



Fédération Européenne des Activités du Déchet et de l'Environnement
European Federation of Waste Management and Environmental Services
Europäische Föderation der Entsorgungswirtschaft

**FEAD PROPOSAL OF AMENDMENTS
ON COMMISSION PROPOSAL FOR A DIRECTIVE
ESTABLISHING A FRAMEWORK FOR THE PROTECTION OF SOIL (COM(2006)232)
June 2007**

LANDFILLS AND WASTE WATER TREATMENT INSTALLATIONS

**Amendment 1
Annex II**

List of potentially soil polluting activities

1. Establishments where dangerous substances are or were present in quantities equal to or in excess of the amounts indicated in Parts 1 and 2, column 2 of Annex I to Council Directive 96/82/EC (Seveso).
2. Activities listed in Annex I to Council Directive 96/61/EC.
3. Airports.
4. Ports.
5. Former military sites.
6. Petrol and filling stations.
7. Dry cleaners.
8. Mining installations not covered by Council Directive 96/82/EC, including extractive waste facilities as defined in Directive 2006/21/EC of the European Parliament and of the Council.
9. Landfills of waste **as defined in** Council Directive 1999/31/EC.
- 10. Waste water treatment installations.**
11. Pipelines for the transport of dangerous substances.

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3. Airports.
4. Ports.
5. Former military sites.
6. Petrol and filling stations.
7. Dry cleaners.
8. Mining installations not covered by Council Directive 96/82/EC, including extractive waste facilities as defined in Directive 2006/21/EC of the European Parliament and of the Council.
9. Landfills of waste **excluded from the scope of** Council Directive 1999/31/EC.
- ~~10. Waste water treatment installations.~~
11. Pipelines for the transport of dangerous substances.

Justification

Landfills are managed under the dedicated Directive 1999/31/EC on the Landfill of Waste. They are specifically designed and shaped to prevent any threat to soil and water. Specific requirements are set all along the conception, operation and after-care for this purpose. Provisions on safety barriers and limit values for waste going to landfill are also set out in the Landfill Directive.

This is the reason why it is important to distinguish between landfills that are subject to the Landfill Directive and landfills that are not. Landfills falling within the scope of the Landfill Directive should be removed from the scope of the Soil Directive. The list in Annex II should only mention landfills that are not subject to the Landfill Directive,.

Waste water treatment installations do not harm the environment. Their main purpose is to avoid the contamination of surface waste, groundwater and soil and to prevent leachate. The environment would rather be potentially harmed if waste water treatment in the respective installation would not take place. As the installation itself aims to prevent negative impacts on the environment it cannot be qualified as potentially soil polluting.

APOH, Slovakia
ARS, Romania
ASELIP, Spain
AVFALL NORGE, Norway
AVFALL SVERIGE, Sweden

BDE, Germany
CAOH, Czech Republic
ESA, UK
FEBEM-FEGE, Belgium
FISE, Italy

FLEA, Luxembourg
FNADE, France
IWMA, Ireland
JLY, Finland

KSZGYSZ, Hungary
PASEPPE, Greece
PIGO, Poland
VA, Netherlands
VÖEB, Austria

ORGANIC MATTER RECYCLING

Amendment 2 Recital 37 (new)

(37) Economic instruments and agri-environmental measures under the second pillar of the Common Agricultural Policy are available to help combat organic matter decline.

Justification

See below

Amendment 3 Chapter IV (new)

Chapter IV: Organic Matter

Article 13 (new)

1. Member States shall take appropriate and proportionate measures to limit organic matter decline.

2. In order to combat organic matter decline, Member States shall promote the use and recycling of organic matter and encourage measures such as:

- the development of economic instruments and/or agri-environmental measures under the Common Agricultural Policy second pillar.**
- the separate collection of biowaste**
- the treatment of biowaste in a way that fulfills high levels of environmental protection and high product standards**
- the establishment of systems of quality assurance for compost**

Article 14 (new)

In order to support the measures as referred to in Article 13, the Commission shall, no later than 30 June 2008, present to the European Parliament and the Council legislation on the recycling of organic matter.

Justification

Organic matter decline is legitimately recognised as threat to soils in the draft proposal but not properly tackled. Clear incentives to turn organic matter back into soils are unfortunately lacking. An appropriate biological treatment of waste is a solution to tackle organic matter decline.

Considering that no dedicated action on the biological treatment of waste (so called "biowaste Directive") was taken by the Commission despite several calls from the European Parliament, the Council and many stakeholders, a dedicated chapter on organic matter recycling should be added to the proposal. The chapter should also include the call for a separate Directive.

