L.N. 22 of 2009

ENVIRONMENT PROTECTION ACT
(CAP. 435)

OCCUPATIONAL HEALTH AND SAFETY AUTHORITY ACT
(CAP. 424)

Waste Management (Management of Waste from Extractive Industries and Backfilling) Regulations, 2009

IN exercise of the powers conferred by articles 9, 11(1)(b) and 28 of the Environment Protection Act, and by article 12 of the Occupational Health and Safety Authority Act, the Prime Minister and the Minister for Social Policy, after consultation with the Malta Environment and Planning Authority and the Occupational Health and Safety Authority, have made the following regulations:-

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PART I

GENERAL PROVISIONS

Title and commencement.

1. (1) These regulations may be cited as the Waste Management (Management of Waste from Extractive Industries and Backfilling) Regulations, 2009.

(2) These regulations shall come into force on such date as the Minister responsible for the environment may by notice in the Gazette appoint and different dates may be so appointed for different provisions and different purposes of these regulations.

Scope.

2. (1) These regulations bring into effect the provisions of Directive 2006/21/EC[1] 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[2] .

(2) These regulations provide for measures, procedures and guidance to prevent or reduce as far as possible any adverse effects on the environment, in particular water, air, soil, fauna and flora and landscape, and any resultant risks to human health, brought about as a result of the management of waste from the extractive industries or of the backfilling into excavation voids.

(3) These regulations provide additional measures, procedures and guidance to those in the Waste Management (Permit and Control) Regulations, 2001.

L.N. 337 of 2001.

Interpretation.

3. (1) In these regulations, unless the context otherwise requires:

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"the Act" means the Environment Protection Act;

"backfill" means any material, excluding waste other than extractive waste, used for backfilling;

"backfilling" means refilling an excavation void, after extraction of the mineral, for rehabilitation or construction purposes related to the mineral extraction process, such as the building or maintenance within such a void of means of access for machinery, haulage ramps, bulkheads, safety barricades or berms; and "backfilled" shall be construed accordingly;

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[1] **OJ L 102,11.4.2006, p. 15.**
[2] **OJ L 143, 30.4.2004, p. 56.**

"best available techniques" is as defined in regulation 2 of the Integrated Pollution Prevention and Control Regulations, 2002; L.N. 234 of 2002.

"the Competent Authority" means the Malta Environment and Planning Authority and such other body or person as the Minister may by order in the Gazette, prescribe and different bodies or persons may be designated as the competent authority for different provisions and different purposes of these regulations;

"the Community" means the European Community;

"competent person" means a natural person who has the technical knowledge and experience, as defined by Maltese legislation, to perform the duties arising from these regulations;

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

"dangerous substance" means a substance, mixture or preparation which is dangerous within the meaning of the Dangerous Substances (Notification) Regulations, 2001, or the Dangerous Substances and Preparations Regulations, 2007; L.N. 318 of 2001. L.N. 10 of 2007.

"extractive industries" means all establishments and undertakings engaged in surface or underground extraction of mineral resources for commercial purposes, including extraction by drilling boreholes, or treatment of the extracted material;

"extractive waste" means waste resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries, such as tailings (i.e. the waste solids or slurries that remain after the treatment of minerals by a number of techniques), waste rock and overburden (i.e. the material that extractive operations move during the process of accessing an ore or mineral body, including during the pre-production development stage), and topsoil (i.e. the upper layer of the ground) provided that they constitute waste;

"hazardous waste" means any type of waste which is marked with an asterisk in Schedule 1 to the Waste Management (Permit and Control) Regulations, 2001, or which has any of

the properties which render a waste hazardous as specified in Schedules 2 and 3 to those regulations, or which is deemed to be hazardous by the competent authority;

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

"inert waste" means waste that does not undergo any significant physical, chemical or biological transformations. Inert waste will 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. The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular not endanger the quality of surface water and, or groundwater;

"leachate" means any liquid percolating through the deposited waste and emitted from or contained within a 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 human health and, or the environment, whether immediately or over time, on-site or off-site;

"mineral resource" or "mineral" means a naturally occurring deposit in the earth's crust of an organic or inorganic substance, such as energy fuels, metal ores, industrial minerals and construction minerals, but excluding water;

"the Minister" means the Minister responsible for the environment;

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

"operator" means the natural or legal person responsible for the management of extractive waste, in accordance with Maltese legislation, including in respect of temporary storage

of extractive waste as well as the operational and the after-closure phases;

"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 mineral resources and from the clearing and recycling of process water;

"prospecting" means the search for mineral deposits of economic value, including sampling, bulk sampling, drilling and trenching, but excluding any works required for the development of such deposits, and any activities directly associated with an existing extractive operation;

"the public" means one or more natural or legal persons and, in accordance with Maltese legislation or practice, their associations, organisations or groups;

"the public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making under regulations 8 and 9 of these regulations; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirement under Maltese legislation shall be deemed to have such an interest;

"receiving body of water" means surface waters, groundwater, transitional waters and coastal water as defined in sub-regulation (1) of regulation 2 of the Water Policy Framework Regulations, 2004; L.N. 194 of 2004.

"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, wild life, natural habitats, freshwater systems, landscape and appropriate beneficial uses;

"site" means all land at a distinct geographic location under the management control of an operator;

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

"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;

"treatment" means the mechanical, physical, biological, thermal or chemical process or combination of processes carried out on mineral resources, including from the working of quarries, 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 Community or Maltese legislation;

"waste" in addition to what is said in the Act, means any thing, substance, product or object, whether in solid or liquid form, whether hazardous or otherwise, which the holder discards, or intends, or is required to discard, or any other which is deemed to be waste by the competent authority nominated by the Minister responsible for the environment under article 6 of the Act.

"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:

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

(ii) a period of more than six months for facilities for hazardous waste generated unexpectedly;

(iii) a period of more than one year for facilities for non-hazardous non-inert waste;

(iv) a period of more than three years for facilities for unpolluted soil, non-hazardous prospecting waste,

waste resulting from the extraction, treatment and storage of peat and inert waste:

Provided that such facilities are deemed to include any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and also to include, but not be limited to, heaps and ponds, but excluding excavation voids;

"waste holder" means the producer of the extractive waste or the natural or legal person who is in possession of it;

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

(2) All other terms shall have the same meaning as that assigned to them in regulation 2 of the Waste Management (Permit and Control) Regulations, 2001.

Applicability.

4. (1) Subject to sub-regulation (2) of this regulation, these regulations shall cover extractive waste and backfill.

(2) The following shall be excluded from the scope of these regulations:

(a) waste which is generated by the prospecting, extraction and treatment of mineral resources and the working of quarries, but which does not directly result from those operations, e.g. food waste, waste oil, end-of-life vehicles, spent batteries and accumulators. The management of such waste should be subject to the provisions of the Waste Management (Permit and Control) Regulations, 2001, or the Waste Management (Landfill) Regulations, 2002, or any other relevant Community or Maltese legislation;

L.N. 168 of 2002.

(b) waste resulting from the offshore prospecting, extraction and treatment of mineral resources;

(c) injection of water and re-injection of pumped groundwater as defined in the first and second indents of paragraph (j) of sub-regulation (3) of regulation 11 of the Water Policy Framework Regulations, 2004, to the extent authorised by that regulation.

(3) Any waste facility which has been granted a permit or which is already in operation on 1 May 2008 shall comply with these regulations by 1 May 2012.

(4) Any excavation void which has been granted a permit or which is already in operation on 1 May 2008 may continue operating in accordance with the Waste Management (Permit and Control) Regulations, 2001, or the Waste Management (Landfill) Regulations, 2002, unless the Competent Authority decides otherwise.

(5) Regulation 7, sub-regulations (3) to (8) of regulation 8, regulations 9 and 10, sub-regulation (1) of regulation 12, sub-regulations (1), (2) and (3) of regulation 14, regulation 17 and 18 of these regulations shall not apply to those waste facilities that are completing the closure procedures in accordance with the applicable Community or Maltese legislation or programmes approved by the Competent Authority, and will be effectively closed by 31 December 2010:

Provided that these facilities shall be managed in a way that does not prejudice the achievement of the objectives of these regulations, in particular the objectives of sub-regulation (1) of regulation 5 of these regulations, including the Water Policy Framework Regulations, 2004.

(6) Without prejudice to other Maltese legislation, waste which falls within the scope of these regulations shall not be subject to the Waste Management (Landfill) Regulations, 2002:

Provided that the Waste Management (Landfill) Regulations, 2002, shall continue to apply to waste other than extractive waste used for backfilling into excavation voids, whether created through surface or underground extraction, as appropriate.

General requirements.

5. (1) Extractive waste shall be managed and excavation voids shall be backfilled without endangering human health and without using processes or methods which could harm the environment, and in particular without risk to water, air, soil and fauna and flora, without causing a nuisance through noise or odours and without adversely affecting the landscape or places of special interest.

(2) The abandonment, dumping, uncontrolled depositing of extractive waste or uncontrolled backfilling into excavation voids

shall be prohibited.

(3) The operator shall take all measures necessary to prevent or reduce as far as possible any adverse effects on the environment and human health brought about as a result of the management of extractive waste or backfilling into excavation voids. This includes the management of any waste facility, also after its closure, and the prevention of major accidents involving that facility and the limiting of their consequences for the environment and human health.

(4) The measures referred to in sub-regulation (3) of this regulation shall be based, inter alia, on the best available techniques, without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the waste facility or excavation void, its geographical location and the local environmental conditions.

PART II

TYPES OF WASTE FACILITIES

Classification system for waste facilities.

6. For the purposes of these regulations, waste facilities shall be classified in one of the following categories:

(1) Category A waste facility: any waste facility meeting the criteria set out in Schedule 3 to these regulations or any waste facility designated for the accumulation or deposit of hazardous waste generated unexpectedly for a period of more than six months; or

(2) Category B waste facility: any waste facility designated for the accumulation or deposit of non-hazardous non-inert waste for a period of more than one year; or

(3) Category C waste facility: any waste facility designated for the accumulation or deposit of unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste for a period of more than three years:

Provided that Category A, Category B and Category C waste facilities are deemed to include any dam or other structure serving to contain, retain, confine or otherwise support such a

facility, and also to include, but not be limited to, heaps and ponds, but excluding excavation voids, whether created through surface or underground extraction.

PART III

CATEGORY A WASTE FACILITY

Waste management plan.

7. (1) The operator shall draw up a waste management plan for the minimisation, treatment, recovery and disposal of extractive waste, taking account of the principle of sustainable development.

(2) The objectives of the waste management plan shall be:

(a) to prevent or reduce waste production and its harmfulness, in particular by considering:

(i) waste management in the design phase and in the choice of the method used for mineral extraction and treatment;

(ii) the changes that the extractive waste may undergo in relation to an increase in surface area and exposure to conditions above ground;

(iii) backfilling into the excavation void, whether created through surface or underground extraction, after extraction of the mineral, as far as is technically and economically feasible and environmentally sound in accordance with existing Community or Maltese environmental standards and with the requirements of these regulations where relevant;

(iv) putting topsoil back in place after the closure of the waste facility or, if this is not practically feasible, reusing topsoil elsewhere;

(v) using less dangerous substances for the treatment of mineral resources;

(b) to encourage the recovery of extractive waste by means of recycling, reusing or reclaiming such waste, where this is environmentally sound in accordance with existing

Community or Maltese environmental standards and with the requirements of these regulations where relevant;

(c) to ensure short and long-term safe disposal of the extractive waste, in particular by considering, during the design phase, management during the operation and after-closure of a waste facility and by choosing a design which:

(i) requires minimal and, if possible, ultimately no monitoring, control and management of the closed waste facility;

(ii) prevents or at least minimises any long-term negative effects, for example attributable to migration of airborne or aquatic pollutants from the waste facility; and

(iii) ensures the long-term geotechnical stability of any dams or heaps rising above the pre-existing ground surface.

(3) The waste management plan shall contain at least the following elements:

(a) the proposed classification for the waste facility in accordance with the criteria laid down in regulation 6 of these regulations and a document demonstrating that a major-accident prevention policy, a safety management system for implementing it and an internal emergency plan will be put into effect in accordance with sub-regulation (3) of regulation 8 of these regulations;

(b) waste characterisation in accordance with Schedule 2 to these regulations and a statement of the estimated total quantities of extractive waste to be produced during the operational phase;

(c) a description of the operation generating such waste and of any subsequent treatment to which it is subject;

(d) a description of how the environment and human health may be adversely affected by the deposit of such waste and the preventive measures to be taken in order to minimise environmental impact during operation and after closure,

including the aspects referred to in paragraphs (a), (b), (d) and (e) of sub-regulation (2) of regulation 11 of these regulations;

(e) the proposed control and monitoring procedures pursuant to paragraph (c) of sub-regulation (2) of regulation 11 of these regulations;

(f) the proposed plan for closure, including rehabilitation, after-closure procedures and monitoring as provided for in regulation 12 of these regulations;

(g) measures for the prevention of water status deterioration in accordance with the Water Policy Framework Regulations, 2004, and for the prevention or minimisation of air and soil pollution pursuant to regulation 13 of these regulations;

(h) a survey of the condition of the land to be affected by the waste facility.

(i) any other relevant information requested by the Competent Authority.

(4) The waste management plan shall provide sufficient information to enable the Competent Authority to evaluate the operator's ability to meet the objectives of the waste management plan as set out in sub-regulation (2) of this regulation and his obligations under these regulations. The plan shall explain, in particular, how the option and method chosen as mentioned in indent (i) of paragraph (a) of sub-regulation (2) of this regulation will fulfil the objectives of the waste management plan as laid down in paragraph (a) of sub-regulation (2) of this regulation.

(5) The Competent Authority may specify the format in which such information is to be made available.

(6) The Competent Authority shall make this information available in accordance with the Freedom of Access to Information on the Environment Regulations, 2001.

L.N. 217 of 2001.

(7) The waste management plan shall be reviewed every five years and or amended, as appropriate, in the event of substantial changes to the operation of the waste facility or to the waste deposited. Any amendments shall be notified to the Competent Authority.

(8) Plans produced pursuant to other Community or Maltese legislation and containing the information specified in sub-regulation (3) of this regulation may be used where this obviates the unnecessary duplication of information and the repetition of work by the operator, on condition that all requirements under sub-regulations (1), (2), (3), (4) and (7) of this regulation are met.

(9) The Competent Authority shall approve the waste management plan on the basis of procedures to be decided by the Competent Authority and shall monitor its implementation.

Major-accident prevention and information.

8. (1) This regulation shall apply to Category A waste facilities, save for those waste facilities falling within the scope of the Control of Major Accident Hazard Regulations, 2003.

L.N. 37 of 2003.

(2) Without prejudice to other Community or Maltese legislation, and in particular the Protection of Workers in the Mineral Extracting Industries through Drilling and Workers in Surface and Underground Mineral Extracting Industries Regulations, 2003, the Competent Authority established by virtue of sub-regulation (1) of regulation 3 of the Control of Major Accident Hazard Regulations, 2003, shall ensure that major-accident hazards are identified and that the necessary features are incorporated into the design, construction, operation and maintenance, closure and after-closure of the waste facility in order to prevent such accidents and to limit their adverse consequences for human health and, or the environment, including any transboundary impacts.

L.N. 379 of 2003.

L.N. 37 of 2003.

(3) For the purposes of the requirements under sub-regulation (2) of this regulation, each operator shall, before the start of operations, draw up a major-accident prevention policy for the management of extractive waste and put into effect a safety management system implementing it, in accordance with the elements set out in Section 1 of Schedule 1 to these regulations, and shall also put into effect an internal emergency plan specifying the measures to be taken on site in the event of an accident:

Provided that, as part of that policy, the operator shall appoint a safety manager responsible for the implementation and periodic supervision of the major-accident prevention policy.

(4) The Competent Authority established by virtue of sub-regulation (1) of regulation 3 of the Control of Major Accident Hazard Regulations, 2003, shall draw up an external emergency plan specifying the measures to be taken off-site in the event of

an accident. As part of the application for a permit the operator shall provide the Competent Authority established by virtue of sub-regulation (1) of regulation 3 of the Control of Major Accident Hazard Regulations, 2003, with the information necessary to enable the latter to draw up that plan.

(5) The emergency plans referred to in sub-regulations (3) and (4) of this regulation shall have the following objectives:

(a) to contain and control major accidents and other incidents so as to minimise their effects, and in particular to limit damage to human health and the environment;

(b) to implement the measures necessary to protect human health and the environment from the effects of major accidents and other incidents;

(c) to communicate the necessary information to the public and to the relevant services or authorities in the area;

(d) to provide for the rehabilitation, restoration and clean-up of the environment following a major accident.

(6) In the event of a major accident, the operator shall immediately provide the Competent Authority established by virtue of sub-regulation (1) of regulation 3 of the Control of Major Accident Hazard Regulations, 2003, with all the information required to help minimise its consequences for human health and to assess and minimise the extent, actual or potential, of the environmental damage.

(7) The public concerned shall be given early and effective opportunities to participate in the preparation or review of the external emergency plan to be drawn up in accordance with sub-regulation (4) of this regulation. To that end, the public concerned shall be informed about any such proposal and relevant information shall be made available, including, inter alia, information about the right to participate in the decision-making process and about the Competent Authority established by virtue of sub-regulation (1) of regulation 3 of the Control of Major Accident Hazard Regulations, 2003, to which comments and questions may be submitted.

(8) The public concerned shall be entitled to express comments within reasonable time frames and, in the decision on

the external emergency plan, due account shall be taken of these comments.

(9) Information on safety measures and on the action required in the event of an accident, containing at least the elements listed in Section 2 of Schedule 1 to these regulations, shall be provided, free of charge and as a matter of course, to the public concerned:

Provided that that information shall be reviewed every three years and, where necessary, updated.

Application and permit.

9. (1) No waste facility shall be allowed to operate without a permit granted by the Competent Authority.

(2) The permit shall contain the elements specified in sub-regulation (3) of this regulation and shall clearly indicate the category of the waste facility in accordance with the criteria referred to in regulation 6 of these regulations:

Provided that, subject to compliance with all requirements under this regulation, any permit produced pursuant to other Community or Maltese legislation may be combined to form a single permit, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or Competent Authority.

Provided further that, the details specified in sub-regulation (3) of this regulation can be covered by one single permit or several permits, provided that all requirements under this regulation are complied with.

(3) The application for a permit shall contain at least the following details:

(a) the identity of the operator;

(b) the proposed location of the waste facility, including any possible alternative locations;

(c) the waste management plan pursuant to regulation 7 of these regulations;

(d) adequate arrangements by way of a financial guarantee or equivalent, as required under regulation 14 of these regulations;

(e) the information provided by the operator in accordance with the Environmental Impact Assessment Regulations, 2007, if an environmental impact assessment is required under those regulations; and

L.N. 114 of 2007.

(f) any other relevant information requested by the Competent Authority.

(4) The Competent Authority may specify the format in which such information is to be made available.

(5) The Competent Authority shall only grant a permit if it is satisfied that:

(a) the operator complies with the relevant requirements under these regulations;

(b) the management of waste does not conflict directly or otherwise interfere with the implementation of the relevant waste management plan or plans referred to in sub-regulation (3) of regulation 4 of the Waste Management (Permit and Control) Regulations, 2001.

(6) The Competent Authority shall reconsider and, where necessary, update permit conditions periodically:

(a) where there are substantial changes in the operation of the waste facility or the waste deposited;

(b) on the basis of monitoring results reported by the operator pursuant to sub-regulations (3) and (4) of regulation 11 of these regulations or inspections carried out pursuant to regulation 29 of these regulations;

(c) in the light of information exchange on substantial changes in best available techniques.

(7) The Competent Authority shall make this information available in accordance with the Freedom of Access to Information on the Environment Regulations, 2001:

Provided that the information contained in a permit granted under these regulations shall be made available to the competent national and Community statistical authorities where requested for statistical purposes.

Provided further that sensitive information of a purely commercial nature, such as information concerning business relations and cost components and the volume of economic mineral reserves, shall not be made public.

Public participation.

10. (1) The public shall be informed, by public notices or other appropriate means, such as electronic media where available, of the following matters early in the procedure for granting a permit or, at the latest, as soon as the information can reasonably be provided on:

(a) the application for a permit;

(b) where applicable, the fact that a decision concerning an application for a permit is subject to consultation with an other State in accordance with regulation 15 of these regulations;

(c) details of the relevant competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

(d) the nature of possible decisions;

(e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;

(f) an indication of the times and places where, or the means by which, the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to sub-regulation (7) of this regulation.

(2) Within appropriate time frames, the following shall be made available to the public concerned:

(a) in accordance with Maltese legislation, the main reports and advice transmitted to the Competent Authority at the time when the public was informed in accordance with sub-regulation (1) of this regulation;

(b) in accordance with the provisions of the Freedom

of Access to Information on the Environment Regulations, 2001, any information in addition to that referred to in sub-regulation (1) of this regulation which is relevant for the decision in accordance with regulation 9 of these regulations and which only becomes available after the time the public have been informed in accordance with sub-regulation (1) of this regulation.

(3) The public shall be informed, in accordance with sub-regulation (1) of this regulation of an update of permit conditions in accordance with sub-regulation (6) of regulation 9 of these regulations.

(4) The public concerned shall be entitled to express comments and opinions to the Competent Authority before a decision is taken.

(5) The results of the consultations held pursuant to this regulation shall be duly taken into account in the taking of a decision.

(6) When a decision has been taken the Competent Authority shall, in accordance with the appropriate procedures, inform the public concerned and shall make the following information available to the public concerned:

(a) the content of the decision, including a copy of the permit;

(b) the reasons and considerations on which the decision is based.

