

PROTECT

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 June 2021

Public Authority: Health and Safety Executive

Address: Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

Decision (including any steps ordered)

1. The complainant requested information from the Health and Safety Executive (HSE) about a seed treatment.
2. The Commissioner's decision is that the HSE has failed to carry out a reconsideration (internal review) of a response it provided, under the Environmental Information Regulations ("the EIR"), within 40 working days and has therefore breached Regulation 11 of the EIR.
3. The Commissioner requires the HSE to take the following step to ensure compliance with the legislation.
 - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with Regulation 11 of the EIR.
4. The HSE must take this step 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 20 January 2021, the complainant wrote to the HSE and requested information in the following terms:

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"The application to the Health and Safety Executive ("HSE") for the emergency authorisation of the use of Syngenta's Cruiser SB neonicotinoid seed treatment on sugar beet (the "Application"), which was approved by the Secretary of State on 8 January 2021. For the avoidance of doubt, the authorisation referred to is described in this statement from the Department of Environment,

Any documents, letters or other materials submitted relating to, or in support of, the Application."

6. On 17 March 2021 the HSE wrote to the complainant and refused the request citing regulation 12(5)(e) (commercial confidentiality) and regulation 12(3) (personal data) of the EIR.
7. On 18 March 2021, the complainant wrote to the HSE and requested an internal review. The HSE acknowledged the complainant's request for an internal review on 18 March 2021.

Scope of the case

8. The complainant contacted the Commissioner on 29 April 2021 to complain about the HSE's failure to respond to their request for an internal review.
9. In line with her usual practice, the Commissioner contacted the HSE on 26 May 2021 to highlight the outstanding response. She requested that the HSE complete its reconsiderations within 20 working days.
10. Despite this intervention the HSE has failed to respond to the complainant.
11. The complainant contacted the Commissioner on 25 June 2021 to request a decision notice considering the HSE's compliance with the EIR.
12. The scope of the Commissioner's investigation is to determine whether the HSE has complied with Regulation 11 of the EIR.

Reasons for decision

Was the requested information environmental?

13. Regulation 2(1) of the EIR defines environmental information as being information on:

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"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);"

14. The Commissioner has not seen the requested information but, as it is information relating to seed treatment on sugar beet, she believes that it is likely to be information about the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

Regulation 11 - reconsideration

15. Regulation 11 of the EIR states that:

(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on

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which the applicant believes that the public authority has failed to comply with the requirement.

(3) The public authority shall on receipt of the representations and free of charge—

(a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.

(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—

(a) the failure to comply;

(b) the action the authority has decided to take to comply with the requirement; and

(c) the period within which that action is to be taken.

17. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days, the HSE has breached Regulation 11 of the EIR.

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Right of appeal

16. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF