The definition of waste
Minerals industry guidance note for extractive materials
Version 2.1
Context Note

The CBI Minerals Group has produced this Guidance Note, in discussion with the Environment Agency, to provide mineral Operators with a practical means of forming a view about whether certain materials arising in the course of mineral extraction and treatment (processing) operations are extractive waste. This Guidance Note applies to mineral operations in England and Wales only.

The content of this Guidance Note is not to be regarded as signifying acceptance or endorsement by the CBI Minerals Group or any Operator who adopts the process set out in this Guidance Note that the limitations on “not-waste” status for materials described in Paragraph 9.6 are a statement of the Environment Agency interpretation of the position concerning such materials. Both this Guidance Note and the application of it by an Operator are expressly without prejudice to any discussion, legal proceedings or other consideration of whether such materials constitute waste.

This Guidance Note does not and cannot purport to address all of the complexities of the various sectors of the minerals industry in England and Wales. Where situations are identified that are not accommodated in the provisions of this Guidance Note, Operators will need to contact the Environment Agency directly to discuss the relevant circumstances with a view to agreeing the regulatory position as they apply to the materials in question. Similarly this Guidance Note does not and cannot address complexities associated with other waste management regulatory controls at those sites where inert waste is imported for use in restoration or for disposal in permitted landfills.

The CBI Minerals Group accepts that where accumulations of materials comprise a Category A waste facility, those materials accumulating in a Category A waste facility comprise extractive waste and are thus subject to regulatory control under the Environmental Permitting regime.

Treatment is defined in the Mining Waste Directive as including the burning of limestone. The Environment Agency considers that the definition is not clear in respect of burning of limestone for the production of lime or cement. The Environment Agency position is that any extractive material generated during such treatment, where it does not constitute waste subject to other regulatory control, may be extractive waste and its status as a non-waste by-product must be demonstrated in accordance with this Guidance Note.

Further versions of this Guidance Note may be issued in response to any developments concerning the definition of waste. This Guidance Note will remain a live document and may be subject to revision based on further discussion and regular review with the Environment Agency and experience of the application of the provisions of the Guidance Note.

Environment Agency Submission Contact

An Operator preparing an Extractive Materials Management Statement and verification in accordance with this Guidance Note should submit completed documents to the Environment Agency Permitting Support Centre either:

- Electronically by e-mail with “Extractive Material Verification” in the subject line to psc@environment-agency.gov.uk; or,
- By post to Environment Agency, Permitting Support Centre, PO Box 4209, Sheffield S9 9BS
Background and Purpose

1.1 Operations for the extraction of mineral resources often involve the handling of substantial volumes of materials in addition to the target mineral (for example, topsoil, subsoil and overburden or interburden comprising consolidated or unconsolidated geological formations). Such materials may arise from the extraction and treatment of minerals or from the preparation for use of ancillary land, eg for access roads, site of processing plant, environmental protection works, materials storage and for the disposal of mineral waste. The treatment of the mineral resource to prepare the mineral for sale or use can produce further materials. In this Guidance Note, materials excavated directly or produced during treatment are collectively referred to as "extractive materials" (see Section 4 below). The term "extractive materials" does not include the target mineral.

1.2 Extractive materials may be classified as "waste" for the purposes of the definition of waste in Article 1(1)(a) of the Waste Framework Directive and, if so, are likely to be "extractive waste" as defined in the Mining Waste Directive (Directive 2006/21/EC on the management of waste from the extractive industries). If extractive materials are extractive waste, mineral Operators must ensure that the management of such extractive waste conforms to the requirements of the Mining Waste Directive. In England and Wales the Mining Waste Directive is implemented through the Environmental Permitting regime by The Environmental Permitting (England and Wales) Regulations 2010 (SI2010 No 675).

1.3 An integral part of most extractive industry operations in England and Wales is the use of extractive materials for the restoration of the mineral workings, including ancillary land used for processing plant, access, soil and overburden storage. Indeed, this beneficial use of extractive materials for restoration purposes is in accordance with the principles of sustainable development and is usually a key factor in enabling the grant of planning permission for mineral extraction activities. Notwithstanding this use, extractive materials used for the restoration of mineral workings may be classified as "extractive waste".

1.4 It is the responsibility of mineral Operators to form their own view regarding whether extractive materials are waste or not. The CBI Minerals Group has produced this Guidance Note to provide mineral Operators with a method of reaching a conclusion on extractive materials managed by them in relation to the stated position the Environment Agency on the definition of waste as applied to extractive materials. Contained in this Guidance Note is advice on the steps that the Environment Agency consider necessary for an Operator to take to demonstrate that extractive materials are not waste. A high degree of self regulation and integrity is therefore required on the part of all those involved in this process.

