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Submitted to Law Commission consultation on regulating coal tip safety in Wales
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About you

What is your name?

Name:
Paul Ransome

What is the name of your organisation?

Enter the name of your organisation:

Neath Port Talbot County Borough Council

Are you responding to this consultation in a personal capacity or on behalf of your organisation?

Response on behalf of organisation

If other, please state::

What is your email address?

Email:
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What is your telephone number?

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If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Explain to us why you regard the information as confidential:

Tips associated with operational mines

Consultation Question 1: We provisionally propose that the existing regulatory regime for tips associated with operational mines should not be altered. Do you agree?

Yes

Please expand on your answer::

Definitions of a tip and of a disused tip

Consultation Question 2: We seek views on whether a satisfactory definition of a disused coal tip could refer to waste from coal mining and whether it should include express reference to overburden dumps, backfill, spoil heaps, stock piles and lagoons.

Please give your views on whether a satisfactory definition of a disused coal tip could refer to waste from coal mining and whether it should include express reference to overburden dumps, backfill, spoil heaps, stock piles and lagoons.:

In order to give clarity, it may be helpful to make express reference to what is covered by the term 'waste from coal mining' (e.g. a lagoon may not automatically be considered as such). Maybe introduce the possibility of introducing land raises or depressions associated with tips. NPT also have a number of quarry waste tips and the extent, if any, to which this new legislation may affect their management may need to be considered.

Consultation Question 3: We provisionally propose that any new legislation should not apply to a tip to which the Quarries Regulations 1999 or the Mines Regulations 2014 apply. Do you agree?

Yes

Please expand on your answer::

Since disused tips are defined as ones to which these two pieces of legislation do not apply it would seem sensible to retain that separation when the new legislation is introduced.

Definition of a tip owner

Consultation Question 4: To the extent that liability under the new regulatory framework rests with the owner of land containing a tip, we provisionally propose that the owner should be defined as the freeholder or a leaseholder under a lease of 21 or more years, except where their interest is in reversion upon a term of 21 or more years. Do you agree?

Yes

Please expand on your answer::

A single supervisory body for disused tips

Consultation Question 5: We provisionally propose that a supervisory authority with responsibility for the safety of all disused coal tips should be established. Do you agree? If not, please set out the alternative that you would favour.

Yes

Please expand on your answer::

Yes, subject to the funding for the body being additional. Local authorities are already stretched and it would be helpful to have one central body with the required skills to support coal tip safety activity.

It would result in a consistent approach across Wales and ensure there is capacity when needed, given the loss of expertise over recent years in local authorities in the face of financial pressures. With climate change and more intense downfalls of rain expected, the demands are likely to outweigh local authority resources in most cases.

Consultation Question 6: We seek views on whether the supervisory authority should be an existing body or a newly created body.

Please give your views on whether the supervisory authority should be an existing body or a newly created body.:

The Coal Authority would be well-placed to act as a supervisory body given the skills and experience within the organisation. However (i) it is understood that it may not be able/permitted to take on this role and (ii) a base within Wales for the organisation would be essential, reporting and accountable to Welsh Government. The possibility of a joint venture between the Coal Authority and Natural Resources Wales might be worthy of consideration if it could address both issues.

Having, or being able to attract, the requisite range of skills and experience would be vitally important whatever the nature of the body that takes on the role.

Setting up of a new National Organisation would be beneficial with help and guidance from the experts The Coal Authority in its set up.

Consultation Question 7: If a new body is established, what form should the new body take? Should it be, for example, a central public body, a corporate joint committee of local authorities under the Local Government and Planning (Wales) Act 2021, or something else?

Explain what form you think the body should take (if created). Should it be, for example, a central public body, a corporate joint committee of local authorities under the Local Government and Planning (Wales) Act 2021, or something else?:

A central National body would have the advantage of being able to adopt a consistent approach across Wales. Within a CJC arrangement regional variations might develop and the burden would probably fall disproportionately on those LAs with a large number of tips in their areas. There will have to be a good relationship between a CJC, the Supervisory Body and the constituent LAs. Some form of local government representation on the board of the Supervisory Body should be part of the governance arrangements.

