

EXPLORATION & MINING DIVISION

- 1 SEP 2005

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Ms. Rosemarie Gorman  
Exploration and Mining Division  
Department of Communications, Marine and Natural Resources  
Beggars Bush  
Haddington Road  
Dublin 4

30 August 2005

**Re: Request for submissions updating and restating the Mineral Development Acts  
1940-1999**

Dear Ms Gorman

We wish to acknowledge receipt of your request for submissions in relation to the updating and restating of the Minerals Development Acts 1940 – 1999. As you are aware the Agency's involvement in relation to mining relates to two specific areas, i.e., a) the licensing of mining and extraction activities listed in the First Schedule of the Environmental Protection Agency Act, 1992; and b) on-going collaborative work with other agencies and government departments in relation to the characterisation, management and assessment of the potential risks to human health, animal health and the environment from historic mine sites. The Agency welcomes this opportunity to make a submission in relation to the above Acts and would like to make the following suggestions.

**1. Historic Mine Sites**

An outstanding environmental problem relating to mining in Ireland is that of old mining sites or abandoned mine sites, which were not remediated when operations ceased and where past mining activities have lead to serious land degradation and environmental pollution. It was normal practice in the past that mining sites were closed with no or very little consideration given to the need to remediate these sites. As a result, these sites may continue to cause on-going damage to the environment and potential risks to human and animal health in the surrounding areas. There is also the potential that the risks posed by these sites may increase with time as large abandoned tailings dumps, rock dumps and underground workings gradually deteriorate and where no consideration was given to long-term maintenance and aftercare of closed mine sites. There is therefore a need to develop a systematic and consistent approach to the remediation, rehabilitation and long-term management of historic mine sites in Ireland.

The Agency recommends that the updated and restated Mineral Development Act provides a mechanism for dealing legislatively with historic mines sites where the position in relation to the determination of mineral ownership, land ownership, liability





and identification of holder/owner of waste associated with mining activities is highly complex. The view of the Agency is that historic mine sites would best be managed under the new updated legislation and be placed outside the controls of the Waste Management Acts 1996 to 2003. The reason for this is that determination of the owner/holder of waste upon which the Act pivots is extremely difficult to establish for historic mine sites. It is also the case that any mine waste that predates the coming into effect of the Waste Framework Directive (75/442/EC, came into effect in 1977) would fall outside the scope of the national waste legislation with respect to permitting. This could lead to a dual system of control for mine waste which would not be helpful.

In relation to the identification, management and rehabilitation of historic/closed mine sites, the updated and restated Minerals Development Acts should follow along similar lines which are currently being proposed and developed under the Draft Directive on the Management of Wastes from the Extractive Industries at European level. In addition, where sites are identified as requiring remediation to reduce the potential risk to human health, animal health or the environment, a structural and financial mechanism needs to be established which allows for the remediation of these sites.

## **2. Bonding and Securities for Mining Activities**

One of the concerns of the Agency in relation to financial guarantees put up by mining companies in respect of closure/aftercare obligations is the security of such funds in cases of receivership or liquidation. Although current case law in Ireland is very limited, a recent example is the case of Ispat in Cork, which allowed the receiver to disown an EPA licence. I would like to bring to your attention a provision in the recent Waste Management (Waste Electrical & Electronic Equipment) Regulations 2005 (SI 340) which is of interest. Article 32(4) of these regulations includes a useful provision that may be usefully adopted into the Minerals legislation so-as to give the necessary protection to closure funds.

Yours sincerely,

Dr. Matt Crowe  
Programme Manager

- (h) any aspects of the scheme to be undertaken by the body corporate for the environmentally sound management of waste electrical and electronic equipment,
- (i) the achievement of the targets as laid down in article 22 for the environmentally sound management of waste electrical and electronic equipment,
- (j) the determination and verification of the effects of measures to be undertaken with regard to the environmentally sound management of waste electrical and electronic equipment,
- (k) the rules of membership of the body corporate and the membership fee structure,
- (l) non-discrimination against any producer on the grounds –
  - (i) of the quantity or, as appropriate, type of electrical and electronic equipment that he or she places on the market or, as appropriate,
  - (ii) that the body concerned is only catering for or will only cater for –
    - (A) a maximum pre-determined share of waste arisings from electrical and electronic equipment, or, as appropriate,
    - (B) waste arising from electrical and electronic equipment from a particular geographical location or locations,

in the State,

- (m) the certification of producers for the purpose of article 30,
- (n) green procurement,
- (o) measures to be undertaken by the body concerned relating to the dissemination of information to the public regarding the environmentally sound management of waste electrical and electronic equipment,
- (p) the nature and frequency of information (including financial accounts) to be submitted by the body concerned to the Minister or to such other person as may be specified by the Minister,
- (q) the application of environmental management costs notwithstanding article 16(12), or, as appropriate,
- (r) any other matters the Minister may consider appropriate.

) Without prejudice to sub-article (3), in the event that an approved body –

- (a) has its approval revoked in accordance with the provisions of article 33,
- (b) goes into liquidation, examination or, as appropriate, receivership, or, as appropriate,

- (c) enters into a scheme of arrangement or compromise in accordance with the provisions of section 21 of the Companies Acts 1963 to 2001,

the contingency reserve provided for in sub-article (3)(f), shall not be used by any person or persons, including the liquidator, examiner, receiver or, as appropriate, administrator concerned for any purpose, including the discharge of liabilities to creditors, whether secured creditors, preferential creditors, creditors claiming under retention of title, creditors with claims supported by guarantees or indemnities, ordinary creditors or, as appropriate, subordinated creditors, other than for fulfilling the obligations of the producer concerned as laid down in these Regulations.

- (5) The Minister may, by notice in writing, from time to time vary any condition attached to an approval granted in accordance with the provisions of this article.

*Review and revocation of approval.*

33. (1) Subject to sub-article (2), where it appears to the Minister that –

- (a) new targets for the environmentally sound management of waste electrical and electronic equipment need to be met,
- (b) it is necessary to ensure equitable distribution of producer responsibility obligations, or
- (c) for some other reason it is necessary in the interests of the environmentally sound management of waste electrical and electronic equipment,

he or she may review an approval granted in accordance with the provisions of article 32, or require the approved body to make a new application in accordance with the provisions of article 31 for a renewal of an approval.

- (2) Where the Minister proposes to review an approval granted in accordance with the provisions of article 32, or require the making of a new application in accordance with the provisions of article 31, the Minister shall –

- (a) give notice in writing to the approved body of the proposal and the reasons therefor,
- (b) specify a period of not less than four weeks within which the approved body may make a submission to the Minister in relation to a review, or make a new application in accordance with the provisions of article 31, as the case may be, and
- (c) consider any submission, or application so made.

- (3) Following the consideration of any submission or application in accordance with sub-article (2), the Minister may issue a revised