1.5 The judgment of the European Court of Justice in the "Avesta Polaris" case (C-1140/01) sets out the principles by which extractive materials used for purposes such as the restoration of mineral workings may be assessed as not being waste for the purposes of the definition of waste in Article 1(1)(a) of the Waste Framework Directive.

1.6 The Environment Agency has published a Position Statement concerning the Definition of Extractive Waste (MWRP Position Statement PS 015 dated 9 August 2010) 1 in which they set out their interpretation of extractive waste and describe the principles they will apply in assessing whether materials arising during an extraction process are extractive waste. This Guidance Note explains how an assessment of whether materials are extractive waste can be made against the criteria set out in the Position Statement. The Environment Agency will take into account the results of such an assessment in deciding whether to regulate extractive materials as waste.

1.7 This Guidance Note relates to Version 1 of PS015. The Guidance note will be revised to take account of any future amendments to PS015.

Application of the Guidance Note

2.1 Use of this Guidance Note by mineral Operators is voluntary. A mineral Operator is free to use other approaches to demonstrate to the Environment Agency, if required, whether a material is "waste" or not.

2.2 The Guidance Note is applicable only to England and Wales. Separate regulatory regimes concerning extractive waste are applicable in Scotland and Northern Ireland.

Application of Other Regulatory Controls

3.1 A recommendation under this Guidance Note that a particular extractive material is or is not waste will not affect other regulatory controls concerning the generation, use and environmental control of that material.

3.2 Controls exercised under other regulatory regimes including, but not necessarily limited to, health and safety, planning and development control and environmental permitting/pollution control will all still apply to the extractive material.

3.3 The relevance and the application of other regulatory regimes to extractive materials are beyond the scope of this Guidance Note.

Scope of Extractive Materials

4.1 This Guidance Note relates to extractive materials that may arise from the prospecting, extraction, treatment and storage of mineral resources (including the working of quarries). It does not apply to materials that arise as a result of the use of mineral resources, even if that use is in a manufacturing process carried on at the mineral extraction or processing site.

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The definition of waste

Examples of the processes that can generate extractive materials are:

**Excavation and handling**

- Mechanical excavation using draglines, backacting excavators, face shovels, loading shovels, motor scrapers or other similar plant working materials both above and below ground water. Extractive materials may be dug directly or explosives may be used to fragment them prior to excavation. For deep mines, development work may include the use of mechanical and/or explosive extraction methods. Excavation practices in some sectors of the industry may vary, such as the hydraulic excavation of china clay.

- Excavation activities that produce extractive materials include soil stripping and overburden removal operations, either as separate activities or together with mineral excavation processes. For deep mines, activities that produce extractive materials may include shaft sinking and drift or tunnel development.

- Excavation of mineral resources may produce extractive materials as interburden or due to mixing with overlying or underlying strata, natural variations in geological conditions and weathering effects that render portions of the target mineral unsuitable for treatment.

**Treatment² (or “Processing”)**

- The treatment or processing to a specification for sale or other beneficial use of mineral resources excavated from the extraction void (either at surface or underground) may produce extractive material. The treatment or processing may be at a dedicated processing area separate from the extraction void or may be by means of mobile plant operating in the extraction void.

- The collection and treatment of air in the processing plant, exhaust air or other dust laden air as part of the air pollution control system may produce extractive materials.

- The washing and/or wet screening of mineral resources may produce extractive material in the process water that accumulates in settlement ponds. Mechanical solid/water separation processes may also result in accumulations of extractive materials.

4.2 Materials or substances arising from the manufacture of products using minerals (eg materials arising in the manufacture of concrete or asphalt) are not within the scope of this Guidance Note and will remain subject to other waste management controls and permitting requirements.

**The Legal background – Environment Agency position on the Avesta Polarit tests**

5.1 The judgment of the European Court of Justice in the “Avesta Polarit” case (C-1140/01) sets out the principles by which the Environment Agency consider extractive materials used for purposes such as the restoration of mineral workings may be assessed as not being “waste” for the purposes of the definition of waste in Article 1(1)(a) of the Waste Framework Directive.