(7) The detailed arrangements for public participation under this regulation shall be determined by the Competent Authority so as to enable the public concerned to prepare and participate effectively.

Construction and management of waste facilities.

11. (1) The management of a waste facility shall be in the hands of a competent person and technical development and training of staff shall be provided.

(2) In constructing a new waste facility or modifying an existing waste facility, the operator shall ensure that:

(a) the waste facility is suitably located, taking into

account in particular Community or Maltese obligations relating to protected areas, and geological, hydrological, hydrogeological, seismic and geotechnical factors, and is designed so as to meet the necessary conditions for, in the short and long-term perspectives, preventing pollution of the soil, air, groundwater or surface water, taking into account especially the Pollution Caused by Certain Dangerous Substances Discharged Into the Aquatic Environment Regulations, 2001, Regulations for the Protection of Groundwater against Pollution caused by Certain Dangerous Substances, 2002, and the Water Policy Framework Regulations, 2004, and ensuring efficient collection of contaminated water and leachate as and when required under the permit, and reducing erosion caused by water or wind as far as it is technically possible and economically viable;

L.N. 213 of 2001.

L.N. 203 of 2002.

(b) the waste facility is suitably constructed, managed and maintained to ensure its physical stability and to prevent pollution or contamination of soil, air, surface water or groundwater in the short and long-term perspectives as well as to minimise as far as possible damage to landscape;

(c) there are suitable plans and arrangements for regular monitoring and inspection of the waste facility by competent persons and for taking action in the event of results indicating instability or water or soil contamination:

Provided that records of monitoring and inspections shall be kept, together with permit documentation, in order to ensure the appropriate hand-over of information, particularly in the event of a change of operator.

(d) suitable arrangements are made for the rehabilitation of the land and the closure of the waste facility; and

(e) suitable arrangements are made for the after-closure phase of the waste facility.

(3) The operator shall, without undue delay and in any event not later than 48 hours thereafter, notify the Competent Authority of any events likely to affect the stability of the waste facility and any significant adverse environmental effects revealed by the control and monitoring procedures of the waste facility.

(4) The operator shall implement the internal emergency plan, where applicable, and follow any other instruction from the Competent Authority as to the corrective measures to be taken.

(5) The operator shall bear the costs of the measures to be undertaken.

(6) At least once a year, the operator shall report, on the basis of aggregated data, all monitoring results to the Competent Authority for the purposes of demonstrating compliance with permit conditions and increasing knowledge of waste and waste facility behaviour. On the basis of this report the Competent Authority may decide that validation by an independent expert is necessary.

Closure and after-closure procedures for waste facilities.

12. (1) A waste facility shall only start the closure procedure if one of the following conditions is satisfied:

(a) the relevant conditions stated in the permit are met;

(b) authorisation is granted by the Competent Authority, at the request of the operator;

(c) the Competent Authority issues a reasoned decision to that effect.

(2) A waste facility may be considered as finally closed only after the Competent Authority has, without undue delay, carried out a final on-site inspection, assessed all the reports submitted by the operator, certified that the land affected by a waste facility has been rehabilitated and communicated to the operator its approval of the closure.

Provided that this approval shall not in any way reduce the operator's obligations under the conditions of the permit or otherwise in law.

(3) The operator shall be responsible for the maintenance, monitoring, control and corrective measures in the after-closure phase for as long as may be required by the Competent Authority, taking into account the nature and duration of the hazard, save where the Competent Authority decides to take over such tasks from the operator, after a waste facility has been finally closed and without prejudice to any Community or Maltese legislation governing the liability of the waste holder.

(4) When considered necessary by the Competent Authority, in order to fulfil relevant environmental requirements set out in Community or Maltese legislation, in particular those in the Pollution Caused by Certain Dangerous Substances Discharged

Into the Aquatic Environment Regulations, 2001, the Protection of Groundwater against Pollution caused by Certain Dangerous Substances Regulations, 2002, and the Water Policy Framework Regulations, 2004, following closure of a waste facility, the operator shall, inter alia, control the physical and chemical stability of the facility and minimise any negative environmental effect, in particular with respect to surface and groundwater, by ensuring that:

(a) all the structures pertaining to the facility are monitored and conserved, with control and measuring apparatus always ready for use;

(b) where applicable, overflow channels and spillways are kept clean and free.

(5) Following closure of a waste facility, the operator shall, without delay, notify the Competent Authority of any events or developments likely to affect the stability of the waste facility, and any significant adverse environmental effects revealed by the relevant control and monitoring procedures.

(6) The operator shall implement the internal emergency plan, where applicable, and follow any other instruction from the Competent Authority as to the corrective measures to be taken:

Provided that the operator shall bear the costs of the measures to be undertaken.

(7) In cases and at a frequency to be determined by the Competent Authority, the operator shall report, on the basis of aggregated data, all monitoring results to the relevant competent authorities for the purposes of demonstrating compliance with permit conditions and increasing knowledge of waste and waste facility behaviour.

Prevention of water status deterioration, air and soil pollution.

13. (1) The operator shall take the necessary measures in order to meet Community or Maltese environmental standards, in particular to prevent, in accordance with the Water Policy Framework Regulations, 2004, the deterioration of current water status, inter alia, by:

(a) evaluating the leachate generation potential, including contaminant content of the leachate, of the deposited waste during both the operational and after-closure phase of the waste facility, and determining the water balance of the waste facility;

(b) preventing or minimising leachate generation and surface water or groundwater and soil from being contaminated by the waste; and

(c) collecting and treating contaminated water and leachate from the waste facility to the appropriate standard required for their discharge.

(2) The operator shall take adequate measures to prevent or reduce dust and gas emissions.

(3) On the basis of an assessment of environmental risks, when taking into account, in particular, the Pollution Caused by Certain Dangerous Substances Discharged Into the Aquatic Environment Regulations, 2001, the Protection of Groundwater against Pollution caused by Certain Dangerous Substances Regulations, 2002, or the Water Policy Framework Regulations, 2004, as applicable, the Competent Authority has decided that collection and treatment of leachate is not necessary or it has been established that the waste facility poses no potential hazard to soil, groundwater or surface water, the requirements set out in paragraphs (b) and (c) of sub-regulation (1) of this regulation may be reduced or waived accordingly.

(4) In the case of a pond involving the presence of cyanide, the operator shall ensure that the concentration of weak acid dissociable cyanide in the pond is reduced to the lowest possible level using best available techniques and, in any case, at waste facilities which have previously been granted a permit or have already been in operation on 1 May 2008 that the concentration of weak acid dissociable cyanide at the point of discharge of the tailings from the processing plant into the pond does not exceed 50 ppm as from 1 May 2008, 25 ppm as from 1 May 2013, 10 ppm as from 1 May 2018 and 10 ppm at waste facilities which are granted a permit after 1 May 2008:

Provided that, if the Competent Authority so requests, the operator shall demonstrate, through a risk assessment that takes site-specific conditions into account, that those concentration limits need not be further lowered.

Financial guarantee.

14. (1) The Competent Authority shall, prior to the commencement of any operations involving the accumulation or deposit of extractive waste in a waste facility, require a financial guarantee (such as in the form of a financial deposit, including

industry-sponsored mutual guarantee funds) or the equivalent, in accordance with procedures to be decided by the Competent Authority, so that:

(a) all obligations under the permit issued pursuant to these regulations, including after-closure provisions, are discharged; and

(b) there are funds readily available at any given time for the rehabilitation of the land affected by the waste facility, as described in the waste management plan prepared pursuant to regulation 7 of these regulations and required by the regulation 9 permit.

(2) The calculation of the guarantee referred to in sub-regulation (1) of this regulation shall be made on the basis of:

(a) the likely environmental impact of the waste facility, taking into account in particular the category of the waste facility, the characteristics of the waste and the future use of the rehabilitated land; and

(b) the assumption that independent and suitably qualified third parties will assess and perform any rehabilitation work needed.

(3) The size of the guarantee shall be periodically adjusted in accordance with any rehabilitation work needed to be carried out on the land affected by the waste facility, as described in the waste management plan prepared pursuant to regulation 7 of these regulations and required by the regulation 9 permit.

(4) Where the Competent Authority approves closure in accordance with sub-regulation (2) of regulation 12 of these regulations, it shall provide the operator with a written statement releasing him from the guarantee obligation referred to in sub-regulation (1) of this regulation with the exception of after-closure obligations as referred to in sub-regulation (3) of regulation 12 of these regulations.

Transboundary effects.

15. (1) Where the Minister is aware that the operation of a Category A waste facility in Malta is likely to have significant adverse effects on the environment of, and any resultant risks to human health in, another State, or where a State likely to be thus affected so requests, the Minister shall forward the information

provided pursuant to regulation 9 of these regulations to the other State at the same time as when the public is informed in terms of sub-regulation (1) of regulation 10 of these regulations:

Provided that such information shall serve as a basis for any consultation necessary within the context of bilateral relations between Malta and the other State on a reciprocal and equivalent basis.

(2) Within the framework of their bilateral relations, the Minister shall ensure that in the cases referred to in sub-regulation (1) of this regulation the applications are also made available for an appropriate period of time to the public concerned of the State likely to be affected so that they will have the right to comment on them before the Competent Authority reaches its decision.

(3) The Minister shall ensure that, in the event of an accident involving a waste facility as referred to in sub-regulation (1) of this regulation, information provided by the operator to the Competent Authority pursuant to sub-regulations (5) and (6) of regulation 8 of these regulations shall be immediately forwarded to the other State in order to help minimise the consequences of the accident for human health and to assess and minimise the extent of the actual or potential environmental damage.

PART IV

CATEGORY B WASTE FACILITY

General provision.

16. Category B waste facility shall be subject to all regulations under Part III of these regulations, except sub-regulations (3) and (4) of regulation 11, sub-regulations (4), (5), (6) and (7) of regulation 12, sub-regulation (4) of regulation 13, regulations 14 and 15 of these regulations.

PART V

CATEGORY C WASTE FACILITY

Application and permit.

17. (1) No waste facility shall be allowed to operate without a permit granted by the Competent Authority.

(2) The permit shall contain the elements specified in sub-regulation (3) of this regulation and shall clearly indicate the

category of the waste facility in accordance with the criteria referred to in regulation 6 of these regulations:

Provided that, subject to compliance with all requirements under this regulation, any permit produced pursuant to other Community or Maltese legislation may be combined to form a single permit, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or Competent Authority:

Provided further that, the details specified in sub-regulation (3) of this regulation can be covered by one single permit or several permits, provided that all requirements under this regulation are complied with.

(3) The application for a permit shall contain at least the following details:

(a) the identity of the operator;

(b) the proposed location of the waste facility, including any possible alternative locations;

(c) the waste management plan pursuant to regulation 18 of these regulations; and

(d) any other relevant information requested by the Competent Authority.

(4) The Competent Authority may specify the format in which such information is to be made available.

(5) The Competent Authority shall only grant a permit if it is satisfied that:

(a) the operator complies with the relevant requirements under these regulations;

(b) the management of waste does not conflict directly or otherwise interfere with the implementation of the relevant waste management plan or plans referred to in sub-regulation (3) of regulation 4 of the Waste Management (Permit and Control) Regulations, 2001.

(6) The Competent Authority shall reconsider and, where necessary, update permit conditions periodically:

(a) where there are substantial changes in the operation of the waste facility or the waste deposited;

(b) on the basis of inspections carried out pursuant to regulation 29 of these regulations;

(c) in the light of information exchange on substantial changes in best available techniques.

(7) The Competent Authority shall make this information available in accordance with the Freedom of Access to Information on the Environment Regulations, 2001:

Provided that the information contained in a permit granted under these regulations shall be made available to the competent national and Community statistical authorities where requested for statistical purposes.

Provided further that sensitive information of a purely commercial nature, such as information concerning business relations and cost components and the volume of economic mineral reserves, shall not be made public.

Waste management plan.

18. (1) The operator shall draw up a waste management plan for the minimisation, treatment, recovery and disposal of extractive waste, taking account of the principle of sustainable development.

(2) The objectives of the waste management plan shall be:

(a) to prevent or reduce waste production and its harmfulness, in particular by considering:

(i) waste management in the design phase and in the choice of the method used for mineral extraction and treatment;

(ii) the changes that the extractive waste may undergo in relation to an increase in surface area and exposure to conditions above ground;

(iii) backfilling into the excavation void, whether

created through surface or underground extraction, after extraction of the mineral, as far as is technically and economically feasible and environmentally sound in accordance with existing Community or Maltese environmental standards and with the requirements of these regulations where relevant;

(iv) putting topsoil back in place after the closure of the waste facility or, if this is not practically feasible, reusing topsoil elsewhere;

(v) using less dangerous substances for the treatment of mineral resources;

(b) to encourage the recovery of extractive waste by means of recycling, reusing or reclaiming such waste, where this is environmentally sound in accordance with existing Community or Maltese environmental standards and with the requirements of these regulations where relevant;

(c) to ensure short and long-term safe disposal of the extractive waste, in particular by considering, during the design phase, the management during the operation and after-closure of a waste facility and by choosing a design which:

(i) requires minimal and, if possible, ultimately no monitoring, control and management of the closed waste facility;

(ii) prevents or at least minimises any long-term negative effects, for example attributable to migration of airborne or aquatic pollutants from the waste facility; and

(iii) ensures the long-term geotechnical stability of any dams or heaps rising above the pre-existing ground surface.

(3) The waste management plan shall contain at least the following elements:

(a) the proposed classification for the waste facility in accordance with the criteria laid down in regulation 6 of these regulations and sufficient information justifying that a Category A waste facility is not required, including an identification of possible accident hazards;

(b) waste characterisation in accordance with Schedule 2 to these regulations and a statement of the estimated total quantities of extractive waste to be produced during the operational phase;

(c) a description of the operation generating such waste and of any subsequent treatment to which it is subject;

(d) a description of how the environment and human health may be adversely affected by the deposit of such waste and the preventive measures to be taken in order to minimise environmental impact during operation and after closure, including the aspects referred to in sub-regulations (1), (2), (4) and (5) of regulation 19 of these regulations;

(e) the proposed control and monitoring procedures pursuant to sub-regulation (3) of regulation 19 of these regulations;

(f) measures for the prevention of water status deterioration in accordance with the Water Policy Framework Regulations, 2004, and for the prevention or minimisation of air and soil pollution pursuant to regulation 20 of these regulations;

(g) a survey of the condition of the land to be affected by the waste facility.

(h) any other relevant information requested by the Competent Authority.