Amendment 4 Annex I

Common elements for the identification of areas at risk of erosion
Soil typological unit (STU) (soil type)
Soil texture (STU level)
Soil density, hydraulic properties (STU level)
Topography, including slope gradient and slope length
Land cover
Land use (including land management, farming systems and forestry)
Climate (including rainfall distribution and wind characteristics)
Hydrological conditions
Agro-ecological zone

Common elements for the identification of areas at risk of erosion
Soil typological unit (STU) (soil type)
Soil texture (STU level)
Soil density, hydraulic properties (STU level)
Organic matter content
Topography, including slope gradient and slope length
Land cover
Land use (including land management, farming systems and forestry)
Climate (including rainfall distribution and wind characteristics)
Hydrological conditions
Agro-ecological zone

Justification

Below a certain level of organic matter content, soils are considered at risk. The level of organic matter content should therefore be an element for the identification of areas at risk of erosion.

DECONTAMINATION

Financial security instruments

Amendment 5 Recital

Member States shall take appropriate measures to encourage the development of instruments and incentives in order to provide effective coverage for remediation obligations under this Directive.

Justification

The lack of instruments and incentives, as well as the lack of financial and legal clarity, has hindered the development of the remediation sector. See justification below.

Amendment Recital 13

Sealing is becoming significantly more intense in the Community as a result of urban sprawl and increasing demand for land from many sectors of the economy, and this calls for a more sustainable use of soil. Appropriate measures are needed to limit soil sealing, for instance by rehabilitating brownfield sites, thus reducing the depletion of greenfield sites. Where sealing does occur Member States should provide for construction and drainage techniques that would allow as many soil functions as possible to be preserved.

Sealing is becoming significantly more intense in the Community as a result of urban sprawl and increasing demand for land from many sectors of the economy, and this calls for a more sustainable use of soil. Appropriate measures are needed to limit soil sealing, for instance by rehabilitating brownfield sites, thus reducing the depletion of greenfield sites, ***as put forward in the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "Towards a thematic strategy on the urban environment"***. Where sealing does occur Member States should provide for construction and drainage techniques that would allow as many soil functions as possible to be

preserved.

Member States shall consider the appropriate use of market instruments (e.g. incentives and taxation measures) to encourage the rehabilitation of brownfield sites.)

Justification

The rehabilitation and reuse of brownfield sites enable to reduce soil sealing, save free or green space, ensure a rational use of soil, as put forward in the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "Towards a thematic strategy on the urban environment".

**Amendment 5a
Recital (new)**

In order to avoid consumption of virgin land, the sealing of the soil as well as the reduction of its functions, industrial and urban spatial planning should preferably occur on sites already affected, in the past or at present, by industrial and urban planning.

Justification

Within the Soil Directive, the European Parliament shall take action to encourage the prevention of virgin land consumption. New urban or industrial spatial planning shall preferably not involve virgin land, but sites on which human planning activities already occurred. This would avoid consumption of virgin land and foster the cleaning up of sites already affected by human activities.

**Amendment 5b
Article 4**

Member States shall ensure that any land user whose actions affect the soil in a way that can reasonably be expected to hamper significantly the soil functions referred to in Article 1(1) is obliged to take precautions to prevent **or** minimise such adverse effects.

Member States shall ensure that any land user whose actions affect the soil in a way that can reasonably be expected to hamper significantly the soil functions referred to in Article 1(1) is obliged to take precautions to prevent, **monitor and** minimise such adverse effects.

Member States shall set up regulations in order to guarantee that subjects, exercising an activity potentially causing introduction of dangerous substances on or in the soil, shall create adequate financial resources to support the costs of potential future remediation linked to their activity.

Justification

Monitoring is also an essential condition in order to avoid the hampering of the soil functions referred to in Article 1(1).

In many cases remediation costs are "socialized", that is borne by the public and not by the polluter. Therefore, Member States shall set up regulations whereby subjects exercising an activity potentially causing introduction of dangerous substances on or in the soil shall create adequate financial resources to support the costs of potential future remediation. This would be in line with the "polluter pays principle".

Amendment 5c

Article 5

For the purposes of preserving the soil functions referred to in Article 1(1), Member States shall take appropriate measures to limit sealing or, where sealing is to be carried out, to mitigate its effects in particular by the use of construction techniques and products which will allow as many of those functions as possible to be maintained.

For the purposes of preserving the soil functions referred to in Article 1(1), Member States shall take appropriate measures to limit sealing or, where sealing is to be carried out, to mitigate its effects in particular by the use of construction techniques and products which will allow as many of those functions as possible to be maintained. **For such purpose Member States shall facilitate industrial and urban spatial planning on areas already affected, in the past or at present, by industrial and urban planning.**

Justification

New urban or industrial planning shall preferably occur on sites already interested by planning activities. This would allow avoiding consumption of virgin land and fostering, if necessary, the cleaning up of sites already affected by human activities.

