and Norway but only to the extent that there is a relevant application or regulator initiated variation which relates to the carrying on at an installation of an activity listed in the IPPC Directive;

“relevant application” means an application—

- (a) for the grant of an environmental permit; or
- (b) to vary an environmental permit,

in relation to an installation described in sub-paragraph (5) or a Category A mining waste facility;

“relevant Directive Article” means —

- (a) in the case of an application in relation to an installation described in sub-paragraph (5), Article 18 of the IPPC Directive;

- (b) in the case of an application in relation to a Category A mining waste facility, Article 16 of the Mining Waste Directive;
- “relevant information” means—
- (a) where the relevant application or regulator initiated variation relates to an installation described in sub-paragraph (5), a matter in paragraph 1 of Annex V of the IPPC Directive;
 - (b) where it relates to a Category A mining waste facility, the information required under Article 16 of the Mining Waste Directive.”.
- (6) After paragraph 10(4), add—
- “(5) The description in this sub-paragraph is an installation at which there is carried on an activity listed in Annex 1 of the IPPC Directive.”.
- (7) For paragraph 16(2), substitute—
- “(2) The period starts—
- (a) in the case of an application for the grant or variation of an environmental permit in relation to a Category A mining waste facility, on the day the regulator is notified by the relevant emergency planner of the matters referred to in paragraph 14(1) of Schedule 18B and for these purposes “relevant emergency planner” has the meaning given in paragraph 2 of that Schedule, but if paragraph 10 of this Schedule applies, this does not have effect until the appropriate authority has complied with paragraph 10(3) of this Schedule;
 - (b) if paragraph 10 of this Schedule applies and the application is not one covered by sub-paragraph (a), on the day the appropriate authority complies with paragraph 10(3) of this Schedule;
 - (c) in all other cases, on the day the regulator receives a duly-made application.”.

Amendment of Schedule 6 (appeals to the appropriate authority)

- 21.**—(1) Paragraph 3 of Schedule 6 (appeals to the appropriate authority) is amended as follows.
- (2) For sub-paragraph (1)(c), substitute—
- “(c) in relation to a regulator initiated variation, a suspension notice, an enforcement notice, a mining waste facility closure notice or a landfill closure notice, not later than 2 months from the date of the variation or notice;”.
- (3) Omit sub-paragraph (3).

Amendment of Schedule 7 (provision in relation to Part A installations and Part A mobile plant)

- 22.**—(1) Schedule 7 (provision in relation to Part A installations and Part A mobile plant) is amended as follows.
- (2) After paragraph 2(d), add—
- “; and
- (e) “substance” must be read as including, after the words “its compounds” in Article 2(1) of that Directive, the words “any biological entity or micro-organism””.
- (3) In paragraph 5(1)—
- (a) in paragraph (a), after the words “provide that the competent authorities”, insert “contained in the first sentence of Article 3(1)”;
 - (b) in paragraph (e), for the words “second indent”, substitute “point (b)”;
 - (c) in paragraph (f), for the words “Article 18(2)”, substitute “Article 19(2)”.
- (4) In paragraph 8(2), for the words “Article 2(11)”, substitute “Article 2(12)”.

Amendment of Schedule 8 (provision in relation to Part B installations and Part B mobile plant)

23.—(1) Schedule 8 (provision in relation to Part B installations and Part B mobile plant) is amended as follows.

(2) After paragraph 2(e), add—

“; and

(f) “substance” must be read as including, after the words “its compounds” in Article 2(1) of that Directive, the words “any biological entity or micro-organism””.

(3) In paragraph 4(2)—

(a) in paragraph (a), for the words “the second, fourth and seventh indents”, substitute “points (b), (d) and (g)”;

(b) in paragraph (b), for the words “the third and fifth indents”, substitute “points (c) and (e)”;

(c) in paragraph (c), for the words “the fifth indent”, substitute “point (e)”;

(d) in paragraph (d), for the words “the sixth indent”, substitute “point (f)”;

(e) in paragraph (e) —

(i) for the words “the eighth indent”, substitute “point (h)”, and

(ii) for the words “Article 3(a) and (b)”, substitute “Article 3(1)(a) and (1)(b)”.

(4) In paragraph 5(1)—

(a) in paragraph (a), for the words “Article 3(a) and (b)”, substitute “Article 3(1)(a) and (1)(b)”;

(b) in paragraph (e), for the words “Article 18(2)”, substitute “Article 19(2)”;

(5) In paragraph 5(2)—

(a) in paragraph (a), after the words “in Article 3”, insert “(l)”;

(b) in paragraph (b)(i), for the words “Article 3(a) and (b)”, substitute “Article 3(1)(a) and (1)(b)”.

(6) In paragraph 7(2), for the words “Article 2(11)”, substitute “Article 2(12)”.

Amendment of Schedule 10 (provision in relation to landfill)

24. Omit sub-paragraph (a) of paragraph (1) of Schedule 10 (provision in relation to landfill).

Insertion of new Schedule 18B (provision in relation to mining waste operations)

25. After Schedule 18A(a) (provision in relation to waste batteries and accumulators), insert Schedule 18B as set out in Schedule 1 to these Regulations.

Amendment of Schedule 19 (public registers)

26.—(1) Paragraph 1 of Schedule 19 (public registers) is amended as follows.

(2) In sub-paragraph (1)(f), after “landfill closure notice”, insert “, mining waste facility closure notice”.

(3) In sub-paragraph (1)(i)(iv), omit “or”.

(4) After sub-paragraph (1)(i)(v), add—

“, or

(vi) a mining waste facility closure notice”.

(a) Schedule 18A was inserted by paragraph 2(6) of Schedule 8 to the Waste Batteries and Accumulators Regulations 2009 (S.I. 2009/890).

(5) After sub-paragraph (2)(a), insert—

“(aa) an inventory of closed mining waste facilities as required under Article 20 of the Mining Waste Directive;”.

Amendment of Schedule 20 (further provision relating to waste)

27.—(1) Schedule 20 (further provision relating to waste) is amended as follows.

(2) In paragraph 1(a), after the definition of “local planning authority”, insert—

“mineral planning authority” has the same meaning as in section 1 of the Town and Country Planning Act 1990(a);”.

(3) At the end of paragraph 6, insert—

“(3) A mineral planning authority must not grant planning permission for a mining waste facility to which Article 7 of the Mining Waste Directive applies unless it is satisfied that—

- (a) the operator of that facility will meet the requirements of Article 11(2)(a) of that Directive; and
- (b) the management of waste at that facility will not conflict directly or otherwise interfere with the implementation of the plan or plans referred to in Article 7(3)(b) of that Directive.”.

Consequential amendments

28.—(1) Schedule 2 (consequential amendments) has effect.

(2) Section 33(1)(a) of the 1990 Act, as amended by paragraph 1(3) of Schedule 2 to these Regulations, does not apply to extractive waste at any time before an environmental permit authorising the deposit of the waste is required.

3rd July 2009

Jane Davidson
Minister for Environment, Sustainability and Housing
one of the Welsh Ministers

2nd July 2009

Dan Norris
Parliamentary Under Secretary
Department for Environment, Food and Rural Affairs

(a) 1990 c. 8. Section 1 was amended by the Local Government (Wales) Act 1994, section 18(3) and (4), c.19.

Provision in relation to mining waste operations

Application

1. This Schedule applies in relation to every mining waste operation.

Interpretation

- 2.—(1) In this Schedule—

“relevant emergency planner” means, in relation to an application for a mining waste facility that is located in—

- (a) London, the London Fire and Emergency Planning Authority;
- (b) an area where there is a fire and civil defence authority, that authority;
- (c) the Isles of Scilly, the Council of the Isles of Scilly;
- (d) an area in the rest of England, the county council for that area or where there is no county council for that area, the district council for that area;
- (e) an area in Wales, the county council or county borough council for that area.”;

“waste management plan” means a plan of the type described in Article 5(1) of the Mining Waste Directive which has the objectives in Article 5(2) and contains the elements and information set out in Article 5(3) of that Directive.

- (2) When interpreting the Mining Waste Directive for the purposes of this Schedule—

- (a) except where otherwise defined in this paragraph, an expression defined in Part 1 of these Regulations has the meaning given in that Part;
- (b) “permit” means an environmental permit; and
- (c) the competent authority is the regulator.

Applications for an environmental permit

3.—(1) The regulator must require that every application for the grant or variation of an environmental permit in relation to a mining waste operation involving a mining waste facility to which Article 7 of the Mining Waste Directive applies includes—

- (a) the information specified in Article 7(2) of that Directive; and
- (b) where Article 6 of the Directive applies, the information mentioned in the second sentence of the third paragraph of Article 6(3).

(2) Where the regulator receives an application for the grant or variation of an environmental permit and that application includes the information required under subparagraph (1)(b), the regulator must immediately forward the information to the relevant emergency planner.

(3) The regulator must require that every application for the grant or variation of an environmental permit in relation to any other mining waste operation includes a waste management plan.

(4) For the purposes of this paragraph, the regulator may accept a waste management plan produced pursuant to other legislation which complies with Articles 5(1) to (4) of the Mining Waste Directive if it has been reviewed and amended in accordance with Article 5(4) of that Directive.

(5) In this paragraph—

“application for the grant of an environmental permit” means an application made under regulation 13(1) of these Regulations;

“application for the variation of an environmental permit” means an application made by an operator under regulation 20(1) of these Regulations.

Review of environmental permits

4. The regulator must periodically review an environmental permit relating to a mining waste facility if Article 7 of the Mining Waste Directive applies in respect of that facility and any of the circumstances in Article 7(4) of the Directive apply in relation to it.

Classification of mining waste facilities

5. The regulator must exercise its functions so as to ensure compliance with Article 9 of the Mining Waste Directive in respect of any mining waste facility to which Article 7 does not apply.

Inspections

6. The regulator must inspect every mining waste facility to which Article 7 of the Mining Waste Directive applies so as to comply with the requirements of Article 17(1) of that Directive.

Exercise of relevant functions

7. The regulator must exercise its relevant functions so as to ensure compliance with the following requirements of the Mining Waste Directive—

- (a) Article 2(4);
- (b) Article 4;
- (c) Article 5(4) and (6);
- (d) Article 6(2), the first and second paragraphs of Article 6(3), the first paragraph of Article 6(4) to the extent that it relates to plans prepared under the first paragraph of Article 6(3) and the second paragraph of Article 6(4) to the extent that it relates to the regulator’s functions;
- (e) Article 7(1) and Article 7(3)(a);
- (f) Article 10;
- (g) Article 11;
- (h) Article 12;
- (i) Article 13;
- (j) Article 14 (1) to (3);
- (k) Article 17(2);
- (l) Article 24(1).

Public participation

8.—(1) The regulator must exercise its functions under the public participation provisions in relation to mining waste facilities to which Article 7 of the Mining Waste Directive applies so as to meet the requirements of Article 8 of that Directive.

(2) In this paragraph, “public participation provisions” means regulations 26, 29 and 59, and paragraphs 6 and 8 of Schedule 5 to these Regulations.

Derogation from requirements

9.—(1) The regulator must exercise its functions to ensure that the requirements mentioned in the first paragraph of Article 2(3) of the Mining Waste Directive do not apply to the substances mentioned in that paragraph where they result from an operation mentioned in that paragraph, to the extent allowed by that paragraph.

(2) The regulator must waive the requirements of the Mining Waste Directive in relation to the deposit of the substances mentioned in the second paragraph of Article 2(3) of that Directive as long as the regulator is satisfied that the requirements of Article 4 of that Directive are met.

(3) The regulator must waive the requirements mentioned in the third paragraph of Article 2(3) of the Mining Waste Directive in relation to the waste mentioned in that paragraph to the extent allowed by that paragraph.

Closure of a mining waste facility

10.—(1) The regulator must set out any reasoned decision under Article 12(2)(c) of the Mining Waste Directive in a closure notice served on the operator.

(2) A closure notice must, in addition to stating the regulator's reasons for requiring initiation of the closure procedure, specify —

- (a) the steps the operator is required to take to initiate the procedure; and
- (b) the period within which they must be taken.

(3) The regulator may withdraw a closure notice at any time by further notice served on the operator.

(4) Closure of a mining waste facility does not relieve the operator of liability under the conditions of the environmental permit in relation to the facility.

(5) The regulator must exercise its functions so as to ensure compliance with Article 14(4) of the Mining Waste Directive.

Inventory of closed mining waste facilities

11. The regulator must maintain and make available to the public an inventory of closed mining waste facilities so as to ensure compliance with Article 20 of the Mining Waste Directive.

Developments in best available techniques

12.—(1) The regulator must ensure that it is informed of developments in best available techniques.

(2) In this paragraph, “best available techniques” has the meaning given in Article 2(11) of the IPPC Directive.

Planning permission requirements and conditions

13.—(1) Following an application under regulation 13(1), the regulator must not grant an environmental permit in relation to a mining waste facility to which Article 7 applies if use of the site as a mining waste facility requires a planning permission and no such permission is in force.

(2) Where—

- (a) a mining waste operation is the subject of an environmental permit;
- (b) that operation has been granted planning permission subject to conditions (“planning conditions”), and

- (c) there is an inconsistency between the conditions imposed by the environmental permit (“environmental permit conditions”) and those imposed by the planning conditions,

the environmental permit conditions prevail.

(3) In this paragraph, “planning permission” means planning permission under the Town and Country Planning Act 1990(a) and includes—

- (a) a certificate under section 191 of that Act, and
- (b) an established use certificate under section 192 of that Act, as originally enacted, which continues to have effect for the purposes of subsection (4) of that section.

Applications for an environmental permit for a Category A mining waste facility

14.—(1) The regulator must not grant an application for an environmental permit relating to a Category A mining waste facility until it has been notified by the relevant emergency planner that it has the information necessary to enable it to draw up an external emergency plan.

(2) The regulator must refuse an application for an environmental permit relating to a Category A mining waste facility that is an existing mining waste facility upon receipt of a notice by the relevant emergency planner stating that the operator has not provided the information necessary to enable the relevant emergency planner to draw up an external emergency plan.

(3) In this paragraph, “external emergency plan” means a plan as required under the third paragraph of Article 6(3) of the Mining Waste Directive that has the objectives specified in the first paragraph of Article 6(4) of that Directive.”

SCHEDULE 2

Regulation 28

Consequential amendments

Environmental Protection Act 1990

1.—(1) The Environmental Protection Act 1990(b) is amended as follows.

(2) In section 29 (interpretation)—

- (a) in subsection (3) after “controlled waste” (in each place where it occurs) insert “or extractive waste”,
- (b) in subsection (4) after “controlled waste” (in each place where it occurs) insert “or extractive waste”,
- (c) in subsection (8) after “controlled waste” insert “or extractive waste”, and
- (d) in subsection (13)(c) after “exempt waste operation” insert—
 - ““extractive waste”;
 - “mining waste operation”;
 - “the Mining Waste Directive”.”

(3) In section 33 (prohibition on unauthorised or harmful depositing, treatment or disposal etc of waste), in subsection (1)—

(a) 1990 c. 8. Sections 191 and 192 were amended by the Planning and Compensation Act 1991, section 10(1), c.34.
(b) 1990 c. 43.
(c) Section 29(13) was inserted by S.I. 2007/3538.

- (a) in paragraph (a), after “controlled waste” (in each place where it occurs) insert “or extractive waste”, and
 - (b) in paragraph (c) after “controlled waste” insert “or extractive waste”.
- (4) In section 33A (section 33 offences: investigation and enforcement costs), as inserted by section 42(1) of the Clean Neighbourhoods and Environment Act 2005(a), in subsection (1)(b), at the end of paragraph (b) insert “or a mining waste operation”.
- (5) In section 33B (section 33 offences: clean up costs), in subsection (1)(a), after “controlled waste” insert “or extractive waste”.
- (6) In section 34 (duty of care)—
- (a) after subsection (1) insert—
 - “(1A) It shall be the duty of any person who is responsible for the management of extractive waste to take all such measures applicable to him in that capacity as are reasonable in the circumstances —
 - (a) to prevent any contravention by any other person of section 33 above;
 - (b) to prevent any contravention by another person of regulation 12 of the 2007 Regulations or of a condition of an environmental permit; and
 - (c) to prevent the escape of the waste from his control or that of any other person.”,
 - and
 - (b) in subsection (6), after “subsection (1)” insert “, (1A).”.
- (7) In section 59 (powers to require removal of waste unlawfully deposited), in subsection (1), after “controlled waste” insert “or extractive waste”.

Water Resources Act 1991

- 2.—(1) The Water Resources Act 1991(c) is amended as follows.
- (2) In section 85 (offences of polluting controlled waters) for subsection (7) substitute—
- “(7) For the purposes of subsection (1), “waste” in the term “waste matter” includes—
 - (a) anything that is waste for the purposes of Directive 2006/12/EC of the European Parliament and of the Council on waste, and that is not excluded from the scope of that Directive by Article 2(1) of that Directive;
 - (b) anything that is waste for the purposes of Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive 2004/35/EC, and that is not excluded from the scope of that Directive by Article 2(2) of that Directive.”.

Clean Air Act 1993

- 3.—(1) The Clean Air Act 1993(d) is amended as follows.
- (2) In section 41A (relation to the Pollution Prevention and Control Act 1999) in subsection (4) for the definition of “activity” substitute—
- “activity” includes—
 - (a) a waste operation within the meaning of the 2007 Regulations, and
 - (b) a mining waste operation within the meaning of those Regulations;”.