5.2 The Avesta Polarit case dealt with the use of mining residues to fill mining galleries or voids. The Environment Agency’s view set out in MWRP Position Statement PS 015 is that the case establishes that there are circumstances in which “residues” from mining operations may be classified as non-waste by-products. These circumstances are where all of the following criteria are met:

- The mining Operator physically identifies the residues to be used to fill the galleries/voids and/or as part of the agreed site restoration plan;

- The mining Operator provides the Environment Agency with sufficient guarantees of that use having regard to the timescale over which restoration will take place;

- The Environment Agency is satisfied that the time period for which the residues will be stored before being used is reasonable in the context of the guarantee;

- The residues will be used without further processing; and,

- Use of the residues for the intended purpose is lawful.

5.3 The Environment Agency uses the term “residues” in MWRP Position Statement PS 015. For the purpose of this Guidance Note there is no difference between the terms “residues” and “extractive material”. The term “residues” is not used further in this Guidance Note to avoid confusion with other elements of waste regulation.

5.4 In further considering the practical application of the Avesta Polarit tests, the Environment Agency consider that extractive material may not be regarded as waste (all other tests being satisfied) even if the finished levels of the deposit (either in the extraction void or placed outside the void in accordance with approved restoration plans) exceed the original level of the ground surface and/or even if such materials are temporarily stored outside the extraction void pending use in restoration. There is no specific time limit governing such storage provided that the elements of the Avesta Polarit tests relevant to timing of use set out at in paragraph 5.2 above are met.

5.5 Set out in Section 9 below are certain limitations on the applicability of “not-waste” status to extractive materials.

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² In the Mining Waste Directive “treatment” is defined as “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 processing of previously discarded waste, but excluding smelting, thermal manufacturing processes (other than the burning of limestone) and metallurgical processes”. The activities referred to as treatment in the Mining Waste Directive are more usually known as “processing” in England & Wales.
Establishing the status of Extractive Materials

6.1 The process for establishing whether extractive materials at a particular site are or are not waste in accordance with this Guidance Note has three stages:

- Information gathering
- Information assessment
- Verification of "not-waste" status of materials so identified.

6.2 The first two bullets of paragraph 6.1 above may be combined in the production of an “Extractive Materials Management Statement” (see Section 8 below and Appendix 1). The verification process is discussed in Section 10. To ensure that all relevant operational issues are considered, it is important that the Extractive Materials Management Statement is prepared in liaison with the appropriate person(s) at existing sites or for new sites, with persons with an appropriate understanding of the proposed methods of working.

6.3 This Guidance Note has been developed to accompany the implementation of the Mining Waste Directive in England and Wales through the Environmental Permitting regime. The requirements set out in the Directive will apply to both new operations managing extractive waste and those underway at the time of implementation. The Guidance Note can be applied to determine:

- Whether extractive materials that have already been generated and may be in store pending use or already used in site restoration are not waste; and/or,
- Whether extractive materials that will be generated in future extraction operations are or are not waste.

6.4 The Environment Agency view is that the default position for extractive materials is that they are waste, unless their status is established as not waste through the application of this Guidance Note or by other means and that status is agreed with the Environment Agency.

Identifying the Site

7.1 A “site” for the purposes of this Guidance Note has the same definition as that used in the Mining Waste Directive, The definition at Article 3(28) of the Directive identifies a site as “all land at a distinct geographic location under the management control of an Operator”. Note that this definition of site may be different from the site definition used for planning purposes.

The Extractive Materials Management Statement

8.1 The Extractive Materials Management Statement must provide information relevant to the Avesta Polarit tests set out in paragraph 8.2 and as described below. A template for the Extractive Materials Management Statement is provided in Appendix 1. The information necessary to compile the Extractive Materials Management Statement may be provided in the form of cross-references to relevant sections of other documents (eg those listed in paragraph 8.3 below).

8.2 Initially it will only be necessary to submit the Extractive Materials Management Statement and a statement compiled by the Verifier (see Section 10 below) to the Environment Agency. Thus where the information necessary for the Extractive Materials Management Statement has been compiled by cross-references to other documents, those cross references should be clear in the Extractive Materials Management Statement so as to provide the required audit trail in case of review by the Environment Agency. It will not be necessary to submit the cross referenced documents referred to in the Extractive Materials Management Statement and the verification to the Environment Agency. The Environment Agency may however request that such documents are provided following submission as part of their review/audit process.

