



Union Européenne des Producteurs de Granulats
Europäischer Gesteinsverband
European Aggregates Association



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POSITION PAPER

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Comments on the draft Extractive Industries Wastes BREF

Best Available Techniques Reference Document for the Management of Waste from the Extractive Industries in accordance with Directive 2006/21/EC by the JOINT RESEARCH CENTRE - Institute for Prospective Technological Studies - Sustainable Production and Consumption Unit (Draft Document of June 2016).

KEY MESSAGES

We are calling for:

- ▶ A deep revision of chapters 4 and 5 to better define the applicability of each BAT taking into account the proportionality principles and the specificities to be applied to each extractive sub sector.
- ▶ An improvement of the general legislative coherence of the draft BREF and of the interpretation of waste definition made by the EU judgement Case C-9/00 and C-114/01.

JUSTIFICATION

The BREF is not sufficiently taking into account existing and applicable legislation and is creating, in some ways, applicability conflicts. For example, the definition of waste, the interpretations made by EU Court of Justice, the new definitions arising with the latest Directive 2008/98/EC on waste (Waste Framework Directive), the proportionality principles and requirements of the Directive 21/2006. Furthermore, some of the basic principles and requirements of the Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) are extended to sectors out of its scope.

1. Definition of waste

- ▶ A first very relevant and key question arise: How is it possible to define EU common BAT when both the waste definition interpretation and the extractive industries Wastes Facilities classification criteria are very different across Europe?
- ▶ Then further clarification on the interpretation of what should be defined as waste in the extractive industry is brought by the EU judgement Case C-9/00 and C-114/01.

- ▶ When the holder of the materials does not discard or is not required to discard them, because the approved extractive project and the approved rehabilitation project of the extraction site are using those materials without storage for an indefinite length of time, for rehabilitation purposes, for construction of screening mounds, for on-site constructions (means of access for machinery, ramps, safety barricades, berms, ...) or for backfilling (for rehabilitation purposes or not), they are not fitting the definition of waste.
- ▶ Regarding to the industrial and construction minerals and rock Industry, leftover, soil, overburden, interburden, upper layer and mineral which contains poor upper layer or top soil (and therefore does not fulfil product quality requirements for industrial and construction minerals and rocks) are used for restoration purposes, for construction of screening mounds, for on-site constructions (means of access for machinery, ramps, safety barricades, berms,...), for backfilling (for rehabilitation purposes or not), already simultaneously during extraction activities. Aggregates Industry therefore does not define such material as “unused extraction”.

2. Proportionality principle and exemptions of the Directive 21/2006

- ▶ Chapters 4 and 5 describe BAT and their supposed applicability. However, the principle of proportionality is not taken into account while the Directive 21/2006 establishes **proportionality between the identified risk and the required actions**. **This proportionality** must be applied to the whole BREF.

Furthermore, the BREF is omitting relevant exemptions that are present all across the Directive 21/2006 for inert wastes in MWF not classified as A, for non-inert wastes in MWF not classified as A, for MW with less than 5% of hazardous in MWF not classified as A.

As an example, Article 2 of 21/2006 Directive states “3. *Inert waste and unpolluted soil resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries and waste resulting from the extraction, treatment and storage of peat shall not be subject to Articles 7, 8, 11(1) and (3), 12, 13(6), 14 and 16, unless deposited in a Category A waste facility.*”

- ▶ Again, the **proportionality principles in MWD should be considered everywhere** in the BREF, to avoid the **general mistake that has been made extending the applicability of a number of BAT to all the sub-sectors**, forgetting that the real practice of the industry for each sector, is very different.
- ▶ Furthermore, some of the basic principles and requirements of the Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) are extended to sectors out of its scope.

2.a MWF Category A / Non A and non-Inert / inert Wastes

- ▶ In general, the BREF is not relevant to the quarrying industry **where any extracted materials are typically inert**. There is a common theme throughout the BREF that all MWD operations are non-inert or hazardous and this requires to be addressed.

Many of the described **BAT are never (or exceptionally) used for MWF with inert wastes or are not classified under category A**. This should be clearly stated everywhere in the BREF.

2.b Waste Management Plan

- ▶ Operators of a EWF have to establish a Waste management plan which includes a proposal of classification of the EWF (article 5.3). This classification is based on criteria listed in annex III to the Directive and in Commission decision 2009/337/EC. The classification is based on a risk assessment. The necessity to update the risk assessment will depend on the conclusion and classification of the EWF.
- ▶ The **waste management plan** of each site is **taking into consideration its specificities**, i.e. size of the site, risk assessment, environmental sensibility of the site, and characteristics of the site, geological conditions, and type of processes generating waste, compliance with national legislation, national methodologies, specific limitations, and permit conditions.

This very powerful tool that is the basis for MWD compliance in waste management is not sufficiently used by the BREF to adapt, when necessary, the applicability of the BAT to specific conditions.

2.c Inert waste characterisation

- ▶ Characterisation of extractive waste is a requirement of the directive and has to be included in the waste management plan (article 5.2). This has to be performed according to criteria set in annex II and in Commission decision 2009/359/EC.
- ▶ According to the EC Decisions, some Member States have developed pieces of legislation to adapt the level of MW characterisation to their potential risk.

2.d Environmental Impact Assessment and emission limit values

- ▶ Most of **BAT are too wide**, and **links with other regulated questions like EIA (when applicable), national provisions and permit requirements and conditions have to be made** taking into account that **this is the only way to consider the specificities of each single extractive site**.

- ▶ The different activities on site are closely linked and sometimes it is difficult to distinguish them (this aspect is mentioned in the text for example noise or dust coming from engines, transportation, extraction,...) therefore BAT dedicated for noise or air emission are not appropriate. For the impact on biodiversity (empty section 4.8.6), the issue would be similar.
- ▶ Also, the BREF states at the beginning that it is not legally binding (in reference to 2006/21/UE) while **it proposes a set of emission limit values**, creating confusion.

Specificities of the sectors

- ▶ The **specificities of most of the subsectors are omitted** and this is key because the real practices of the industry for each sector are very different.

This is technically supported by numerous professionals and experts. Carefully reading the text, **what is written is that most of the proposals have been drawn from the 2014 survey answers from specific activities, to become applicable always and everywhere, without (in many cases) any restriction** (See our tables of comments for chapters 4 and 5).

The lack of representativeness of the sample, recognised by the draft (*“especially in the case of industrial and construction rocks and minerals for which 28 questionnaires were collected whereas 27 647 extractive Sites have been identified compiling both the UEPG database and the BRGM database”*) is making this problem more severe.

The impression is almost given that, in the BREF, the waste management is considered as a separate activity and not as it is in practice, an integrated part of the overall activities at an extraction site. This impression is also given on page 71 of the BREF: *“However, as the extractive process itself is not in the scope of this document, operators responsible for the management of the excess of extracted materials have little options to prevent the generation of waste.”*

- ▶ Also, wording and phraseology in place is more specific to “ores” rather than general extractive industries (example- 1.3.1.2 para 2).

Generalisation of specific good practices to all the industry

- ▶ The **REAL** practices and techniques that are applied by the sectors have been forgotten when extending generally the applicability of the BAT coming from specific single cases.
- ▶ There are also many inconsistencies between chapters 4 and 5, especially related with the applicability parts of chapter 5 and tables n° 6 under chapter 4.
- ▶ Then there is **a real risk of misleading by the generalisation of all BAT to all the extractive sectors**. That makes the BREF unusable for the industry as a tool for improvement.

In this respect, we wish to submit some points which would make the implementation more efficient and would take socioeconomic requirements more into account.