(4) The waste management plan shall provide sufficient information to enable the Competent Authority to evaluate the operator's ability to meet the objectives of the waste management plan as set out in sub-regulation (2) of this regulation and his obligations under these regulations. The plan shall explain, in particular, how the option and method chosen as mentioned in indent (i) of paragraph (a) of sub-regulation (2) of this regulation will fulfil the objectives of the waste management plan as laid down in paragraph (a) of sub-regulation (2) of this regulation.

(5) The Competent Authority may specify the format in which such information is to be made available.

(6) The Competent Authority shall make this information available in accordance with the Freedom of Access to Information

on the Environment Regulations, 2001.

(7) The waste management plan shall be reviewed every five years and, or amended, as appropriate, in the event of substantial changes to the operation of the waste facility or to the waste deposited. Any amendments shall be notified to the Competent Authority.

(8) Plans produced pursuant to other Community or Maltese legislation and containing the information specified in sub-regulation (3) of this regulation may be used where this obviates the unnecessary duplication of information and the repetition of work by the operator, on condition that all requirements under sub-regulations (1), (2), (3), (4) and (7) of this regulation are met.

(9) The Competent Authority shall approve the waste management plan on the basis of procedures to be decided by the Competent Authority and shall monitor its implementation.

Construction and management of waste facilities.

19. In constructing a new waste facility or modifying an existing waste facility, the operator shall ensure that:

(1) the waste facility is suitably located, taking into account in particular Community or Maltese obligations relating to protected areas, and geological, hydrological, hydrogeological, seismic and geotechnical factors, and is designed so as to meet the necessary conditions for, in the short and long-term perspectives, preventing pollution of the soil, air, groundwater or surface water, taking into account especially the Pollution Caused by Certain Dangerous Substances Discharged Into the Aquatic Environment Regulations, 2001, the Protection of Groundwater against Pollution caused by Certain Dangerous Substances Regulations, 2002, and the Water Policy Framework Regulations, 2004, and ensuring efficient collection of contaminated water and leachate as and when required under the permit, and reducing erosion caused by water or wind as far as it is technically possible and economically viable;

(2) the waste facility is suitably constructed, managed and maintained to ensure its physical stability and to prevent pollution or contamination of soil, air, surface water or groundwater in the short and long-term perspectives as well as to minimise as far as possible damage to landscape;

(3) there are suitable plans and arrangements for regular monitoring and inspection of the waste facility by competent persons

and for taking action in the event of results indicating instability or water or soil contamination:

Provided records of the monitoring and inspections shall be kept, together with permit documentation, in order to ensure the appropriate hand-over of information, particularly in the event of a change of operator.

(4) suitable arrangements are made for the rehabilitation of the land and the closure of the waste facility;

(5) suitable arrangements are made for the after-closure phase of the waste facility.

Prevention of water status deterioration, air and soil pollution.

20. (1) The operator shall take the necessary measures in order to meet Community or Maltese environmental standards, in particular to prevent, in accordance with the Water Policy Framework Regulations, 2004, the deterioration of current water status, inter alia, by:

(a) evaluating the leachate generation potential, including contaminant content of the leachate, of the deposited waste during both the operational and after-closure phase of the waste facility, and determining the water balance of the waste facility;

(b) preventing or minimising leachate generation and surface water or groundwater and soil from being contaminated by the waste; and

(c) collecting and treating contaminated water and leachate from the waste facility to the appropriate standard required for their discharge.

(2) The operator shall take adequate measures to prevent or reduce dust and gas emissions.

(3) Where, on the basis of an assessment of environmental risks, taking into account, in particular, the Pollution Caused by Certain Dangerous Substances Discharged Into the Aquatic Environment Regulations, 2001, the Protection of Groundwater against Pollution caused by Certain Dangerous Substances Regulations, 2002, or the Water Policy Framework Regulations, 2004, as applicable, the Competent Authority has decided that collection and treatment of leachate is not necessary

or it has been established that the waste facility poses no potential hazard to soil, groundwater or surface water, the requirements set out in paragraphs (b) and (c) of sub-regulation (1) of this regulation may be reduced or waived accordingly.

PART VI

INVENTORY OF CLOSED WASTE FACILITIES

Inventory of closed waste facilities.

21. The Competent Authority shall draw up and periodically update an inventory of closed waste facilities, including abandoned waste facilities, which cause serious negative environmental impacts or have the potential of becoming in the medium or short term a serious threat to human health or the environment:

Provided that such an inventory, to be made available to the public, shall be carried out by 1 May 2012.

PART VII

BACKFILLING INTO EXCAVATION VOIDS

Application and permit.

22. (1) No excavation void, whether created through surface or underground extraction, shall be allowed to be backfilled without a permit granted by the Competent Authority.

(2) The permit shall contain the elements specified in sub-regulation (3) of this regulation:

Provided that, subject to compliance with all requirements under this regulation, any permit produced pursuant to other Community or Maltese legislation may be combined to form a single permit, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or Competent Authority:

Provided further that, the details specified in sub-regulation (3) of this regulation can be covered by one single permit or several permits, provided that all requirements under this regulation are complied with.

(3) The application for a permit shall contain at least the following details:

(a) the identity of the operator;

(b) the location of the excavation void, whether created through surface or underground extraction;

(c) the backfilling plan pursuant to regulation 23 of these regulations; and

(d) any other relevant information requested by the Competent Authority.

(4) The Competent Authority may specify the format in which such information is to be made available.

(5) The Competent Authority shall only grant a permit if it is satisfied that:

(a) the operator complies with the relevant requirements under these regulations;

(b) the backfilling into the excavation void, whether created through surface or underground extraction, does not conflict directly or otherwise interfere with the implementation of the relevant waste management plan or plans referred to in sub-regulation (3) of regulation 4 of the Waste Management (Permit and Control) Regulations, 2001.

(6) The Competent Authority shall reconsider and, where necessary, update permit conditions periodically:

(a) where there are substantial changes in the backfilling into the excavation void, whether created through surface or underground extraction, or the backfill;

(b) on the basis of inspections carried out pursuant to regulation 29 of these regulations;

(c) in the light of information exchange on substantial changes in best available techniques.

(7) The Competent Authority shall make this information available in accordance with the Freedom of Access to Information on the Environment Regulations, 2001:

Provided that the information contained in a permit granted under these regulations shall be made available to the competent

national and Community statistical authorities when requested for statistical purposes:

Provided further that sensitive information of a purely commercial nature, such as information concerning business relations and cost components and the volume of economic mineral reserves, shall not be made public.

Backfilling plan.

23. (1) The operator shall draw up a backfilling plan for the backfilling into the excavation void, whether created through surface or underground extraction.

(2) The objectives of the backfilling plan shall be:

(a) to ensure that the backfilling into the excavation void, whether created through surface or underground extraction, is carried out in accordance with existing Community or Maltese environmental standards and with the requirements of these regulations where relevant; and

(b) to encourage material recovery by means of backfilling, where this is environmentally sound in accordance with existing Community or Maltese environmental standards and with the requirements of these regulations where relevant.

(3) The backfilling plan shall contain at least the following elements:

(a) a description of how the environment and human health may be adversely affected by the backfilling into the excavation void, whether created through surface or underground extraction, including the relocation of temporary constructions, and the preventive measures to be taken in order to minimise environmental impact during operation and after closure, including the aspects referred to in sub-regulations (1), (2), (4) and (5) of regulation 24 of these regulations;

(b) the proposed control and monitoring procedures pursuant to regulations 24, 25, 26 and 27 of these regulations, when applicable;

(c) the proposed plan for closure, including rehabilitation, after-closure procedures and monitoring as provided for in regulation 26 of these regulations;

(d) measures for the prevention of water status deterioration in accordance with the Water Policy Framework Regulations, 2004, and for the prevention or minimisation of air and soil pollution pursuant to regulation 25 of these regulations;

(e) a survey of the condition of the land to be affected by the backfilling.