Contents of the Extractive Materials Management Statement

- Summary Fact Sheet – a short summary that can be used by the Environment Agency to capture the key information relating to the statement, including the name of the Operator, site location details, contact details, anticipated quantities of extractive materials, anticipated timing of operations and name of verifier.
- Description of the operations – a description of the processes giving rise to the extractive materials and a description of the nature and estimated volumes of those materials. Information relevant to existing excavated materials in store and those to be generated during future operations should be provided.
- Description of the use of extractive materials – a general description of the uses to which the extractive materials are to be put.
- Description of the areas for temporary storage of extractive materials – a description or identification of the general areas to be used for the storage of extractive materials pending use in restoration. Such storage might be provided by, for example, the interim use of extractive materials to form screening mounds, etc at the site.
- Assessment against the Avesta Polarit Tests – for those extractive materials that the Operators considers may be not-waste, establishing how the use of specified extractive materials satisfies the Avesta Polarit tests in respect of:
  - Identification of specified types and volumes of extractive materials to be used in restoration works (“Identification of Materials”);
  - Guarantees of use of specified extractive materials (“Guarantee of Use”);
  - Time periods for use of specified extractive materials (“Time Period for Use”);
  - Confirmation that no further processing of the specified extractive materials is necessary before their use and that their use is an integral part of the overall operation (Use as part of the Overall Operation); and,
  - Confirmation of the necessity of use and lawfulness of use of the specified extractive materials (“Necessity and Lawfulness of Use”).
• Assessment of status of materials – a brief assessment of the status of all extractive materials that will be managed at the site against the criteria set out in the Flow Chart in Annex 1 of the Environment Agency MWRP Position Statement PS 015 and confirming the status of the specified extractive materials as not-waste in compliance with those criteria. Where the extractive operations also give rise to materials that are extractive waste, a brief summary of the management of that extractive waste and an explanation of the relationship between those management measures and those for not-waste materials should be provided.
• Verification Statement – a signed confirmation of the status as not waste of the specified extractive materials.

8.3 Information to support the preparation of the Extractive Materials Management Statement, and which may be suitable for use by means of cross references, may be available from:
• Planning applications
• Minerals Review applications
• Environmental statements
• Planning permissions
• Mine/quarry designs, restoration plans, etc

8.4 In addressing the Avesta Polarit tests relating to:
• Guarantees of use;
• Time periods for use;
• Necessity; and,
• Lawfulness of use
Operators may need to identify:
• The reasons why it is necessary to use the extractive materials in restoration of the site in the way in which is intended (eg to achieve stability, to meet sustainability and/or land-use policy requirements or as a consequence of the requirements of landowners in allowing the use of land for mineral extraction); and,
• The controls imposed by the relevant planning permissions that the materials must be used as intended, within the timescales set out by the permissions.

Limitations on “non-waste” status
9.1 As noted in Section 6.4 above the Environment Agency view is that the default position for extractive materials is that they are waste, unless their status is established as not waste through the application of this Guidance Note or by other means agreed with the Environment Agency. The Environment Agency position is that where the management of extractive materials requires placement in a Category A waste facility, the objectives of the Mining Waste Directive would not be met if those extractive materials were classified as “not waste” under the Avesta Polarit tests. Therefore the Environment Agency position is that such materials should not be classified as “not waste” even though the Avesta Polarit tests may otherwise be satisfied.

9.2 In making a verification of the status of materials as not waste, the Verifier (see Section 10 below) should make a high level assessment as to whether, management of those materials, including both storage and final placement of the materials:
• Would involve an extractive material that would not fall within the scope of “de-facto” inert extractive waste as described in Appendix 3 of EPR6.14 “How to comply with your environmental permit. Additional Guidance for Mining Waste Operations” and in accordance with the Commission Decision on the definition of inert waste 2009/359/EC; and,
• Would involve management of the extractive materials in a way that would be within the scope of a Category A waste facility (see Section 2.2.1 of EPR6.14 for guidance on identifying Category A waste facilities).

9.3 Where a Verifier considers that the extractive materials may not be inert in the terms of Appendix 3 of EPR6.14 or that the management of the extractive materials may involve a Category A waste facility, the Verifier should recommend to the Operator that the particular case be discussed with the Environment Agency. The Environment Agency may, after consideration of the specific circumstances, determine that subject to the criteria of the Avesta Polarit tests being met, the materials can be regarded as not-waste. In the absence of such Environment Agency determination, a verification of the materials in question as “not waste” should not be made by the Verifier.

9.4 An Operator preparing an Extractive Materials Management Statement is advised to conduct their own high-level assessment of the points identified in paragraph 9.2 above and to contact the Environment Agency to discuss particular cases where there may be doubt as to the “not waste” status of extractive materials to obtain an Environment Agency determination that will assist the Verifier in making a subsequent assessment and recommendation.

Treatment of extractive materials
9.5 Any activities other than excavation, transport and placement of extractive materials may indicate the prior processing of extractive materials that would take them outside the scope of the Avesta Polarit tests. Such cases should be discussed with the Environment Agency.

9.6 In the following instances the Environment Agency consider there to be treatment of extractive wastes such that the Avesta Polarit tests of use of extractive materials without prior processing cannot be met. Such materials could not therefore receive a “not-waste” recommendation from a Verifier.
• Where fine grained material is separated from process water by settlement under gravity in a natural or engineered structure (ie a pond or lagoon) and where the waste will be either subsequently dug from the pond or lagoon or the pond or lagoon will be filled with fine grained materials and restored to predominantly dry land, this will be considered by the Environment Agency as further treatment of waste. Such fine grained materials will be considered by the Environment Agency to be extractive waste and not an extractive material that may be classed as not waste.

3 Much of this information will be available from the Waste Management Plan as required by the Environmental Permitting regime for those materials that are extractive waste
Where two or more types of extractive material, one or more of which would not be inert waste or unpolluted soil if it were to be regarded as extractive waste, are blended together to produce a substance that would be regarded as inert waste were it to be waste, this blending process will be considered by the Environment Agency as treatment of waste. Such extractive materials will be considered by the Environment Agency to be extractive waste and not an extractive material that may be classed as not waste.

9.7 Where fine grained material is deposited in a pond or lagoon and the pond or lagoon will remain a water body following restoration, the fine grained material will not be regarded as an extractive waste by the Environment Agency and may be classed as not waste. The fine grained material may be rehandled within the pond or lagoon area after deposit to provide landscaping features compatible with the restoration to a water body (eg reedbeds, small islands or similar) but no significant excavation from the pond is undertaken.

9.8 Any ponds associated with the use of the mechanical separation of fine grained materials (eg – by means of a filter press or similar) may accumulate fine grained materials either before or after the mechanical process. The status of both the solid output from such mechanical separation and of materials accumulating in ponds should be assessed as either waste or not waste by reference to the Avesta Polarit tests and other matters set out in this Guidance Note. The solid output will usually be able to be assessed as not waste.

Verification of “non-waste” status

10.1 The assessment and confirmation in the Extractive Materials Management Statement that the extractive materials are not waste must be verified. Verification must be made in the context of the Environment Agency Position Statement Number 15.6

10.2 Verification should be undertaken by a person (the “Verifier”) who:

- Holds Corporate Membership of an appropriate professional body having restrictions on areas of activity and the capacity to apply sanctions in the event of unprofessional conduct (eg RICS, Geological Society, IMMM, CIWM), and
- Holds academic qualifications (including the direct professional examinations of the professional body of which he or she is a Corporate Member) at a level and of a type appropriate to the verification sought, and
- Has not less than 3 years relevant experience of the management of extractive materials and extractive waste of the types identified in the Extractive Materials Management Statement under consideration, together with appropriate knowledge in the relevant sector of the extractive industries to be able to critically review the assessment of the status of extractive materials as not waste in the Extractive Materials Management Statement that he or she is verifying.

10.3 Where verification is undertaken by a person other than an employee of the Operator, it should be undertaken by a person who is appropriately authorised by their employer to conduct the verification sought.

10.4 The Verifier should complete the signed statement in the form contained in the template for the Extractive Materials Management Statement (See Appendix 1). The verification should be:

- Addressed to the Operator;
- Addressed to the Environment Agency lead contact;
- Confirming the professional standing of the Verifier and suitability to act in that capacity;
- Confirming that the Extractive Materials Management Statement contains the information required by this Guidance Note in respect of the range of extractive materials that it identifies as not-waste sufficient to enable the recommendation of not–waste status to be made for those materials;
- Confirming that the conclusions set out in the Extractive Materials Management Statement regarding the not-waste status of those materials are appropriate having regard to the Environment Agency’s Position Statement on the Definition of Extractive Waste PS015; and,
- Recommending to the Environment Agency that they should accept that the specified extractive materials identified in the Extractive Materials Management Statement are not waste.
- Confirming that the Operator is aware of the need to maintain Confirmation information as described in paragraph 12.4 below.

10.5 The Environment Agency will write to the Operator to confirm their decision on the recommendation made by the Verifier within 20 working days of receipt of the Verifier’s statement.

10.6 The operation of a mineral extraction and processing site may change hands over time, for example, as a result of the sale of business assets. Where an Extractive Materials Management Statement has been prepared and verified on behalf of one Operator, that Extractive Materials Management Statement and verification will remain applicable to the site if it is taken over by another Operator. The new Operator is advised to ensure that it obtains the Extractive Materials Management Statement, the verification statement and any Confirmation Information for operations up to the date of transfer from the outgoing Operator. Notification should be provided to the Environment Agency of the change of Operator, who should also confirm to the Environment Agency that they will continue to operate in the same manner as set out in the accepted EMMS.

