The devil in the detail

The final proposal for the EC’s new Mining Waste Directive is expected in February. As Dr Roger Doome, scientific officer of IMA-Europe, makes clear, issues surrounding mining waste definitions, and specific and appropriate legislation for the industrial mineral sector appear far from resolved.

Mining waste: a puzzle for the EU

It is now quite normal to read in official European EC (EC) reports that mining waste is among one of the largest waste streams in the European Community. In such statements, the term “mining waste” implicitly covers all waste from the extractive industry. According to the European Parliament, this sector is responsible for 18% of overall waste generation.

However, depending on their recycling potential within a given environmental and economic framework, these “waste materials” are not always considered as such by national authorities. Under current legislation, waste means any substance or object which the holder discards, or intends or is required to discard. Depending on Member States’ interpretation of the word “discard”, the statistics on mining waste can in fact vary by several orders of magnitude.

Similar discrepancies also appear in legislative aspects, since waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries is excluded from the EU waste framework Directive, if already covered by other legislation. As a consequence, national legislation within the EU are not consistent. For instance, France does not consider topsoil and overburden as waste, while Finland actually does, which, not surprisingly, is leading to a number of trials at Finnish and EU level. This lack of a coherent and comprehensive legislative framework pushed the EC to investigate the need for Community legislation governing the mining industry and mining waste.

The significant differences between the various sub-sectors of the extractive industry (ie. metallic ores, industrial minerals, aggregates, and coal), the inclusion of candidate countries, and the sensitive issue of abandoned mine sites made the EC’s work a real nightmare and gave the industrial minerals industry a new battle field to avoid disproportional and inappropriate legislation.

The core issue being the waste definition, the industrial minerals industry has taken several initiatives to explain the reality of mineral extraction and the specificity of our tailings to the policy makers. As you will see, despite these extensive efforts, the problem is not yet totally solved.

The Landfill Directive: a first attempt

In March 1997, the EC decided to include mining waste in its proposal for a Directive on the landfill of waste. In doing so, they assimilated mining waste as municipal waste and believed this would circumvent all the embarrassing issues. This was without counting on the determination of the extractive industry to get its specificity recognised.

The initial EC’s proposal excluded the deposit of unpolluted soil or of non-hazardous inert waste resulting from the extractive sectors. At the end of the co-decision procedure, this exclusion was partly extended to non-hazardous waste resulting from the extraction of mineral resources. Although this could be seen as a success story for the extractive industry, it actually was not. No progress with regard to the waste definition had been made, and thus legislation still differed from one Member State to another. The situation became worse when the EC defined the criteria for inert and non-hazardous waste. The criteria, based on leaching values, were so low that most of the mining “waste” would be considered as hazardous (eg. for inert waste, the leaching value for lead should stand below 0.2 mg/kg).

The Landfill Directive came into force on 16 July 1999 and was effective from 16 July 2001. In the absence of other legislation covering mining waste, this Directive would apply to all waste disposal activities, possibly turning mining operators into landfill managers.

Baia Mare: the public pressure catalyst

On 30 January 2000, a serious environmental accident put the mining industry in the spotlight: a dam at the Baia Mare gold mine in Romania broke, and an estimated 100,000m³ of mud and wastewater containing 126 mg/litre cyanide spilled into the Lapus river, and from there to the Tisza river, then to the Danube, and finally entered the Black Sea. Such a catastrophe underlined the high potential transboundary effects of mining accidents, and the mining waste issue gained a new political dimension far beyond what existed before.

Recalling other similar mining events such as the Aznalcóllar accident in Spain in 1998, NGOs urged the EU Authorities to take all necessary actions to regulate the mining sector at Community level. They were heard and the EC released, only nine months later, a Communication on safe mining activities: a follow-up to recent mining accidents (COM(2000)664, final). This communication put forward three key initiatives to improve the safety of mining activities, which would mobilise the industrial minerals industry until at least 2005:

- an amendment to the Seveso II Directive to unequivocally include the mineral processing of ores and, in particular, tailings ponds or dams used in connection with such mineral processing of ores;
- the production of a special Best Available Techniques (BAT)
A specific specification for mining waste

With its separate proposal for the regulation of waste from the extractive industry, the EC addressed the gap that was created by the waste framework Directive which did not cover the extractive industry’s waste. The announcement of this forthcoming legislation stimulated great interest among IMA’s Members, who have subsequently been deeply involved in the drafting process.