Consultation Question 8: We provisionally propose that the supervisory authority's duty to ensure the safety of tips should be framed as a general one, rather than one limited to specified risks. Do you agree?

Yes

Please expand on your answer::

In the first instance, the duty should be on the land/tip owner to maintain the safety of the tip. They should be given the opportunity to address any issues that are identified. Should intervention be necessary, due to inaction on the part of the land/tip owner, a 'general duty' on the Supervisory Body would have to be defined, especially if there is any possibility of the role/responsibility being passed to LAs to be discharged. In defining the duty, though, it is hard to see how this could be done without specifying the types of risk expected to be managed under the duty?

Base line inspections by the Supervisory Authority should classify the tip, evaluate the risk and carry out the risk assessment prior to its registration.

Tip register

Consultation Question 9: We provisionally propose that a central tip register should be compiled and maintained. Do you agree?

Yes

Please expand on your answer::

Yes, this would provide an accurate and consistent picture across Wales that could be continually updated.

Consultation Question 10: We provisionally propose that the contents of the tip register should be prescribed by the Welsh Ministers by statutory instrument. Do you agree?

Yes

Please expand on your answer::

Yes – again this would support a clear and consistent approach.

Consultation Question 11: We provisionally consider that:

Yes

Please expand on your answer::

The supervisory authority should be required to maintain a comprehensive and up-to-date register. The question of whether a tip exists or not would seem relatively non-controversial, but issues relating to land ownership could be taken on appeal for determination by an appropriate independent body. It is the details contained on the register, though, that will be the key issue for landowners. Allocation to a high-risk category could impact on the value of the land on which the tip is located as well as surrounding areas.

Consultation Question 12: We seek views on whether an owner of land should be under a duty to notify the supervisory authority of any tip of which the landowner is or becomes aware is situated on land owned by the landowner and not currently included on the register, unless the landowner has reason to believe that it has already been registered.

Please give views on whether a landowner should be under a duty to notify the supervisory authority of any tip which the landowner is or becomes aware is situated on land owned by the landowner which is not currently included on the register. :

If the register is to be as comprehensive as possible it would make sense to place land owners under a duty to notify the supervisory body of any un-registered tip. Even with maps of tip boundaries being made available to landowners, it may be difficult to prove whether or not a landowner 'has reason to believe' that a tip on their land has been registered, especially if it is adjacent to a tip that is already registered.

Base line data should be agreed with the Supervisory Authority and notified to land owners.

Consultation Question 13: Do you consider that the information in a tip register should or should not be publicly accessible? Are there any particular categories of information that should not be published?

The information in the tip register should not be publicly accessible

Please list any particular categories of information that should not be published::

There will be a need to comply with GDPR requirements in relation to any personal information about the landowners. Making categories of tips publicly available could run the risk of 'blight' for high-risk tips, as noted above, impacting on land values and property prices in the vicinity. Should they show up on LA's Searches.

Initial inspection

Consultation Question 14: We provisionally propose that, upon the entry of a tip onto the register, the supervisory authority should be under a duty to arrange an inspection of the tip unless it considers that a sufficiently recent and thorough inspection has been conducted. Do you agree?

Yes

Please expand on your answer::

Every tip should be subject to an inspection to ascertain/confirm the level of risk.

Tip management plans

Consultation Question 15: We provisionally propose that:

Yes

Please expand on your answer::

This will assist with the aim of achieving a consistent approach across all tips.

Classification of tips and designation of higher risk tips

Consultation Question 16: We provisionally propose that the risk classification of coal tips should have regard to the risk of instability of a tip and the consequences of a slide of spoil. Do you agree?

Yes

Please expand on your answer::

Tip instability can lead to land slips in certain areas of geological instability, plus redirection of established water courses.

