

DMQTWB 27 - Evidence from: British Aggregates Association

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Tomenni Mwyngloddiau a Chwareli Nas Defnyddir (Cymru) | Disused Mine and Quarry Tips (Wales) Bill

1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

There is no requirement for the bill as the Mines and Quarries (Tips) Act 1969 and the regulations published in 1971 dealt with open tips and closed tips and the categories of the tip based on gradients of the base, the ground conditions, the height of the tip and the surface area. The British Coal Corporation and their successors were responsible for inspecting tips within their district that were former colliery spoil tips and the Coal Authority who manage the coal industry's assets should work with Local Authorities to ensure that each tip has been risk assessed. As regards the tips at quarries the Mines and Quarries (Tips) Regulations 1971 provide for the owner to be responsible for safety and stable condition of the tip and that still applies. The problem is the legacy of the coal mining industry and the underground mines that were abandoned by the National Coal Board and British Coal Corporation. Quarry tips that were closed prior to 1999 are assessed by the landowner as part of the completion of the site and the closure is regulated by the Health and Safety Executive and the Mineral Planning Authority based on the planning conditions at the time. Quarry tips that were open after 2000 are regulated by the Quarries Regulations 1999 regulations 12,13, 16 and 30 to 37 for geotechnical assessments of tips. The Act and Regulations require amending to allow Local Authorities or their nominated body to inspect coal tips, a new bill is not required. The evidence and work undertaken by the Coal Authority has been solely on coal tips and not on tips within quarries on non coal mines. The previous consultations focussed on legacy coal mining tips and not on the wider minerals sector.

2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ Part 1 - The Disused Tips Authority for Wales (sections 1 to 5 and Schedule 1)

The work undertaken on behalf of the Welsh Government by the Coal Authority was solely on coal tips that were part of the nationalised industry and other assets that were taken over by the NCB in 1947. The Coal Authority or now the Mine Remediation Authority are the successors to the NCB and British Coal Corporation as they manage the legacy issues of the coal mining industry. It is understandable the Authority would inspect colliery spoil tips but the BAA are not aware that the survey and inspections have been extended to tips within quarries or non coal mines. From the BAA members experience the inspection of tips under the Quarries Regulations 1999 and the approved code of practice has worked extremely well and is continually monitored every two years. The BAA fail to see how the legislation can be extended to non coal mining tips when no research has been undertaken and no asset list has been prepared.

The problem lies with the coal mining legacy issues of spoil heaps being placed on land above areas of population and infrastructure that have not been regularly inspected by the Coal Authority or the Local Authority unless it was an emergency.

It is unclear where these professional engineers and geologists experienced in geotechnical engineering will come from when the current Authorities have not been able to carry out their statutory duties due to lack of expertise and funds. The quarrying and civil engineering sectors are struggling to hire engineers and geologists who can carry out the geotechnical work on operational mines and quarries, never mind closed and abandoned mines. The Coal Authority probably don't have the expertise now that they once had as most of the staff who have knowledge of coal mining and colliery tip inspections and record keeping will have retired.

The proposal goes beyond the White Paper and the Law Commission report which was purely to address the legacy coal mining issues with tips and lagoons. The bill should not be extended to include operational quarries and non coal mines as they are regulated under the Quarries Regulations 1999 and the HSE.

The powers being afforded to Welsh Ministers under this bill are beyond the previous consultations and now include all quarries and mines. The issue of

ownership has to be addressed first as in most cases the surface will be in one ownership and the minerals in another.

Mineral law is a complex subject and the owner of land where a tip is will be difficult to prove unless it is an operational facility where the onus is on the operator to manage excavations and tips.

On the other hand the colliery spoil tips were either made by coal mining companies that were nationalised and therefore became an asset of the State or made by operational NCB and BCC mines before being privatised leaving the legacy of these tips with the Coal Authority.

- **Part 2 - Assessment, registration and monitoring of disused tips (sections 6 to 32 and Schedule 2)**

The British Aggregates Association objects to the provisions in the Bill as it now includes all disused tips in Wales which goes beyond the scope of the consultation on coal tips and the Law Commission report. Consultees have responded to the two previous Welsh Government consultations as it was purely about dealing with coal tips on the surface that had been built from underground mining or some of the opencast sites that were left unrestored. There has been no research on the disused non coal mining and quarry tips in Wales and certainly no consultation with the wider minerals supply sector. The regulatory impact assessment (RIA) can only have considered the coal mining legacy so it is flawed as the cost of the service when adding non coal mining assets into the remit, with no research has not been quantified. It is assumed there are 20,000 non coal tips in Wales that will require assessment. Further research is required if this Bill is to include non coal mining tips as it is clear there will be considerably more work based on the number given in paragraph 8.18. It is clear that the author of the Bill has not discussed the work required for a geotechnical assessment for a tip under the Quarries Regulations 30 to 37 and the Approved Code of Practice and the time taken to complete one whether for a coal tip or quarry. The report is the same for a disused tip as it is for an active tip.

- **Part 3 - Dealing with tip instability and threats to tip stability (sections 33 to 54 and Schedule 3)**

The British Aggregates Association know the provisions in the Bill are not workable as there has been no research on non coal mining tips or the work that has been undertaken on such tips since the Mines and Quarries (Tips) Regulations

1971 that came into effect on the 1st October 1971. Records will be kept of these tips and quarries / mines under these regulations by the HSE, the Planning Authority and the operator and most likely the minerals / landowner. The Bill should deal with the coal mining legacy issues as clearly they are the major risk to human health and well being and infrastructure in the Welsh coal mining areas particularly the South Wales Coalfield.

The Authority could accept the function of Local Authorities in relation to tips inspections under the Mines and Quarries (Tips) Act to deal with the colliery spoil tips under the same classification. Non coal mining tips can continue to be assessed by the quarrying sector, the HSE and the Minerals Planning Authorities when active. Non coal mine tips are usually inspected by minerals company that built them or the landowner under some clause in the working agreement. As the regulations have been in place for over 50 years it is unlikely that there are any tips that are a hazard unless they are older than 50 years or before the Town and Country Planning Act.

▪ **Part 4 - Supplementary (sections 55 to 70)**

The British Aggregates Association do not see any issues with the Bill's provisions on the "relevant public authority" or their function as it applies to tips. The issue is the consultations and the Law Commission report, the research and the Coal Authority assessment only related to coal mining legacy issues and not the wider minerals industry. The risk from tips in Wales are mainly due to colliery spoil tips on the valley sides in South Wales as borne out by the research tabulated on figure 1 on page 22 for each local authority. Non coal mining tips should not be brought into this Bill. If the Welsh Government thinks non coal mining tips should be assessed then the research should be undertaken with full consultation and data gathering with the HSE, quarrying companies, the British Aggregates Association, the Mineral Products Association, Mineral Estate Owners and Mineral Planning Authorities to assess the data that is available on disused tips, the age of the tips and the risk to human health and the environment.

▪ **Part 5 – General (sections 71 to 88)**

The British Aggregates Association does not see any issues with sections 71 to 88 but it should only be applied at the present time to the coal mining tips in Wales as the RIA, funding and research has been undertaken on those tips by the Coal Authority. Disused non coal mining tips such as metalliferous mines, building stone quarries and limestone mines should be inspected under an extension to Tips Regulations until further research is undertaken on the non coal mining tips

in Wales that would involve the BGS, local history societies, the minerals owners and the HSE as they are likely to hold plans of these mines and tips.

3. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

The Bill financial provision is flawed as it is based only on the coal mining related hazards on colliery spoil tips and the Bill. The White Paper did not propose extending the legislation beyond dealing with colliery spoil tips and the powers proposed in this bill go beyond what was previously consulted upon. The colliery spoil tips are or were owned and operated by the National Coal Board and the successor was the Coal Authority who manage the legacy issues. The state was responsible for the safety of the tips hence the person having the responsibility of a closed tip being the owner. With the NCB before privatisation, being the owner of those tips it was clear who to deal with under the Regulations. Now those colliery parcels of land will be in separate ownership so there are issues of who is responsible for the tips, the landowner, the minerals owner, which in the case of coal is still the State or is it the body who created the spoil tip, which again was the NCB or British Coal Corporation. Even when the industry was privatised, the coal still belongs to the State and is licenced by the Coal Authority to allow mining by a third party so they are never the owner of the coal. There is only an evidence base for the Bill for the research undertaken on the colliery tips.

4. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

It is not appropriate to make subordinate legislation without a sound evidence base.

5. Are any unintended consequences likely to arise from the Bill?

Yes, the decision to incorporate Non-Coal Tips into the Bill, without the necessary research, financial risk assessment and engagement through the proper consultation with the wider stakeholders in the non coal mining sector increases the risk of legal challenges, uncertainty of who is responsible as the tip owner and add significant delays and costs. Whether or not these consequences are unintended is unknown, but it will frustrate the intentions of the Bill to deal with risk to human welfare from colliery spoil tips in the South Wales Coalfield.

6. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

The British Aggregates Association's view is that the financial implications for dealing with the coal mining legacy issues could be predicted. To extend that to the wider non coal mining tips and hazard risks based on an assumption there are 20,000 tips in Wales with no other research cannot be quantified.

7. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

The Bill should be restricted to the Coal Mining tips and how to deal with that hazard which is relatively unique in that it is material that has been brought from underground and stored on the surface up above settlements in the South Wales Coalfield and valleys. The North Wales coalfield does not suffer from the same risks and they have mainly been restored for other uses as industrial or commercial development. The extension of the Bill to non coal mining disused tips threatens the financial governance and diverting funds away from dealing with the legacy coal mining issues that State as owner should be held accountable for.