10.7 Alternatively, the new Operator must submit a new EMMS to the Environment Agency for acceptance setting out the proposals for continued operation and the continued verification of materials as not waste. In particular the requirements of paragraph 13 of this Guidance Note should be taken into account when deciding whether the original EMMS remains suitable for the continuing operations.
Post-verification

11.1 For those extractive materials identified as not waste in a verified Extractive Materials Management Statement, the Operator will be able to proceed with their use in the manner described in the Extractive Materials Management Statement. The requirements of the Mining Waste Directive or other waste regulation will not apply to such extractive materials.

11.2 The Environment Agency will audit a number of the verified Extractive Materials Management Statements. In any case where the Environment Agency consider that extractive materials have been incorrectly assessed as not being waste, appropriate permits for the management of such material as extractive waste will be required. The Environment Agency may subsequently choose to audit other recommendations made by the same Verifier.

Recording the Use of Extractive Materials

12.1 A recommendation of “not waste” status for extractive materials will be made on the basis of, amongst other things, the use which the Operator intends to make of those materials. The Operator should keep suitable records to show that the extractive materials have been used in the manner described in the Extractive Materials Management Statement.

12.2 It is anticipated that most Extractive Materials Management Statements will indicate the use to be made of extractive materials by reference to development and restoration plans contained in the planning permission for site operations. In these cases information on the use of extractive materials may be obtained from the Monitoring Reports issued by Mineral Planning Authorities following their periodic monitoring, supplemented where appropriate by any Certificates of Compliance with relevant aftercare conditions issued by the Mineral Planning Authority under Paragraph 5 of Schedule 5, Town & Country Planning Act 1990.

12.3 As an alternative or supplement to any Monitoring Reports produced by the Mineral Planning Authority, an Operator may wish to compile a Confirmation Record containing such information as is necessary to show that the extractive materials have been used in the manner set out in the Extractive Materials Management Statement.

12.4 Operations involving extractive materials may last for many years. They may also take place in discrete geographic phases of activity or for defined activities and periods. An Operator may therefore wish to assemble Mineral Planning Authority Monitoring reports, Certificates of Compliance and/or Confirmation Records (“Confirmation Information”) for different parts of the site at such time as operations are completed in those parts.

12.5 The attention of Operators is drawn to the benefit of assembling adequate information in the event of the Environment Agency wishing to review an Operator’s implementation of the Extractive Materials Management Statement.

12.6 On completion of activities at a site, the Operator should inform the Environment Agency that extraction, processing and restoration operations have ceased. The Operator must advise the Environment Agency where Confirmation Information can be reviewed, together with contact details for the person responsible for the information.

Scheme Changes

13.1 It is recognised that operating schemes for extractive operations may be subject to change during the life of a project, for example:

- More, or less, extractive material may be found during operations than was predicted based on the site investigation information and mine/quarry design.
- Storage locations and phasing of material placement may change as a result of operational requirements.
- Operating schemes may change as a result of site extensions.
- Restoration proposals may be amended, for example, to increase biodiversity gains.

13.2 Such changes may have no effect on the status of extractive materials as not waste, even though the physical scheme in which they are to be used may have altered from that contained in the initial verified Extractive Materials Management Statement. Alternatively the scheme changes may potentially affect the status of the extractive materials as not-waste in some circumstances.

13.3 Changes to the nature of the extractive materials generated or the management of them in a way that has the potential to give rise to significant negative effects on human beings or the environment will require an updated Extractive Materials Management Statement to be thoroughly reviewed by a Verifier to determine whether not-waste status remains appropriate. Examples of such significant changes are:

- Where the changed management operations would involve a Category A waste facility into which materials previously assessed as not waste would be deposited.
- Where the management activities involve extractive materials that were not considered in the original Extractive Materials Management Statement or any earlier revision of the Extractive Materials Management Statement.
- Where the treatment process by which any extractive material arises is altered so that the nature of the extractive material is altered.

This list is not exhaustive and careful consideration should be given to any proposed change in the management of extractive materials having a not-waste status to determine whether re-consideration by a Verifier is appropriate.

13.4 Where changes will have only a minor effect on the use or programme described in the Extractive Materials Management Statement, for example:

- Change in stockpile locations (unless the revised location would be regarded as a Category A waste facility assuming the extractive materials to be waste).
- Limited re-phasing of material placement in restoration.
- Extension of time of less than 24 months for completing restoration works.