Amendment

Article 11

3. In accordance with the following time-table, the competent authorities shall **measure the concentration** levels of dangerous substances in the sites identified in accordance with paragraph 2, and where the levels are such that there may be sufficient reasons to believe that they pose a significant risk to human health or the environment, an on-risk assessment shall be carried out in relation to those sites:

- (a) within **five** years from [transposition date], for at least 10% of the sites;
- (b) within **15** years from [transposition date] for at least 60% of the sites;
- (c) within 25 years from [transposition date] for the remaining sites;

3. "In accordance with the following time-table, the competent authorities shall **estimate** the levels of dangerous substances in the sites, identified in accordance with paragraph 2. **This estimation should be established in priority on the basis of existing data and information contained in the European Pollutant Release and Transfer Register established by REGULATION (EC) No 166/2006 provides sufficient data and information.**

In case of no sufficient information would be available, the competent authorities shall measure the concentration levels of dangerous substances. In both cases, these data are limited to those substances that are linked to the potentially polluting activity on the site.

Where the levels are such that there may be sufficient reasons to believe that they pose a significant risk to human health or the environment, an on-risk assessment shall be carried out in relation to those sites. **The undertaking of the risk assessments shall be prioritised according to the level of risk to human health and the environment:**

- (a) within **2** years from [transposition date], for at least 10% of the sites,
- (b) within **8** years from [transposition date] for at least 60% of the sites;
- (c) within 25 years from [transposition date] for the remaining sites

Justification

The European Pollutant Release and Transfer Register established by Regulation (EC) No 166/2006 provides a publicly accessible electronic database and contains information on releases of pollutants to

air, water and land, as well as transfers of waste and pollutants (including greenhouse gases, acid rain pollutants, ozone-depleting substances, heavy metals and certain carcinogens such as dioxins), where emissions exceed certain threshold values and result from specific activities, in particular those covered by Directive 96/61/EC (the "IPPC" Directive), also referred to in Annex II of the Framework Directive on Soil Protection.

The time frame seems extremely extensive to reduce the negative impacts of major contaminated sites. A prioritisation must be introduced for the realisation of risk assessments according to the level of risk to human health and the environment. We therefore suggest to reduce inventory periods from 5 years to 2 years for sites referred to in (a), and to start with the inventory of those sites which pose the most significant risk to human health.

Amendment 5d

Article 13.3

(3) Member States shall set up appropriate mechanisms to fund the remediation of the contaminated sites for which, subject to the polluter pays principle, the person responsible for the pollution cannot be identified or cannot be held liable under Community or national legislation or may not be made to bear the costs of remediation.

(3) Member States shall set up appropriate mechanisms **at the national level (including, without limitation, investment aid, tax exemptions or reductions, tax refunds direct price support schemes)** to fund the remediation of the contaminated sites for which, subject to the polluter pays principle, the person responsible for the pollution cannot be identified or cannot be held liable under Community or national legislation or may not be made to bear the costs of remediation. **With a view of fostering remediation, Member States shall guarantee the proper functioning of these mechanisms in order to maintain investor confidence and achieve the aims of this Directive.**

Justification

Given the fact that in most of the cases the polluter is not identifiable, funding mechanisms are very important for achieving the aims of this Directive. Given the high importance of this paragraph, the Directive should propose a non exhaustive list of funding mechanisms and stress the importance of creating investors' confidence. Lacking of investors' confidence will be counterproductive to getting contaminated sites remediated by subjects different from those who are to be regarded as being the polluters.

Amendment 6

Article 13.3 (new) , Remediation

For this purpose, Member States shall take appropriate measures to encourage the development of financial security instruments and markets.

Justification

The lack of financial security instruments and markets has hindered the development of the remediation sector. These instruments should cover the potential insolvency of the liable entity or the closedown/after-care of the polluting activity. As already foreseen in Directive 2004/35/EC on Environmental Liability, Member States should foster the development of appropriate financial mechanisms.

Amendment 7

Article 16, Reporting

(h) a report on conditions of insurance and other types of financial security for remediation.

(h bis) a report on the disfunctions existing

on a national level in relation to remediation of contaminated sites.

Justification

The actions put in place by the Member States in order to develop the appropriate financial security instruments should be monitored. Any obstacles for achieving the remediation of contaminated sites should also be identified.

Authorisation procedure for remediation

Amendment 8
Article 13.4 (new)

4. Member States shall set up a regulatory framework with regard to authorization procedure for remediation, including the following aspects:

- coordination between the different administrative bodies as regards deadlines, reception and treatment of applications for remediation authorizations,**
- drawing up a fast-track planning procedure for remediation.**

Justification

In order to foster remediation activities, it is necessary to eliminate the disincentives for remediation which still exist in several Member States. Procedures for remediation involve several administrative bodies and often last very long. In order to avoid delays and cut red tape, authorisation procedures for remediation should be streamlined.

Amendment 9
Article 16, Reporting

(i) a report on measures taken pursuant to article 13 paragraph 4.

Justification

See above.

Risk assessment for contaminated sites

Amendment 10
Article 17, Exchange of information

The Commission shall develop guidelines on risk assessment methodologies for contaminated sites.

Justification

Risk assessment methodologies for contaminated sites vary from one Member State to another, and even from one region to another. Harmonisation at European level is therefore required.