Consultation Question 17: Should coal tip classification also have regard to the risk the tip presents of pollution, combustion or flooding?

Yes

Please expand on your answer: :

These risks should also be considered as part of the assessment/plan.

Consultation Question 18: We provisionally propose that the coal tips safety legislation should provide for the designation of a coal tip by the safety authority as "higher risk" where the tip meets criteria prescribed by the Welsh Ministers by statutory instrument. Do you agree?

Yes

Please expand on your answer::

Categorisation of tips will be important in terms of prioritisation of work and determining of resource allocation. It does raise the possibility that designation as a high-risk tip will affect land and property values. LAs have already experienced Freedom of Information requests in relation to tips and it would be difficult, once inspections are complete, to argue that the designation is not in the public interest.

There should be a full risk evaluation and assessment of all tips, then a categorisation of all tips i.e. spoil heaps, mining, quarrying, excavation residue, waste tips and all materials overlain by materials likely to flow when wet.)

Consultation Question 19: We seek views on whether the designation of a tip should be by reference to any of the following, or other, criteria:

Give your views on whether the designation of a tip should have reference to any of the following, or other, criteria: the tip shows signs or has a recent history of movement or instability, a slide of spoil from the tip would be likely to impact or affect buildings or other infrastructure, there is a substantial risk of the tip releasing dangerous pollution into the environment, there is a substantial risk of the tip causing flooding, there is a substantial risk of the material in the tip spontaneously igniting or the tip requires engineering work.:

All of the above should be taken into consideration in relation to tip safety. Along with potential for further instability on adjoining land.

Consultation Question 20: We provisionally propose that a person aggrieved by a designation of a coal tip as higher risk should have a right of appeal. Do you agree?

Yes

Please expand on your answer::

Given the potential financial implications for a landowner, it would seem appropriate that they have a right of appeal to an independent body (provided a body with the necessary knowledge and understanding can be identified). It does raise the question of whether that right should be limited to the immediate landowner or available to adjacent land and property owners who might also be affected. Any such right, though, should not be allowed to delay safety work identified as necessary.

Consultation Question 21: We provisionally propose that in the case of a designated tip the supervisory authority itself should normally be under a duty to carry out the operations specified in the tip management plan for the tip. Do you agree?

Yes

Please expand on your answer::

Yes, in relation to inspections. The owner of the land on which a designated tip is situated should be engaged in the development of the management plan and encouraged, wherever possible, to take the actions identified in that plan themselves. The landowner should be responsible for meeting the cost of these actions. However, if they are unwilling or unable to do so then the supervisory authority should be under a duty to step in and reclaim costs. Otherwise, knowing the supervisory authority is under a duty to act may deter some landowners from taking necessary steps. For cases where landowners are unable to meet the costs (in full or in part), the supervisory body will need to be allocated funding at a level that enables it to undertake works identified in management plans. The duty will be unworkable if this is not the case (unless this question refers solely to the inspection part of the management plan).

Consultation Question 22: We provisionally propose that an authority should be empowered to enter into a tip maintenance agreement with the owner of land registered in the tip register, providing for the carrying out by the owner of the operations specified in the tip management plan. Do you agree?

Yes

Please expand on your answer::

The landowner should be responsible for carrying out the operations specified in the plan. The supervisory authority may require compulsory purchase powers to avoid the creation of 'orphan assets' where, for example, landowners declare bankruptcy. Any maintenance agreement would need to transfer with the ownership of the tip.

Consultation Question 23: Do you agree that a duty of inspection should fall to an authority to ensure compliance with the tip maintenance agreement?

Yes

Please expand on your answer::

Consultation Question 24: We provisionally propose that an authority should be able to make a tip maintenance order where:

Yes

Please expand on your answer::

The above provisions would help to deal with the issues raised above in relation to owners being unable or unwilling to carry out necessary works. Is there a requirement for a grant aided scheme for land owners through no fault of their own are put at risk.

Consultation Question 25: Do you think that responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority or lie with local authorities? If you think that responsibility should lie with the local authority, should this include both making and supervising the agreements, or should the supervisory authority be given the duty to make the agreement?

Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority

If you think that responsibility should lie with the local authority, should this include both making and supervising the agreements, or should the supervisory authority be given the duty to make the agreement?:

It would be better if there is one supervisory body responsible for ALL tip maintenance agreements, irrespective of the risk level to maintain a consistent approach and to not unduly burden LA's with a higher number of tips within their boundary.

Please expand on your answer(s): :

Enforcement powers

Consultation Question 26: We provisionally propose that:

Yes

Please expand on your answer::

All of the above provisions are necessary for enforcement activity where this is necessary.

Consultation Question 27: We provisionally propose that failure, without reasonable excuse, to comply with a tip maintenance order should be a summary offence. Do you agree?

Yes

Please expand on your answer::

Charging powers

Consultation Question 28: We provisionally propose that the supervisory authority and any other public bodies having functions under the coal tip safety scheme should have a general power to charge fees and expenses to the owner of land containing a tip, which could include periodic charges. Do you agree?

Yes

Please expand on your answer::

There is a need for this general power within the legislation.

The detail of how these fees would be calculated is for further discussion. However, it will be important that fees are fair, proportionate, transparent and consistent across Wales.

By itself, having the power to charge will not address the issue of landowners who refuse to pay but there are other remedies in that respect.

It is important that the system established for monitoring, charging and pursuing non-payers does not end up being more expensive and slower than directly carrying out preventive maintenance work.

Appeals and claims for compensation or contribution

Consultation Question 29: Is it appropriate for legislation underpinning a new coal tip safety regime to include:

Please comment on each provision in turn: :

It is important that, in refreshing the legislation, a priority is to simplify arrangements as far as possible and limit the opportunities for expensive and time-consuming court cases.

However there do need to be adequate protections in place to safeguard the interests of landowners and allow them the right to appeal against decisions (with appropriate measures available for dealing with emergency situations).

Panels of Engineers

Consultation Question 30: Do you think that a panel of engineers with specialist qualifications to inspect and supervise prescribed types of work on coal tips is a good way to ensure consistency and safety?

Yes

Please expand on your answer::

This would be a good way of ensuring relevant expertise, with professional accreditation. As the consultation document notes, it may add to the costs but would help to ensure a consistent approach. However if the qualifications are too onerous it will limit the availability of staff and the system could grind to a halt.

Clashes between environmental legislation and tip safety

Consultation Question 31: Do you think that the Welsh Ministers should be able to give directions to the supervisory authority and other relevant parties regarding actions to be taken in response to a coal tip emergency?

Yes

Please expand on your answer::

A power of direction along the lines of the Civil Contingency Act powers would give the flexibility needed to ensure that actions taken at the time of an emergency are lawful.

Consultation Question 32: Do you think that the power of the supervisory authority to take action in an emergency pursuant to regulation 40 of the Environmental Permitting Regulations (England and Wales) 2016 should be widened? If so, in what way?

Yes

If 'yes', in what way? :

Any other comments: :

Consultation Question 33: Do you suggest any other approaches to deal with clashes between environmental legislation and tip safety? If so, please set them out.

Please set out any other approaches to deal with clashes between environmental legislation and tip safety. :

Reclamation projects

Consultation Question 34: Do you consider that new tip safety legislation should be combined with provision for the consideration of tip reclamation? If so, do you favour any particular model?

Yes

If 'yes', do you favour any particular model? :

Any other comments: :

In light of climate change impacts there is a need for more radical action than remediation. This should extend to consideration of reclamation of tips, with the potential to bring sites back into beneficial use. Given constraints over development in flood plain areas the ability to make some significant, reclaimed sites could make an important contribution to climate resilience and green recovery efforts more generally.

Additional comments

Do consultees have any additional comments to make in respect of the consultation paper that have not been addressed in a previous question?

Please share any additional comments below::