It is unlikely that the status of the extractive materials as not-waste will change and it will not be necessary for the Operator to seek an updated recommendation of not-waste status from a Verifier, although full details of the changes should be recorded in the Extractive Materials Management Statement.
13.5 The extent of changes that are not on the face of it significant but nevertheless might merit review of the Extractive Materials Management Statement by a Verifier is a matter of judgement based on the degree of change proposed to the Extractive Materials Management Statement. Material changes to the measures set out in the Extractive Materials Management Statement, for example:

- Extensions of time of more than 60 months for commencing or completing restoration
- Major changes to restoration proposals
- Significant increase or decrease in anticipated volumes of extractive materials

should lead to a revision of the Extractive Materials Management Statement and re-verification in accordance with the procedures above, so that a check is made as to whether the scheme changes have led to a change in status of the extractive materials as not-waste.

13.6 Where there are changes of a significance that merit reconsideration of the Extractive Materials Management Statement by a Verifier, and any the conclusion of the reconsideration is that continued not-waste status is appropriate, the procedure for making a recommendation set out in Section 10 above should be followed. Where continued not-waste status is not appropriate for some or all of the extractive materials, the Verifier should inform the Operator, who should take appropriate action to obtain any necessary permits.
Appendix 1

Extractive Materials Management Statement Template

The following pages provide a template for the preparation of the Extractive Materials Management Statement, with guidance and information provided in italic typeface. A separate electronic version of the template is available for Operators to use when preparing their statements.
### Extractive minerals management statement

<table>
<thead>
<tr>
<th>Operating company name</th>
<th></th>
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<tbody>
<tr>
<td>Name of site</td>
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Extractive Materials Management Statement – Summary Fact Sheet

<table>
<thead>
<tr>
<th>Address of site</th>
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</thead>
<tbody>
<tr>
<td>Grid reference</td>
<td></td>
</tr>
<tr>
<td>Contact name</td>
<td></td>
</tr>
<tr>
<td>Contact address (if different from site address)</td>
<td></td>
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<tr>
<td>Contact telephone number</td>
<td></td>
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<tr>
<td>Contact email</td>
<td></td>
</tr>
</tbody>
</table>

**Primary mineral(s) produced at the site**

<table>
<thead>
<tr>
<th>Quantity of extractive material assessed as not waste (cu.m)</th>
<th>A simple statement of the volume of extractive material that is not waste – from Part 3 of the EMMS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum storage time of any extractive material before final deposit</td>
<td>A simple statement regarding the maximum time that extractive materials will be stored – from Part 2 of the EMMS. If multiple materials are identified or if storage of one material significantly exceeds the others, state each separately</td>
</tr>
</tbody>
</table>

**Expected date for completion of operations at the site**

<table>
<thead>
<tr>
<th>Name of EMMS verifier</th>
<th></th>
</tr>
</thead>
</table>

**Date of verification**

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The definition of waste

Minerals industry guidance note for extractive industries
### Part 1. Overview of the Production Process

**Description of the operations**

Provide a summary of the operations/processes giving rise to the extractive materials (including soil handling, overburden removal, mineral extraction, treatment of mineral etc. including any associated development/site preparation work that may produce extractive materials). Such information may be found in approved schemes of working, applications for planning permission etc. If appropriate, provide references to plans that show the extractive operations and disposition of extractive materials.

<table>
<thead>
<tr>
<th>Extractive materials produced</th>
<th>Extractive material</th>
<th>Volume (cu.m)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

Provide a summary of the types and anticipated quantities of extractive materials that will be produced e.g. soil, overburden, processing residues. Include all materials, whether or not they will be dealt with as extractive waste or as not-waste and identify those materials and quantities for which confirmation of not waste status is sought.

Where sites are already in operation, identify separately those materials that have already been produced and those materials that will arise as a result of future operations.

**Description of the use of extractive materials**

Provide a general description of the existing and proposed uses for extractive materials in site restoration. Such information may be found in approved schemes of working, applications for planning permission etc. If appropriate, provide references to plans that show the restoration areas and proposals.

**Description of areas for temporary storage of extractive materials**

Provide details of any existing and proposed areas that will be used for temporary storage of extractive materials pending use in site restoration. Such information may be found in approved schemes of working, applications for planning permission etc. If appropriate, provide references to plans that show the temporary storage areas.
### Part 2. Assessment against the Avesta Polarit Tests

#### Identification of Materials

- **Identification of specified types and volumes of extractive materials to be used in restoration works**

  Provide details of the extractive materials that are identified for use in the restoration works and for which not waste status is sought. Include specific information relating to the nature and amount of material to be used and the locations in which it will be used.

