

**CONSULTATION ON MINERAL PLANNING AUTHORITY FEES FOR
MONITORING MINERAL AND LANDFILL PERMISSIONS**

Report of the Director of Environment

Author: June Kelly (Tel 01992 556224)

1. Purpose of the report

To seek the views of the Development Control Committee with regard to the County Council's response to the Department of Transport, Local Government and the Regions (DTLR) Consultation Paper on Mineral Planning Authority Fees for Monitoring Mineral and Landfill Permissions.

2. Summary

2.1 In August 1999 the Government commissioned research into Mineral Planning Authority (MPA) fees for monitoring mineral and landfill planning permissions. The consultation document follows on from that research and:

- examines the case for establishing a separate fee system (charged by and payable to MPAs or Waste Planning Authorities (WPAs) for an appropriate frequency of monitoring visits to all mineral and landfill sites in their area;
- identifies options for charging and considers the cost/benefits and practicality of implementation of each option

2.2 The main charging options identified were:

- Fees based on the area of the site being worked/filled.
- Fees based on the expected or actual output/input levels.
- Fees based on a flat rate charge irrespective of frequency of visits.
- Fees determined as a rate per visit with MPAs and WPAs determining the frequency.
- Fees based on a possible hybrid of the above options.

2.3 The Government has not yet reached any conclusions on any of the options identified by the consultants, any of which would require primary legislation. The Government are seeking the views of stakeholders and other interested parties on the options and issues identified by the consultants together with any suggestions for alternative approaches.

2.4 A draft response to the Government's Consultation Paper is set out within Appendix 1 of the report.

3. Conclusion

The report concludes that the Director of Environment, in consultation with the Executive Member for Environment, be authorised to respond to the Government on the Consultation Paper based upon the draft response set out in Appendix 1 of this report.

1. Context

- 1.1 Mineral planning permissions are unique in that they can last for many decades; some dating from the early 1940s do not legally expire until 2042. Monitoring and, if necessary, enforcement of the complex and technical planning conditions that now govern them is important to ensure high environmental standards and to maintain credibility of the planning system.
- 1.2 The 1998 Comprehensive Spending Review (CSR) concluded that Mineral Planning Authorities (MPAs) should be empowered to recover the costs of monitoring and enforcing the conditions that govern minerals permissions, to ensure that they have sufficient resources to carry out this aspect of their work properly.
- 1.3 The Government therefore commissioned research to identify and analyse available information on monitoring and enforcement costs in England; identify options for cost recovery; and make recommendations and identify a preferred option.
- 1.4 The consultation document follows on from research conducted by Arup Economics & Planning on behalf of the Department, which:
 - examines the case for establishing a separate fee system (charged by and payable to MPAs or Waste Planning Authorities (WPAs) for an appropriate frequency of monitoring visits to all mineral and landfill sites in their area;
 - identifies options for charging and considers the cost/benefits and practicality of implementation of each option

2. Research into Current Practice and Experience of Minerals Monitoring and Enforcement.

- 2.1 As part of the study referred to in para 1.3, the research carried out to identify and analyse available information on monitoring and enforcement costs focused on authorities that were known to be undertaking a reasonable degree of monitoring. Among this group it was found that two broad organisational approaches were adopted:
 - use of a dedicated minerals and waste monitoring and enforcement officer/team;
 - the integration of monitoring and enforcement with minerals and waste development control activities.
- 2.2 Specialist monitoring officers/teams are generally present in authorities that have a larger number of sites or that take a more proactive approach to monitoring. The main advantages of this approach are that resources are dedicated to that specific task. It also enabled staff to establish a clear programme of inspections. By contrast, although those authorities that have

adopted an integrated approach have successfully achieved periodic monitoring, it was not always possible to give priority to regular monitoring and enforcement activities due to pressure to meet statutory development control times scales.

- 2.3 The Committee will recall that it considered a report in April 2001, which reviewed the monitoring and enforcement of planning permissions and unauthorised development. This considered all sites monitored by the County Council, whilst the DTLR research concentrates only on mineral sites both with and without subsequent landfill. That report highlighted that, in the past, the County Council had followed a number of different models for its monitoring and enforcement function and that it was concluded that a dedicated team represented the most effective option.
- 2.4 The research identified that the style and extent of monitoring work was also very heavily driven by elected member interest. In several cases the resources have been increased and a dedicated team established, where members had decided to give priority to this topic so as to increase confidence that conditions on permissions were followed strictly.
- 2.5 Mineral planning authorities all identified that resources and staff numbers are constantly under pressure and that any increase in monitoring effort from existing resources was unlikely. Equally, while they welcomed a process for charging for monitoring they hoped that any income would be ring fenced for that purpose.
- 2.6 There is a general acceptance that the current level of monitoring is at a less than ideal level. Equally, many parts of the industry have been giving greater emphasis to an improvement in their standards of operation. Many of the problems rest with a few operators who do not subscribe to achieving high standards.
- 2.7 Overall, the perception is that while the industry maybe striving to improve standards, the MPAs do not have the resources to independently monitor all sites to an adequate frequency so as to be able to give the public confidence that problems will be spotted before they become too serious.

3. Best Practice

- 3.1 The consultant's research found that the key to public confidence is better knowledge in the hands of the MPA, and this can be achieved in three ways;

- **Organisational approach**

Organisation of staff is best left to the MPA, dedicated monitoring teams including professional minerals officers are the most effective in that they can give this role a high priority.

Monitoring needs to be supported by a management system, preferably computer based.

- **Frequency of visit**

This should include a mixture of regular proactive visits, averaging between 2 and 6 visits per annum across all sites. In practice some sites will require more visits at critical stages of the operation while dormant sites will require a single visit.

- **Methods**

Conditions need to be carefully written;

A copy of conditions and site plans should be held on site;

MPAs should adopt standardised and transparent report writing systems, including condition checklists;

Use of technology for site visits and keeping of records would need to be part of any new funding system;

Award schemes as incentive for good practice;

Liaison Committees as useful reporting mechanism;

Keeping elected members and public well briefed on their monitoring activities. Detailed annual or quarterly reports.

4. Options for cost recovery

4.1 The final element of the Government's study was for the consultants to identify options for cost recovery, make recommendations and identify a preferred option.

4.2 The main charging options identified were:

- i **Fees based on the area of the site being worked/filled.**

The survey produced no evidence to suggest that the current or desirable monitoring frequency is dictated by the size of the site

- ii **Fees based on the expected or actual output/input levels.**

The practicality of this option depended on the availability of output/input information to the MPA across all mineral types.

- iii **Fees based on a flat rate charge irrespective of frequency of visits.**
This is a very simple option that would be straightforward to administer. However, it could be seen to be a very unfair system as it takes no account of monitoring needs.
- iv **Fees determined as a rate per visit with MPA determining the frequency.**
Potentially this allows charges to be directly related to monitoring activity and costs. It therefore avoids the need for cross-subsidy between good and poor performing operators.
The task of deciding the appropriate number of visits could potentially place an up-front burden on authorities, particularly in cases where there has been limited monitoring in the past or where the results of past monitoring exercises have been poorly recorded.
An alternative solution would be for a good practice guide to be produced so that, before planning permission is actually issued, the MPA and the applicant meet to discuss the frequency of monitoring and likely start date of operations. The final decision on frequency would rest with the MPA.
There could be a significant up-front cost to the operator regardless of the size or profitability of their operations
- v **Fees based on a possible hybrid of the above options.**
A number of hybrids of the above options were also considered.

4.3 The consultants identified a preferred option (option iv) in their report.

5. The Consultation process

- 5.1 The Government has not reached any conclusions on any of the options identified. Adoption of any of the above options would require primary legislation to take effect. The Government is therefore seeking the views of stakeholders and other interested parties on the options identified together with any suggestions for alternative approaches (identifying the costs for industry, local and central government).
- 5.2 Following the current consultation, the Government intends to take a view on a preferred option (or options). A further consultation exercise will be undertaken on the preferred option(s) and a full draft Regulatory Impact Assessment (RIA) will be prepared for comment.
- 5.3 In light of the options and issues raised, the Government has requested that all stakeholders and interested parties put forward their views on fifteen issues in particular and they are set out within Appendix 1 of this report, together with some suggested responses

6. Conclusion

- 6.1 The consultation document reflects and supports the County Council's recent review of its own practices and procedures for the monitoring and enforcement of mineral and waste planning permissions. As such, it would be appropriate for the County Council to endorse the Government's consideration of implementing a fee structure. Clearly, it is widely recognised that the need for pro-active monitoring, if it is to be carried out in a comprehensive and consistent way, has resource implications for MPAs.
- 6.2 Draft responses to the specific questions asked by the Government are set out in Appendix 1, which could form the basis of the County Council's response.

5. Financial Implications

There are none arising directly from this report, but any potential for support for monitoring will assist the County Council's budget.

Background material

DTLR Consultation on Mineral Planning Authority Fees for Monitoring Mineral and Landfill Permissions.

Report to Development Control Committee 3 April 2001, Agenda Item 10, "Review of Development Control Enforcement and Monitoring Provision within Hertfordshire: Recommendations for Environment Select Committee".

**MINERAL PLANNING
FEES FOR MONITORING MINERAL AND LANDFILL PERMISSIONS**

Draft response to DTLR Consultation Paper, 3 September 2001

Issue 1: Should the fees be based on the area of the site being worked/filled?

Answer: No. The area is not the best indicator of scale of problem or potential harm requiring inspection. There would also be significant problems of interpretation as to the site's operational area and variations year on year.

Issue 2: Should fees be based on the expected or actual output/input levels?

Answer: No. This fluctuates and there would always be arguments with the operator in setting the appropriate fee, particularly if based on expected levels. It is not the level of activity at a site that justifies inspection, but the complexities of the permission and conditions attached to them. Furthermore, such a scheme may be complex to determine in the first instance.

Issue 3: Should there be a flat rate fee per site irrespective of frequency of visits?

