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## Industry Position Paper on BAT Review for management of Tailings and Waste Rock.

The European Commission has recently initiated the review of the **Management of tailings and Waste-rock in mining activities (MTWR) “Best Available Techniques Reference Document (BREF)”**. The MTWR BREF document was published in 2009 by the European Commission according to Article 21(3) (as well as Art. 4 (2) and (3)) of the Directive 2006/21/EC on the management of waste from the extractive industries.

The revision of the “Best Available Techniques Document on Management of Tailings and Waste-Rock in Mining Activities” (MTWR BAT Document) should in general be limited to what is necessary for the practice and should therefore focus on additional new technologies (like heap leaching) that have been developed since the BAT Document was accomplished.

### Legal basis of the BAT – Document

The legal basis for the **BAT Document** on management of tailings and waste rock is the **Mine Waste Directive 2006/21/EU (MWD)** and **not the Directive on Industrial Emissions 2010/75/EU (IED)**. As a result mining waste facilities do not fall under the scope of the IED and therefore do not have to comply with its requirements. The Seville process can be used as a tool for elaborating the BAT – Document.

For example, the establishment of legally binding associated emission levels (AELs) is only required under the IED. Thus, there is no legal basis for establishing them under the MWD and the concept of AELs would not be applicable due to the special characteristics of mining waste facilities. In addition, there is no legal basis to link other BREFs established strictly under the IED to the MTWR BAT Document.

### Scope of the BAT - Document

The scope of the BAT-Document should not go beyond the MWD's scope as defined by Article 2. Non-waste materials, product or by-product, processes, techniques and facilities cannot be covered by the scope, provided that these materials are by-products according to Article 5 of Directive 2008/98/EC on waste.

The aim of the BAT-Document is to cover the management of waste resulting from the prospecting, extraction, treatment and storage of the mineral resources

- that have a significant production within the EU, including the acceding countries, the candidate countries and
- that generate waste with a potential for adverse effects on the environmental and any resulting risks to human health, as a result of the management of waste from the extractive industry.

As this is the approach of the existing BAT, it is reasonable to maintain the scope of the existing BAT therefore not to extend its scope to all extracted materials and all waste derived from them. Any extension would have to be justified – i.e. recent accident in mining waste facilities. Such reasons are not perceptible from the perspective of the European mining industry. Moreover it wouldn't make sense to cover all extracted materials as i.e. in some extractive activities usually no waste is generated, in other extractive activities waste might be generated but in insignificant amounts or environmental impact might be low of generated waste.

The scoping approach would

- ensure a full consistency with the MWD and the associated standards that have been developed by the CEN TC 292 WG8
- facilitate the implementation of the BAT conclusions for Authorities and Industry, in particular for SMEs

### **Positions on vertical issue of the BAT Document**

The “vertical” scope of the existing BAT-Document should be maintained. So far the BAT Document addresses the management of tailings in mine waste facilities and their potential environmental or human health adverse effects, which means:

- Activities which are not linked to mining waste are not included in the scope of the MWD and should consequently remain outside of the scope of the BAT Document. This is the case in particular for the mining process itself. Regarding the treatment of minerals these processes are only described in the existing BAT Document as far as relevant to tailings management.
- In the JRC-Position Paper it is suggested to also include activities such as waste collection, transport, handling, loading of waste on the mine site. Such activities – which are not part of the waste facility itself - have so far not been covered by the BAT. This is due to the fact that article 4 para. 3 MWD in connection with Art. 21 para. 3 MWD, which is the legal basis for the BAT-Document, only refers to the waste facility. Therefore there is neither a legal obligation nor a practical necessity for including such activities when updating the BAT-Document.
- Also general “topics” related to mining waste such as questions of waste reduction - suggestion in the JRC-Position Paper under section E, 5.1.2. - should remain out of the scope of the BAT-Document. The reduction of waste is linked

to the extraction and processing activities which do not fall under the scope of the BAT. These are questions which are only addressed by the MWD itself - whereas the purpose of the BAT-Document is the prevention of environmental or human health adverse effects by laying down best available techniques for the management of waste facilities.

The BAT-Document and the JRC-Position Paper should address

- the new CEN TC292 Guidance and the new GARD Guide ([www.gardguide.com](http://www.gardguide.com));
- the lack of complete guidance on dam safety and the geotechnical precautions required to prevent dam failures in as far as it has not been addressed by ICOLD;
- the standards for geotechnical design as defined in the Eurocode.

### **Associated emission levels**

Another recommendation proposed in the JRC position paper is to establish associated emission levels (AEL) (under D, 218/219). The “AEL” are a new requirement that has been introduced by the IED and has now to be considered when revising the existing BREFs under IED. As clarified above, the legal basis for the BAT Document is the MWD and not the IED which doesn't apply to the extractive industries including their waste facilities. The MWD does not foresee AELs. This means that, the requirement to lay down AEL - a requirement of the IED - doesn't apply to the mining waste facilities, hence there is no legal obligation to introduce such AELs into the BAT Document. Considering the site specific nature of the extractive operations and the diversity of parameters and situations, BAT AELs do not make sense. Emissions to air, water and soil from mining waste facilities are however already regulated by other EU and national environmental legislation and generally embedded in mining permits delivered by competent authorities.

### **Focus on emerging technologies /no general revision of the BAT**

As mentioned before, the revision of the BAT Document should focus on the addition of new emerging technologies for the management of tailings, in particular the general outline of the BAT in chapter 4 – techniques to consider in the determination of the BAT. Therefore it is not clear why many proposals in the working document relate to general environmental topics – such as emission prevention and control, life-cycle management, reduction of footprint etc. Regarding these aspects the TWG agreed to common positions laid down in the existing BAT Document. It is essential that the document is kept as simple and as clear as possible in order for it to be deemed acceptable in assisting authorities and operators.

25<sup>th</sup> February 2014