(a) 2005 c. 16.
 (b) Section 33A(1) was substituted by S.I. 2007/3538.
 (c) 1991, c. 57. Section 85 was amended by S.I. 2007/3538.
 (d) 1993, c. 11. Section 41A was inserted by S.I. 2000/1973 and amended by S.I. 2007/3538.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 3538 of 2007) (“the EP Regulations”) for the purposes of transposing the requirements of Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from the extractive industries and amending Directive 2004/35/EC (“the Mining Waste Directive”) (but excluding certain requirements in Article 6 of that Directive which will be transposed through separate regulations). They also make certain amendments to the EP Regulations relating to environmental permitting.

Regulation 3 amends regulation 2 (interpretation: general) of the EP Regulations by adding definitions relating to the Mining Waste Directive and replacing the definition of the previous IPPC Directive (Council Directive 96/61/EC concerning integrated pollution prevention and control) with the codified version of that Directive (2008/1/EC). It also amends the definition of “landfill” to exclude operations which fall outside the scope of the Landfill Directive (Council Directive 1999/31/EC on the landfill of waste).

Regulation 4 amends regulation 8 (interpretation: regulated facility) of the EP Regulations by adding mining waste operations, whether or not involving a mining waste facility, to the list of regulated facilities, and amending the provision which specifies when an exempt waste operation is not a regulated facility.

Regulation 5 amends regulation 12 (requirement for an environmental permit) of the EP Regulations to make compliance with the duty to hold a permit for a regulated facility subject to the transitional provisions applicable to mining waste operations. The transitional provisions are inserted into the EP Regulations by regulation 17.

Regulations 6 and 7 make minor corrections to regulations 17 (single site permits etc.) and paragraph (1)(b) of regulation 24 (notification of the surrender of an environmental permit) of the EP Regulations.

Regulation 8(1) amends regulation 31 (appeals to an appropriate authority) of the EP Regulations to include decisions regarding closures of mining waste facilities. A related amendment is made to paragraph 3(1)(c) of Schedule 6 (appeals to an appropriate authority) to the EP Regulations by regulation 22. Regulation 8(3) amends regulation 31(2) and provides a further circumstance where regulation 31(1) (which sets out appeal rights) does not apply. This further circumstance is the refusal of an application relating to a Category A mining waste facility that is an existing mining waste facility under paragraph 14(2) of Schedule 18B.

Regulation 9 amends regulation 32 (discharge of functions) and provides that functions relating to mining waste operations are exercisable by the Environment Agency. It also inserts a provision for the discharge of functions in relation to waste operations carried out at a Part B installation.

Regulation 10 amends the power to make directions in regulation 33 (direction to a regulator: discharge of functions by a different regulator). It provides that a direction cannot be made requiring Local Authorities to exercise any of the Environment Agency’s functions relating to mining waste operations.

Regulations 11 and 25 insert and give effect to new Schedule 18B (provision in relation to mining waste operations) to the EP Regulations.

Regulations 12 and 13 add mining waste facility closure notices into the offence and enforcement provision in regulations 38 (offence) and 42 (enforcement by the High Court) respectively of the EP Regulations.

Regulation 14 adds a new paragraph to regulation 46 (duty of the regulator to maintain a public register) of the EP Regulations requiring that the public register required under the EP Regulations contains a statement relating to the existence of any information that has been excluded from the register under regulation 48.

Regulations 15, 20(4)(a), 22(3) and 23(3) update references to provisions in the previous IPPC Directive (Council Directive 96/61/EC concerning integrated pollution prevention and control) to correspond to provisions in the codified version of that Directive (2008/1/EC).

Regulation 16(1) to (4) amends the transitional provision in regulation 71 (transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant) of the EP Regulations so as to cover the situation where an application relating to a landfill site fails on appeal to obtain a PPC permit. The existing permit conditions that deal with closure and after-care of the site, together with any regulator initiated variation following the appeal relating to such closure, will be deemed to be an EP permit. Regulation 16(5) inserts a new regulation 71A into the EP Regulations containing transitional provisions for existing mining waste operations. Under the transitional provisions, existing mining waste operations involving existing mining waste facilities have until 1st May 2011 to apply for an environmental permit and other existing mining waste operations have until 30th December 2010 to apply.

Regulation 17 amends paragraph (1) of regulation 72 (savings) of the EP Regulations to rectify the omission of the Landfill (England and Wales) Regulations 2002 from the list of legislation which has effect for certain purposes despite being repealed or revoked.