Answer: Yes. At least all operators would know where they stood (like planning application fees), and certainly this should form the basis of any fee regime for the first year of an operation.

Issue 4: Should the fees chargeable be based on a rate per visit with the MPA determining frequency?

Answer: Possibly. If this is the way forward there is a need for consistency and fairness and for the industry to be assured that this is not a licence for the authority to 'print money'. The rate per visit and the number of visits should take into account whether an operator has met an environmental standard i.e. ISO 14001 and has its own method of ensuring compliance. A recognised facility for independent self-certification should be available to the operator. Unnecessary delays may result if an appeal system was made available to operators unhappy with the MPA's determined frequency.

Issue 5: What should be defined as a chargeable visit?

Answer: The visits in terms of the numbers and periods, which have been agreed with the MPA as being necessary beforehand (i.e. when charging occurs). If the charging is to be reassessed year-on-year, then adjustments can be made in future years if it is considered that more (or

less) visits are required. Again, there is a need to reassure operators that a brief inspection on one issue is not used as an excuse to initiate charging. Ad hoc visits in response to complaints should not be charged for. But may be taken into account when assessing the following year's frequency.

Issue 6: Is there a need to define what constitutes a 'site' in relation to a visit?

Answer: Yes. This should be defined when fees are set at the beginning of the monitoring year.

Issue 7: How many visits should be made annually?

Answer: Hertfordshire County Council has determined that a minimum of two should be made to all operating sites, one of which should be a thorough review. This should be the norm for all sites, subject to amendments, based on the previous year's performance, that more might be required. It may be preferable to adopt a procedure similar to the OPRA (risk-based) system implemented by the Environment Agency, taking into account a number of environmental considerations and the past record of the operator.

Issue 8: What should the visits cover?

Answer: A comprehensive check of all planning conditions and site areas being worked/filled, plus a site report and actions sheet. Subsequent visits would check that actions on the actions sheet had been carried out/

Issue 9: What level of fees should be adopted?

Answer: The charge rate at £120 per daily visit plus overheads at 1999 prices (£360 per visit) seems reasonable. However, site inspections even including time taken driving to and from sites, the comprehensive nature of such visits, never take more than one day in Hertfordshire (except perhaps the first visit which may include familiarisation with the site).

Issue 10: Should charges be set nationally or locally?

Answer: If a nationally agreed regime is recommended, then the fees should be set nationally. If authorities can set their own regime, then they could be nationally or locally set. Whatever way, the monitoring service should be near self-financing. There may be inconsistency if charges are set locally, not reflecting the charges set by other MPAs.

Issue 11: Should each MPA be required to hypothecate the revenue accrued to ensure that it is properly spent on monitoring?

Answer: Yes, or the operator will believe they are just being taxed to finance some other local authority service, or the service provided will be less than required. The essence of the scheme should be self-sufficiency.

Issue 12: Should a ‘Best Practice Monitoring’ guide be issued for MPA’s?

Answer: Yes, to ensure consistency but this need/should not wait until the question of charging is resolved.

Issue 13: Should the status quo be maintained?

Answer: No. The problem at present is a lack of consistency and fairness, despite any good practice guide. Monitoring is the area of mineral and waste development control work that suffers when other priorities dictate (planning applications/appeals/enforcement), even though it may lead to problems in the future from non-detection of a breach of planning control. It is a function underfunded by authorities generally.

Issue 14: Should there be rebates for a good operator?

Answer: Rebates no, but agreement for a lesser inspection regime in the future years should ISO 14001 or its equivalent be followed by the operator and the MPA/WPA has access to the report and action plan.

Issue 15: Should dormant sites be subject to the same monitoring?

Answer: No, not whilst they remain dormant. Subject to primary legislation and provided a site is agreed as being dormant by the owner/operator and MPA, then reopening of the workings should only be permitted if a fee regime has been agreed beforehand and payment method followed (in addition to any planning control mechanisms that might also be required to be activated).

Issue 16: What should be done in the case of sites that are merely inactive as opposed to being dormant?

Answer: Treated as above in answer to question 15.

Issue 17: What type of enforcement action should be used against defaulting operators who do not pay the fees as requested?

Answer: Should be a criminal offence with direct recourse to the courts unless payment not made within specified number of days (similar to a fixed penalty system). Enforcement action, of the form used under the Town and Country Planning Act would be inappropriate.

Issue 18: Should alternative charging options be considered?

Answer: It is considered that the charging regime should be agreed annually with the operator, no matter how many additional times the MPA/WPA is 'called out'. This can be reflected in the next years charging regime. The regime should be based on, say, 2 visits per year for all operating sites, subject to the additional visits identified at the beginning of the charge year (which it is assumed would coincide with the tax year) extended only if the operations start or are completed within a year. May need to consider some form of independent arbitration if operators and MPAs cannot agree, although clear guidelines should help.

General Issues

- 1 If a site is in aftercare only, this would be a single visit requirement and should be reflected in the regime.
- 2 All comments above assume that fees would be payable in one year and advance at a standard (say 2 visit rate) unless the MPA/WPA have just cause to increase the numbers.