(f) any other relevant information requested by the Competent Authority.

(4) The backfilling plan shall provide sufficient information to enable the Competent Authority to evaluate the operator's ability to meet the objectives of the backfilling plan as set out in sub-regulation (2) of this regulation and his obligations under these regulations.

(5) The Competent Authority may specify the format in which such information is to be made available.

(6) The Competent Authority shall make this information available in accordance with the Freedom of Access to Information on the Environment Regulations, 2001.

(7) Plans produced pursuant to other Community or Maltese legislation and containing the information specified in sub-regulation (3) of this regulation may be used where this obviates the unnecessary duplication of information and the repetition of work by the operator, on condition that all requirements under sub-regulations (1), (2), (3) and (4) of this regulation are met.

(8) The Competent Authority shall approve the backfilling plan on the basis of procedures to be decided by the Competent Authority and shall monitor its implementation.

Construction and management of excavation voids.

24. In backfilling into an excavation void, whether created through surface or underground extraction, the operator shall ensure that:

(1) the excavation void, whether created through surface or underground extraction, is suitably located, taking into account in particular Community or Maltese obligations relating to protected areas, and geological, hydrological, hydrogeological, seismic and geotechnical factors, and is backfilled in such a way so as to meet

the necessary conditions, in the short and long-term perspectives, preventing pollution of the soil, air, groundwater or surface water, taking into account especially the Pollution Caused by Certain Dangerous Substances Discharged Into the Aquatic Environment Regulations, 2001, the Protection of Groundwater against Pollution caused by Certain Dangerous Substances Regulations, 2002, and the Water Policy Framework Regulations, 2004, and ensuring efficient collection of contaminated water and leachate as and when required under the permit, and reducing erosion caused by water or wind as far as it is technically possible and economically viable;

(2) the excavation void, whether created through surface or underground extraction, is suitably backfilled to ensure its physical stability and to prevent pollution or contamination of soil, air, surface water or groundwater in the short and long-term perspectives as well as to minimise as far as possible damage to landscape; and

(3) there are suitable plans and arrangements for regular monitoring and inspection of the excavation void, whether created through surface or underground extraction, by competent persons and for taking action in the event of results indicating instability or water or soil contamination:

Provided records of the monitoring and inspections shall be kept, together with permit documentation, in order to ensure the appropriate hand-over of information, particularly in the event of a change of operator.

(4) suitable arrangements are made for the rehabilitation of the land and the closure of the excavation void, whether created through surface or underground extraction; and

(5) suitable arrangements are made for the after-closure phase of the excavation void, whether created through surface or underground extraction.

Prevention of water status deterioration, air and soil pollution.

25. (1) The operator shall take the necessary measures in order to meet Community or Maltese environmental standards, in particular to prevent, in accordance with the Water Policy Framework Regulations, 2004, the deterioration of current water status, inter alia, by:

(a) evaluating the leachate generation potential, including contaminant content of the leachate, of the backfill during both

the operational and after-closure phase of the excavation void, whether created through surface or underground extraction, and determining the water balance of the excavation void, whether created through surface or underground extraction;

(b) preventing or minimising leachate generation and surface water or groundwater and soil from being contaminated by the backfill; and

(c) collecting and treating contaminated water and leachate from the excavation void, whether created through surface or underground extraction, to the appropriate standard required for their discharge.

(2) Where, on the basis of an assessment of environmental risks, taking into account, in particular, the Pollution Caused by Certain Dangerous Substances Discharged Into the Aquatic Environment Regulations, 2001, the Protection of Groundwater against Pollution caused by Certain Dangerous Substances Regulations, 2002, or the Water Policy Framework Regulations, 2004, as applicable, the Competent Authority has decided that collection and treatment of leachate is not necessary or it has been established that the backfilling into the excavation void, whether created through surface or underground extraction, poses no potential hazard to soil, groundwater or surface water, the requirements set out in paragraphs (b) and (c) of sub-regulation (1) of this regulation may be reduced or waived accordingly.

(3) When backfilling into excavation voids, whether created through surface or underground extraction, which will be allowed to flood after closure, the operator shall take the necessary measures to prevent or minimise water status deterioration and soil pollution in accordance, *mutatis mutandis*, with sub-regulations (1) and (2) of this regulation:

Provided that the operator shall provide the Competent Authority with the information necessary to ensure compliance with Community or Maltese obligations, in particular those in the Water Policy Framework Regulations, 2004.

Closure and after-closure procedures for excavation voids.

26. (1) The operator shall be responsible for the maintenance, monitoring, control and corrective measures in the after-closure phase for as long as may be required by the Competent Authority, taking into account the nature and duration of the hazard, save where the Competent Authority decides to take over such

tasks from the operator, after an excavation void, whether created through surface or underground extraction, has been finally closed and without prejudice to any Community or Maltese legislation governing the liability of the operator.

(2) When considered necessary by the Competent Authority, in order to fulfil relevant environmental requirements set out in Community or Maltese legislation, in particular those in the Pollution Caused by Certain Dangerous Substances Discharged Into the Aquatic Environment Regulations, 2001, the Protection of Groundwater against Pollution caused by Certain Dangerous Substances Regulations, 2002, and the Water Policy Framework Regulations, 2004, following closure of an excavation void, whether created through surface or underground extraction, the operator shall, inter alia, control the physical and chemical stability of the excavation void, whether created through surface or underground extraction, and minimise any negative environmental effect, in particular with respect to surface and groundwater, by ensuring that:

(a) all the structures pertaining to the excavation void, whether created through surface or underground extraction, are monitored and conserved, with control and measuring apparatus always ready for use; and

(b) where applicable, overflow channels and spillways are kept clean and free.

PART VIII

DISPOSAL INTO A RECEIVING BODY OF WATER

Disposal of extractive waste into any receiving body of water.

27. The disposal of extractive waste, whether in solid, slurry or liquid form, into any receiving body of water other than one constructed for the purpose of disposing of extractive waste, shall be conditional upon compliance by the operator with the relevant requirements of the Pollution Caused by Certain Dangerous Substances Discharged Into the Aquatic Environment Regulations, 2001, the Protection of Groundwater against Pollution caused by Certain Dangerous Substances Regulations, 2002, and the Water Policy Framework Regulations, 2004.

PART VIII

ENFORCEMENT

Inspections of Waste Facilities by the Competent Authority.

28. (1) Prior to the commencement of deposit operations and at regular intervals thereafter, including the after-closure phase, to be decided by the Competent Authority, the Competent Authority shall inspect any waste facility covered by regulation 9 or 16 or 17 of these regulations in order to ensure that it complies with the relevant conditions of the permit:

Provided that an affirmative finding shall in no way reduce the responsibility of the operator under the conditions of the permit.

(2) The operator shall keep up-to-date records of all waste management operations and make them available for inspection by the Competent Authority.

(3) In the event of a change of operator during the management of a waste facility, the operator shall ensure that there is an appropriate transfer of relevant up-to-date information and records relating to the waste facility.

Inspections of Excavation Voids by the Competent Authority.