  Such details may include reference to schemes of working, statements in the environmental statement/application for planning permission, restoration and mine/quarry development plans, etc.

  Extractive materials must be identified in sufficient detail to allow the Verifier to make an accurate review and confirmation of the status of the materials in respect of their proposed use.

#### Guarantee of Use

- **Guarantees of use of specified extractive materials**

  Provide details of the guarantees that the materials for which not waste status is sought will be used for the purpose identified.

  Such details may include reference to planning conditions that specify or approve the use of particular materials for restoration works.

#### Time Period for Use

- **Time periods for use of specified extractive materials**

  Provide details that establish the periods in which the extractive materials for which not waste status is sought will be used in the restoration process.

  Such details may include references to planning conditions, schemes of working, phasing plans, etc.

#### Use as part of the Overall Operation

- **Confirmation that the specified extractive materials do not need further processing and that their use in restoration is an integral part of the overall operation**

  Provide details that describe the process from generation to final use for all specified extractive materials for which not waste status is sought and which demonstrate that no further processing, treatment or blending is necessary. Such information may be the same as that referred to in Part 1 of the EMMS under 'Description of the operations'.

  Provide details showing where the specified materials will be placed and outline the purpose of placing the materials in that location. This may be by reference to information provided in Part 1 of the EMMS under 'Description of the use of extractive materials'.

#### Necessity and Lawfulness of Use

- **Confirmation of the necessity of use and lawfulness of the use of the specified extractive materials**

  Provide confirmation that the materials are inert as defined in the Mining Waste Directive, which could be by reference to Appendix 3 of EPR 61.4, assessments included in environmental statements or the application for planning permission, or in other investigation/assessment reports.

  Provide confirmation that the use of the specified extractive materials in the manner proposed has planning permission.

  References to relevant conditions should be included.

  References to approved schemes of working and restoration proposals can be used to justify necessity of use.
### Part 3. Assessment of the status of extractive materials

**Extractive materials assessed as waste**

Provide a statement of the quantity of extractive materials that will be managed as extractive waste at the site. Refer to the relevant sections of the flow chart in Annex 1 to the MWRP Position Statement PS015.

Provide a brief statement on the relationship between the materials that will be managed as extractive waste and those that will be managed as not-waste. References to the Waste Management Plan prepared in accordance with the EA guidance on management of extractive waste may be appropriate.

**Extractive materials assessed as not waste**

Provide a statement of the quantity and nature of extractive materials that will be managed as not-waste at the site. Refer to the relevant sections of the flow chart in Annex 1 to the MWRP Position Statement PS015 to demonstrate compliance/justification for the definition.
Part 4. Statement by the Verifier

To: The Operator (include company name and contact address)

To: The Environment Agency (include lead contact name and address)

1 I confirm that I satisfy the requirements to act as a Verifier set out in Section 10.2 of the CBI Minerals Group document: The Definition of Waste; Minerals Industry Guidance Note for Extractive Materials.

2 I have reviewed the Extractive Materials Management Statement set out in Parts 1 to 3 and all of the supporting documentation referred to in the Extractive Materials Management Statement and I confirm:
   a) that the Extractive Materials Management Statement contains the information set out in The Definition of Waste; Minerals Industry Guidance Note for Extractive Materials in respect of the range of extractive materials that it identifies as not-waste sufficient to enable the recommendation of not-waste status to be made for those materials, and
   b) that the conclusions set out in the Extractive Materials Management Statement regarding the not-waste status of those materials are appropriate having regard to the Environment Agency’s Position Statement on the Definition of Extractive Waste PS015
   c) that the Operator is aware of the need to assemble Confirmation Information, which may be inspected by the Environment Agency.

3 I recommend that that the materials described in this Extractive Materials Management Statement and listed below as “Not Waste” should not be considered as extractive waste by the Environment Agency. I have advised the Operator that appropriate Environmental Permits or Exemption should be obtained for the management of those materials listed below as “Extractive Waste”

<table>
<thead>
<tr>
<th>Not Waste</th>
<th>Extractive Waste</th>
</tr>
</thead>
<tbody>
<tr>
<td>List the materials and quantities from Part 3 of the EMMS</td>
<td>List the materials and quantities from Part 3 of the EMMS</td>
</tr>
</tbody>
</table>

Signature of verifier:      Date of verification:

Name of verifier:      Qualifications:

Verifier’s address: