

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** **6 April 2022**

**Public Authority:** **Health and Safety Executive (HSE)**  
**Address:** **5N3 Redgrave Court**  
**Merton Road**  
**Bootle**  
**Merseyside**  
**L20 7HS**

**Decision (including any steps ordered)**

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1. The complainant requested environmental information on 9 January 2022 (and resent on 6 February 2022) relating to Coal Tips in Rhondda Cynon Taf. HSE has failed to respond to this request.
2. The Commissioner considers that the HSE has breached regulation 5(2) EIR as it has failed to respond within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide a response to the information request originally made on 9 January 2022 in accordance with the EIRs.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

**Request and response**

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5. On 9 January 2022 the complainant requested information of the following description:

"Following the publication by the Welsh Government of dangerous Coal Tips in Wales Rhondda Cynon Taf has the most with 23 Category D 52 Category C 95 Category B 89 Category A 44 Category R\* a total of 303.

After the Aberfan tragedy in 1966, you would be aware of the legislation that came about after that disaster that eventually brought about the establishment known as the Health and Safety Executive.

Under the Freedom of Information Act and Environmental Information Regulations please can you provide answers to the following questions?

Coal tips have a historical record of being unstable records show in 2014 a number of coal tips were established as dangerous structures in the Rhondda and Cynon Valleys and needed remedial work on them. As dangerous coal tips are notifiable Rhondda Cynon Taf Council notified HSE of the dangerous coal tips discovered in Rhondda and Cynon Valleys? Please can you supply a copy of the reports submitted by Rhondda Cynon Taf Council and a copy of your recommendations and response?

The 23 coal tips with a category D within the boundary of RCT have you received reports on category D coal tips from Rhondda Cynon Taf Council? The Coal Authority? Celtic Energy Limited? Or any of the private owners of coal tips? Within the boundary of Rhondda Cynon Taf.

The 52 coal tips with a category C within the boundary of RCT have you received reports on category C coal tips from Rhondda Cynon Taf Council? The Coal Authority? Celtic Energy Limited? Or any of the private owners of coal tips? Within the boundary of Rhondda Cynon Taf.

How many coal tips have been reported to HSE in the last 15 years and what category? Where were the locations?

### **HSE Guidance 61**

HSE section 347 A geotechnical assessment by a geotechnical specialist will be needed where it is apparent that failure of a tip could seriously injure or kill people, eg a tip near a public roadway, house or in close proximity to workplaces. Many old coal tips are sited above houses schools and public roads all represent a danger, as there is evidence of movement at some sites, the public should not live in fear when there is heavy rain in the forecast.

What influence and recommendations has HSE had with Rhondda Cynon Taf Council Natural Resources Wales and Welsh Government to remove the danger away from the public?

## **HSE Guidance 61**

Section 369 In the case of an existing tip that was not previously classified, the mine operator must inform HSE as soon as possible after their receipt of the geotechnical assessment which concludes that the tip is a significant hazard. Old coal tips with no mine operator would it be the Local Council or [Natural Resources Wales](#) who must inform HSE of the coal tips geotechnical assessment which concludes that the tip is a significant hazard? Has HSE received any reports and who from?

Welsh Government minerals technical advice note 2: Coal January 1009

## **Spoil heaps**

Part II deals with "disused" tips, on land where extraction is not continuing. The duty to ensure the integrity and safety of the tip lies with the landowner, the duty to enforce any remedial action lies with the local authority.

Local authorities may undertake work to determine the condition of the disused tip. Where, by reason of instability, the tip is a danger to the public, they can serve notice on owners to undertake the necessary works as specified in the notice.

Private individuals or companies now own many coal tips in Rhondda Cynon Taf of the 23 coal tips with categories D and C what steps is HSE taking to establish ownership of the coal tips? How many private owners have been identified?

How many coal tips in Rhondda Cynon Taf come under the [Control of Major Accident Hazards Regulations 1999](#)? Where are they sited?"

6. The HSE has failed to provide a response to this request.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 24 February 2022 as the HSE failed to respond to the request.
8. The Commissioner contacted the HSE on 5 and 28 March 2022 to ask it to provide a response to the complainant in relation to this request. The HSE has failed to provide a response to the complainant or contact the

Commissioner in response to his correspondence of 5 and 28 March 2022.

9. The Commissioner has considered whether the HSE complied with its obligations under regulation 5(2) EIR in its handling of this request.

### **Reasons for decision**

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Regulation 5: duty to make environmental information available

10. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request. This is however subject to any exceptions that may apply. Regulation 5(2) states that such information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
11. The original request was made on 9 January 2022 and a response has not been provided. The Commissioner therefore finds that the HSE breached regulation 5(2) EIR in failing to provide a response within 20 working days.

## Right of appeal

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12. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from: First-tier Tribunal (Information Rights)

GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@Justice.gov.uk](mailto:grc@Justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

13. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
14. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed**.....

**Gemma Garvey**  
**Senior Case Officer**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**