29. (1) Prior to the commencement of deposit operations and at regular intervals thereafter, including the after-closure phase, to be decided by the Competent Authority, the Competent Authority shall inspect any excavation void, whether created through surface or underground extraction, covered by regulation 22 of these regulations in order to ensure that it complies with the relevant conditions of the permit:

Provided that an affirmative finding shall in no way reduce the responsibility of the operator under the conditions of the permit.

(2) The operator shall keep up-to-date records of all backfilling operations and make them available for inspection by the Competent Authority.

(3) In the event of a change of operator during the backfilling into an excavation void, whether created through surface or underground extraction, the operator shall ensure that there is an appropriate transfer of relevant up-to-date information and records

relating to the excavation void, whether created through surface or underground extraction.

Offences under these regulations.

30. Any person shall be guilty of an offence under these regulations if:

(a) he fails to comply with any provisions of these regulations or fails to comply with permit conditions or with any order lawfully given in terms of any provision of these regulations; or

(b) he contravenes any restriction, prohibition or requirement imposed by or under these regulations; or

(c) he acts in contravention of any of the provisions of these regulations; or

(d) he conspires or attempts, or aids, or abets, any other person by whatever means, including advertising, counselling or procurement to contravene the provisions of these regulations or to fail to comply with any such provisions (including any order lawfully given in terms of any of the provisions of these regulations) or to contravene any restriction, prohibition or requirement imposed by or under the said regulations.

Penalties.

31. Any person who commits an offence against these regulations shall, on conviction, be liable:

(a) on a first conviction, to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69), but not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37);

(b) on a second conviction or subsequent convictions, to a fine (*multa*) of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), but not exceeding four thousand and six hundred and fifty-eight euro and seventy-five cents (€4,658.75), or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment:

Provided that whenever any person is found guilty of committing an offence under these regulations by means of a

vehicle, the owner of the said vehicle, where applicable, is held liable in the same manner and degree:

Provided further that the court may order any person who has been found guilty of committing an offence against these regulations to pay for the expenses incurred by the Competent Authority mentioned in these regulations as a result of the said offence, the revocation of the permit issued by the Competent Authority and the confiscation of the *corpus delicti*, including the vehicle, if applicable.

Applicability of the Criminal Code.

Cap. 9.

32. (1) The provisions of articles 23 and 30 of the Criminal Code shall, *mutatis mutandis*, apply to proceedings in respect of offences against these regulations, so however that the disqualification from holding or obtaining a licence, permit or authority shall in no case be for less than one year.

(2) Notwithstanding the provisions of article 370 of the Criminal Code, proceedings for an offence against these regulations shall be held before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts as courts of criminal judicature.

(3) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) in respect of proceedings for any offence against these regulations.

Schedule 1

(Regulation 8)

Major-accident prevention policy and information to be communicated to the public concerned

1. Major-accident prevention policy

The operator's major-accident prevention policy and safety management system should be proportionate to the major-accident hazards presented by the waste facility. For the purpose of implementing them, account shall be taken of the following elements:

(1) the major-accident prevention policy should include the operator's overall aims and principles of action with respect to the control of major-accident hazards;

(2) the safety management system should include the part of the general management system which includes the organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the major-accident prevention policy;

(3) the following issues shall be addressed by the safety management system:

(a) organisation and personnel — the roles and responsibilities of personnel involved in the management of major hazards at all levels in the organisation; identification of training needs of such personnel and the provision of the training so identified; and involvement of employees and, where appropriate, subcontractors;

(b) identification and evaluation of major hazards — adoption and implementation of procedures for systematically identifying major hazards arising from normal and abnormal operations and assessment of their likelihood and severity;

(c) operational control — adoption and implementation of procedures and instructions for safe operation, including maintenance of plant, processes, equipment and temporary stoppages;

(d) management of change — adoption and implementation of procedures for planning modifications to, or the design of, new waste facilities;

(e) planning for emergencies — adoption and implementation of procedures to identify foreseeable emergencies by systematic analysis and to prepare, test and review emergency plans to respond to such emergencies;

(f) monitoring performance — adoption and implementation of procedures for the ongoing assessment of compliance with the objectives set by the operator's major-accident prevention policy and safety management system, and the mechanisms for investigation and taking corrective action in case of non-compliance. The procedures should cover the operator's system for reporting major accidents or near misses, particularly those involving failure of protective measures, and their investigation and follow-up on the basis of lessons learnt;

(g) audit and review — adoption and implementation of procedures for periodic systematic assessment of the major-accident prevention policy and the effectiveness and suitability of the safety management system; the documented review of performance of the policy and safety management system and its updating by senior management.

2. Information to be communicated to the public concerned

1. Name of operator and address of the waste facility.

2. Identification, by position held, of the person providing the information.

3. Confirmation that the waste facility is subject to these regulations and, when applicable, that the information relevant to the elements referred to in sub-regulation (2) of regulation 8 of these regulations has been submitted to the Competent Authority.

4. An explanation in clear and simple terms of the activity or activities undertaken at the site.

5. The common names or the generic names or the general danger classification of the substances and preparations involved at the waste facility as well as waste which could give rise to a major accident, with an indication of their principal dangerous characteristics.

6. General information relating to the nature of the major-accident hazards, including their potential effects on the surrounding population and environment.

7. Adequate information on how the surrounding population concerned are to be warned and kept informed in the event of a major accident.

8. Adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident.

9. Confirmation that the operator is required to make adequate arrangements on site, in particular liaison with the emergency services, to deal with major accidents and to minimise their effects.

10. A reference to the external emergency plan drawn up to cope with any off-site effects from an accident. This should include advice to co-operate with any instructions or requests from the emergency services at the time of an accident.

11. Details of where further relevant information can be obtained, subject to the requirements of confidentiality laid down in Maltese legislation.

SCHEDULE 2

(Paragraph b of sub-regulation (3) of regulations 7 and 18)

Waste characterisation

The waste to be deposited in a facility shall be characterised in such a way as to guarantee the long-term physical and chemical stability of the structure of the facility and to prevent major accidents. The waste characterisation shall include, where appropriate and in accordance with the category of the waste facility, the following aspects:

1. description of expected physical and chemical characteristics of the waste to be deposited in the short and the long term, with particular reference to its stability under surface atmospheric/meteorological conditions, taking account of the type of mineral or minerals to be extracted and the nature of any overburden and, or gangue minerals that will be displaced in the course of the extractive operations;

2. classification of the waste according to the relevant entry in the Waste Management (Permit and Control) Regulations, 2001, with particular regard to its hazardous characteristics;

3. description of the chemical substances to be used during treatment of the mineral resource and their stability;

4. description of the method of deposition;

5. waste transport system to be employed.

SCHEDULE 3

(Sub-regulation (1) of regulation 6)

Criteria for determining the classification of waste facilities

A waste facility shall be classified under category A if:

1. a failure or incorrect operation, such as the collapse of a heap or the bursting of a dam, could give rise to a major accident, on the basis of a risk assessment taking into account factors such as the present or future size, the location and the environmental impact of the waste facility; or

2. it contains waste classified as hazardous under the Waste Management (Permit and Control) Regulations, 2001, above a certain threshold; or

3. it contains substances or preparations classified as dangerous under the Dangerous Substances (Notification) Regulations, 2001, or the Dangerous Substances and Preparations Regulations, 2007 above a certain threshold.