Regulation 18 amends paragraph 5 of the “Interpretation and application of Part A(1)”, in Section 1.1 (combustion activities), Part 2 of Schedule 1 (activities) to the EP Regulations in order to correct an error.

Regulation 19 amends paragraphs 5 and 29 of Schedule 3 (descriptions: exempt waste operations and other operations to which section 33(1)(a) of the 1990 Act does not apply) to the EP Regulations in order to correct certain omissions relating to the application of the Waste Incineration Directive (2000/76/EC).

Regulation 20 amends paragraph 5(1) of Schedule 5 (environmental permits) which relates to public participation. It disapplies the public participation provisions set out in paragraph 6 of that Schedule to mining waste operations not involving a mining waste facility to which Article 7 of the Mining Waste Directive applies. It amends paragraph 10 of that Schedule to include references to the Mining Waste Directive. It also amends the period for calculating the time limits for determining environmental permit applications relating to Category A mining waste facilities.

Regulation 21 makes a correction to paragraph 3 of Schedule 6 (appeals to the appropriate authority).

Paragraphs (2) and (3) of Regulation 22 make corrections to paragraph 2(d) of Schedule 7 (provision in relation to Part A installations and Part A mobile plant).

Regulation 24 amends paragraph 1 of Schedule 10 (provision in relation to landfill), which describes the scope of the Schedule. The amendment should be read with the amendment to the definition of “landfill” in regulation 3.

Regulation 26 amends paragraph 1 of Schedule 19 (public registers) of the EP Regulations so as to require any mining waste facility closure notices and the inventory of closed mining waste facilities (required under Article 20 of the Mining Waste Directive) to be included on the public register.

Regulation 27 amends Schedule 20 (further provision relating to waste) of the EP Regulations by imposing duties on the mineral planning authority relating to Articles 7(3)(b) and 11(2)(a) of the Mining Waste Directive when granting a planning permission for any mining waste facility to which Article 7 of the Mining Waste Directive applies.

Regulation 28 gives effect to the consequential amendments in Schedule 2.

Schedule 1 contains the new Schedule 18B to be inserted into the EP Regulations which applies in relation to every mining waste operation. Paragraph 2 provides definitions for the purposes of the new Schedule. Paragraph 3 specifies the particular requirements for applications for environmental permits for mining waste operations. Paragraph 4 sets out the circumstances under

which the regulator must periodically review environmental permits relating to mining waste facilities. Paragraph 5 sets out the regulator's duties in relation to classification of mining waste facilities. Paragraph 6 sets out the regulator's duties relating to inspection of mining waste facilities. Paragraph 7 requires the regulator to exercise its relevant functions, defined in regulation 9 (interpretation: relevant functions) of the EP Regulations, so as to ensure compliance with the requirements of the Mining Waste Directive set out in sub-paragraphs (a) to (l). Paragraph 8 sets out the regulator's duties in relation to public participation requirements for mining waste facilities. Paragraph 9 sets out the requirements of the Mining Waste Directive which the regulator must waive. Paragraph 10 sets out the requirements for notices from the regulator regarding closure of a mining waste facility. Paragraph 11 sets out the regulator's duty to maintain and make available an inventory of closed mining waste facilities. Paragraph 12 requires the regulator to ensure it is informed of developments in best available techniques when carrying out functions relating to mining waste operations. Paragraph 13 prevents the regulator from issuing an environmental permit in relation to a mining waste facility to which Article 7 of the Mining Waste Directive applies unless planning permission has previously been granted in relation to the facility. It also provides that in the event of an inconsistency between a planning condition and an environmental permit condition, the environmental permit condition prevails. Paragraph 14 imposes duties on the regulator as regards the granting of an environmental permit relating to a Category A mining waste facility.

Schedule 2 contains consequential amendments to the Environmental Protection Act 1990 ("1990 Act"), the Water Resources Act 1991 ("1991 Act") and the Clean Air Act 1993 ("1993 Act"). In the 1990 Act, the term "extractive waste" is added to certain provisions which contain references to "controlled waste". Section 34 of that Act is amended by imposing a new duty of care on persons responsible for the management of extractive waste. Section 85(7) of the 1991 Act is amended to include waste within the scope of the Mining Waste Directive in the definition of "waste matter". Section 41(4) of the 1993 Act is amended to add mining waste operations to the definition of an activity for the purposes of that section.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Waste Management Division, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London, SW1P 2AL and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2009 No. 1799

**ENVIRONMENTAL PROTECTION, ENGLAND AND
WALES**

The Environmental Permitting (England and Wales)
(Amendment) Regulations 2009

£5.50