Wide and intensive consultations with stakeholders were held for almost one and a half years. The first EC proposal was very disappointing as it was basically a copy of the Landfill Directive. Moreover, the scope was so broad that even the Member States criticised this approach. From the very beginning, the industrial minerals industry provided the EC with sound scientific inputs focussing on two key priorities:

- preventing the management of mining and quarrying waste to be covered by the Landfill Directive, which does not logically fit;
- avoiding topsoil and overburden, which are not intended to be discarded, to be regarded as waste.

Beside these major issues, the industrial minerals industry and its colleagues from other sectors challenged a list of requirements which were either inappropriate or disproportionate. Among these, the industry opposed the following issues:

- the inventory of abandoned mine sites and the subsequent costs for remediation:
  The industrial minerals industry, supported by most Member States, recognised the importance of this issue, and requested to address it in a separate initiative. Indeed, the complexity of the problem, combined with the accession of candidate countries by 2004 would require an in-depth investigation and a detailed economic impact assessment. Without these elements, it is strongly believed that any attempt to regulate this matter will fail in its implementation stage.

- the inclusion of the exploration activities within the scope of the Directive:
  This would have a significant impact since a comprehensive dossier (including studies, waste management plan, etc.) would have to be submitted to get a permit for exploration. Exploration is an essential activity towards sustainable development and, in that sense should be encouraged, not burdened with regulations so as to become less attractive.

- the proposed classification system which would classify the waste disposal facilities according to their dimensions and capacities: It is feared that such classification system would be arbitrary and inappropriate in most cases. Should such a system need to be developed – the benefit of which is still unclear – it should be based on a proper risk assessment.

- the requirement for a financial guarantee for reclaiming the waste management facilities:
  The extractive industries already succeeded to obtain that such a financial guarantee may be set either by a financial deposit or equivalent means (eg. provisions in accounting, industry sponsored mutual guarantee funds, etc.). However, they advocated that such a guarantee should be made available when starting operations, not when applying for a permit as suggested in the draft EC proposal.

- the requirement for a specific insurance to cover civil and environmental liabilities:
  The Environmental Liabilities Directive, which is close to adoption, would address this matter for the whole industry. Therefore, the industrial minerals industry firmly opposed more stringent legislation to be imposed on the extractive industry.

The stakes for the industrial minerals sector

After an extensive information exercise carried out jointly with the Member States representatives, the extractive industry succeeded in being listened to by the EC, which withdrew part of the concerning requirements (eg. the inventory of abandoned mine sites and the specific environmental liability insurance).

However, the EC seems not keen to address the waste definition issue, arguing that this would create a jurisprudence for other industrial sectors.

Recalling that the Directive aims at improving the safety of mining activities so as to prevent accidents and environmental damage, the extractive industries agree to have topsoil and overburden included within the scope of the Directive, provided that they are not defined as waste.

For IMA-Europe’s members, the best way to achieve this goal would be to conclude that topsoil and overburden are defined as “demobilised materials” rather than waste as is currently the case in many Member States. The EC refusal to tackle this major issue would lead to an incoherent legislation, with the risk that the implementation of the provisions would differ from one Member State to another, leading to a distortion of competitiveness which would not help to address the environmental and social risk issues.

The final EC proposal, expected in February 2003, will have to be submitted to the Council and the European Parliament for adoption (co-decision procedure). Far from being over, the fight for a specific and appropriate mining waste legislation is going to enter the political stage, where special attention should be given to the work of the European Parliament, which may still push for a more stringent legislation in this field.

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Footnotes:

v EC communication on safe mining activities: a follow-up to recent mining accidents, COM(2000)664, final, 23 October 2000
vi However, the drafting of such a BAT Reference Document does not imply that our sector will be covered by the Integrated Pollution Prevention and Control (IPPC) Directive (Council Directive 96/61/EC of 24 September 1996, OJ N° L257, 10.10.96, p 26)