

Planning Committee

19 March 2008



**The Mining Waste Directive
Consultation paper on proposals for
transposing the Directive in
England and Wales**

Report of Rod Lugg, Head of Environment and Planning

Purpose of the Report

- 1 To inform the Committee of the consultation paper and its main recommendations and request that these be endorsed.

Background

- 2 The consultation paper seeks views on the Government's preferred option for transposing and implementing the EU Mining Waste Directive (MWD). The aim of the Directive is to reduce as far as possible any adverse effects on the environment and any resultant risk to human health brought about as a result of the management of waste from extractive industries. The consultation period ends on 11 April 2008.
- 3 The MWD covers the management of waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries, referred to as 'extractive waste'. The Directive applies to on land operations and will among other matters require site operators to produce waste management plans, closure and after closure procedures and have a permit to operate an extractive waste facility. The UK is required to transpose its requirements into national law by 1 May 2008.

Options for Transposition

- 4 The consultation paper presents 3 alternatives for incorporating the Directive within the environmental regulatory system for England and Wales. The options are:
 - i) The planning and existing consents regime;
 - ii) The Environmental Permitting Programme;
 - iii) A hybrid arrangement involving elements of i) and ii).

The Government's preference is for option ii) the Environmental Permitting Programme administered by the Environment Agency as the 'principal competent authority'.

Reasons for Preferred Option

- 5 The Government sets out a number of reasons why it believes the EPP system would be the most effective and efficient route for transposing the Directive. At the heart of its thinking is the belief that as the Directive is primarily concerned with the management of waste rather than the use of land it sits more comfortably within the jurisdiction of the Environment Agency.
- 6 It is recognised that the planning regime deals with more minerals issues overall and that this route would build on existing and well established procedures. However this option would require significant changes to planning legislation, extending its scope and burden on planning authorities at a time when the Government is aiming to improve the speed and efficiency of the system.
- 7 The consultation paper notes that the Planning Officers Society has expressed concerns that local planning authorities do not have the necessary technical expertise and specialist knowledge to apply the Directive's requirements. Consequently they would be heavily reliant on advice from the Environment Agency and Health and Safety Executive to enable them to meet their obligations.
- 8 The Environment Agency has said it is willing and able to be the regulator for the Directive.
- 9 The detailed pros and cons of the individual options are listed in Appendix A. Should the Environment Permits option be pursued the planning system would continue regulate the land use aspects of mining and quarrying operations as now.

Conclusion and Recommendation

- 10 Having regard to the requirements of the Directive and its regulatory implications, Members are requested to support the Government's preferred option that the Directive be transposed through the Environmental Permitting Programme administered by the Environment Agency as the 'competent authority'. This view be forwarded to the Government as a formal response to the consultation paper together with any associated technical comments as appropriate.

Background Papers

EU Directive 2006/21/EC on the Management of Waste from the Extractive Industries (The Mining Waste Directive) Consultation Paper on Proposals for Transposition of the Directive in England and Wales

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Appendix A: Pros and Cons of each option:

(i) The planning and existing consents option

	PROS	CONS
1	Implementation of the Directive would be based on an existing, well established system (Town and Country Planning) of regulation of the mining and quarrying industries.	The Mining Waste Directive is principally concerned with the protection of the environment and human health from adverse impacts resulting from the management of extractive waste. In contrast, the planning system's main function is to regulate the use of land.
2	This system generally works well in conjunction with environmental pollution control systems and health and safety legislation, to be adapted to transpose many elements of the Directive.	The scope of planning would need to be extended under this option to cover the specific aspects of waste management regulated by the Directive. This would be contrary to the Government's objectives of reducing unnecessary burdens on the planning system and ensuring it concentrates on its primary purpose.
3	Mine and quarry operators are familiar with planning controls and are likely to have established contacts and working relationships with the local minerals planning authority.	The role of the main regulatory (competent) authority would rest with local planning authorities who lack the necessary technical expertise and competence to deal with the environmental pollution control and waste stability requirements of the Directive.
4	Local planning authority officers are likely to be familiar with mining and quarrying operations and the particular (site-specific) operational conditions and requirements in their area.	Local planning officers would be heavily reliant on the advice and decisions of the EA and HSE in implementing the Directive – this is unlikely to be the most efficient and effective approach.
5	Mining and quarrying operations will continue to be subject to planning controls exercised by the planning authority, whichever option is chosen for transposing the Directive.	This option would also necessitate some significant changes to the planning system for mining and quarrying operations, including: <ul style="list-style-type: none"> – a statutory duty placed on planning authorities to ensure that the provisions of the Directive were met when a planning decision is taken. In practice this would mean that the requirements of the Directive would become the prime consideration which could not be outweighed by other material planning considerations. – taking account of the need to enforce the requirements of the Directive, enforcement of relevant planning conditions would need to become a statutory duty, rather than a discretionary activity, as now.

	PROS	CONS
6		Because planning permission generally runs with the land, rather than being personal to an applicant (although personal permissions can be used, they are the exception rather than the rule), those aspects of the Directive that are specific to the operator, e.g., the need to assess the competence of an operator of a waste facility, would need to be delivered through a separate consenting system, which would operate in addition to planning controls.
7		Adoption of this transposition route instead of the EPP option would be inconsistent with the Government's aims of introducing a common, streamlined approach to environmental permitting which is designed to reduce the administrative burden of regulation on industry.

(ii) The Environmental Permitting Programme (EPP) option with two variations to this model depending on whether principal regulatory ('competent') authority is (a) the mineral and waste planning authority, or (b) the Environment Agency.

	PROS	CONS
1	The EPP option has been specifically designed as a platform to deliver environmental permitting Directives at lower cost and in a more efficient way than would be the case should a stand-alone system be designed to deliver the Directive's requirements – this is demonstrated by the impact assessment.	As planning controls would continue to apply to mining and quarrying sites and be exercised by the planning authority, the use of EPP would potentially risk some overlap in regulatory activities in relation to extractive waste facilities.
2	The EPP option has been designed to deliver Directives such as the Mining Waste Directive and creates a fit for purpose, off-the-shelf permitting platform.	EPP would be a new regulatory regime for mining and quarrying operators which they would have to get used to, as well as continuing to operate under the planning system.
3	The EPP option will allow existing environmental permits, such as discharge consents and waste licences to be subsumed into one permit with the Directive's requirements. This would simplify environmental requirements for the operator and reduce costs for both parties.	EPP under option (ii)a (with the planning authority as main competent authority) would have similar disadvantages as 'cons' 3 and 4 under the planning and existing consents option.

	PROS	CONS
4	The EPP option already delivers 11 other environmental permitting Directives and national policy.	
5	The EA is willing and able to be the regulator for the Directive – this would complement its role and draw on its skills as the waste and water environmental regulator.	
6	Under the planning and existing consents option there would still need to be a separate consent to cover operator competence and consents to cover emissions to water to deliver the requirements of the Directive – whereas under the EPP option all these latter consents can be subsumed into a single consent to deliver all of the requirements of the Directive.	
7	It is likely that fewer existing planning consents would need to be modified under the EPP option than under the planning and existing consents option.	
8	Option (ii)b (EPP with the EA as main competent authority) results in a lower burden and represents a cheaper way of delivering the requirements of the Directive than Option (ii)a (EPP with the planning authority as main competent authority).	

- (iii) A ‘hybrid’ option involving elements of (i) and (ii), whereby the Directive’s requirements would be delivered through the planning system, apart from the requirements relating Article 7 which would be delivered through the EPP.**

By its nature, the hybrid option offers a mixture of the advantages and disadvantages of both options (i) and (ii). In addition, the prospect of having dual arrangements and dual regulators to implement the Directive, depending on whether or not an Article 7 permit was required to operate a waste facility, would appear to provide, potentially at least, a more complex system.

Government Preferred Option:

The Government and the Welsh Assembly are of the view that the requirements of the Mining Waste Directive would be more effectively transposed through option (ii), the Environmental Permitting Programme, with the Environment Agency as the principal competent authority.