

Implementation of new powers to charge for the monitoring of mineral and landfill permissions

Report by Head of Planning Applications Group to the Regulation Committee on 23rd May 2006

Summary: Implementation of new powers to charge for the monitoring of mineral and landfill permissions. Work and resources required to introduce charging for our formal monitoring of mineral and landfill permissions in Kent

Recommendation: Note the introduction of Regulations that allow us to charge for monitoring at minerals and landfill permissions at a prescribed fee and support flexible phased implementation of an excellent level of service representing good practice monitoring.

Local Member: n/a

Unrestricted

Background

1. On 6 April 2006, the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006 (the Regulations) came into force. These Regulations give mineral and waste planning authorities (mwpas) the powers to charge for the monitoring of mineral and landfill waste permissions. At the same time, the ODPM issued a guide to implementation and good practice.
2. The introduction of the new regime reflects the on-going process of development and complexity associated with mineral and landfill permissions and the objective to ensure that mineral and landfill permissions are monitored in accordance with good practice. Granting powers that allow us to charge for monitoring is an acknowledgement of the resource and cost implications of delivering 'good practice'.

The new regime

3. The Regulations enable us to charge the main operator of an active mining or landfill site for up to 8 visits in a 12 month period, from the date of the first site visit, at £288 per visit. At inactive sites the charge is £96 for no more than 1 visit in a 12 month period. A fee can only be charged after a visit has been completed.
4. The ODPM guidance describes their rationale for monitoring visits as authorities and operators working together to constructively review compliance with permissions in the light of the stage of development reached and possible changing operational circumstances and needs. In this way it is thought that problems can be avoided and formal enforcement action is less likely to be necessary. Our powers of entry to carry out such monitoring are already provided within the Town and Country Planning Act 1990 (as amended).

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5. We intend to use a site categorisation process in order to propose and then agree annual visit frequencies with the main operator of a site. However, there may be occasions where we are unable to agree a visit frequency with the site operator. In these circumstances, we intend to impose a monitoring frequency, in accordance with the site categorisation process, as, ultimately, it is mwpas that should set the monitoring frequency. Monitoring within these frequencies can be carried out under our powers of entry and once a site visit has been made, a fee becomes payable. If an operator disagrees with the number of visits imposed and carried out, they will need to follow the Kent County Council's complaint procedure. Ultimately, if they are unhappy with the outcome, they may ask the local government ombudsman to investigate. We intend to follow Kent County Council established procedures for taking action against those who default on fees that have been requested and which are due.
6. It is expected that mwpas will employ fully trained and qualified planning staff in sufficient numbers to carry out the monitoring in accordance with good practice principles and it is recognised that some authorities will need to develop appropriately resourced monitoring teams to achieve a good practice level of monitoring.
7. Expectation is that a monitoring visit to a site will involve preparation work, travel, the visit, completion of a visit form at the site, a formal monitoring report and an annual report to the site operator.

Work completed to date

8. In preparation for the new regime, we employed Adams Hendry Consulting Ltd to assess the requirements of the proposed scheme. We asked them to identify 3 service categories, in order to define a range of monitoring frequencies and activities; assess the skills mix and relevant competencies required based on the sites in Kent; estimate the man hours that would be needed and to provide a system for determination of an appropriate annual visit frequency. We also asked them to assess our existing systems and identify improvements that would be needed and to offer options for phased implementation of the system. This work has recently been completed.
9. From the initial categorisation of sites, we have 99 sites that fall within the regime. This represents over 1/3rd of the sites that we have in Kent. A process for site categorisation has been produced and all of these sites have been given an initial categorisation. Three service categories have been defined (excellent, above average and average) and indicative visit frequencies and durations have been provided against each of 5 categories of site. The skill requirements for monitoring staff have also been provided against each of the 5 categories of site and variations have been produced according to the 3 service categories. Details of the 5 categories of site and monitoring frequencies at excellent, above average and average service level are included in Appendix 1 attached.

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Implementation

10. The Regulations and guidance do not make provision for phased implementation of charging for monitoring visits. Thus we need to consider how and when we will implement the scheme.
11. Table 1 below shows the maximum number of visits that would be required in a 12 month period and the potential revenue that we might receive from such visits. It also shows the time and *additional* resources (FTE) which we would require in order to undertake the visits when we implement the new system, as determined by the Adams Hendry work.

Table 1 – Additional requirements to introduce a system

Service category	Total visits required - 12 month period	Potential revenue from visits undertaken (£)	Time required for visit freq (days)	Additional FTE required to current staffing to implement chargeable monitoring (227 days/FTE)
Excellent	Max 274	73536	510	2.25
Above Average	199	51936	286.7	1.3
Average	156	39552	155.14	0.7

12. It is important to note that we cannot charge for our monitoring at all sites in Kent. We can only charge for monitoring at mineral and landfill sites. Our monitoring of other activities such as at waste transfer stations, metal recycling sites, and composting sites will fall outside of this regime. If we divert existing monitoring resources to mineral and landfill sites it will impact on our ability to monitor at other sites.
13. The excellent level of service defined by the Adams Hendry work sets out features of a monitoring system that could deliver good practice. The recommendation from their work being that we phase the introduction of the regime, taking the next year to develop the necessary systems and expertise to deliver at least an average service with a view to achieving an excellent service in the medium term (2 – 3 yrs). It should be noted that the costs of delivering an excellent (representing good practice) or above average service would be greater than the potential revenue from charging for these visits. It is also possible that sites may be further re-categorised after the initial visit or that we have difficulty collecting fees due after monitoring. It would appear that the costs of monitoring are higher than ODPM have allowed for in setting the fee regime.

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14. It is recognised that additional preparation time will be required for the first visit at each site in order to implement the system. The work undertaken suggests that in the first year of operation, we carry out 156 visits at an increased average time per visit. In order to do this, we will need additional resources to those that we currently have in place. We will need an additional 0.7 FTE to deliver monitoring within an average service category.
15. However, we feel that there may be difficulties if we implement monitoring frequencies at an average level and then increase frequencies to an excellent level over time. Operators may find it difficult to accept the need for an increased frequency of visits after the scheme has been introduced to them. It is my opinion that it would be more appropriate to agree monitoring frequencies at an excellent level from the outset, although resources may initially dictate that a lower level of visits may be adopted in the early stages. Monitoring to an excellent service would require additional resources to those that we currently have in place. We will need an additional 2.25 FTE to deliver monitoring within an excellent service category. It is likely that the monitoring carried out will generate further case work in terms of securing full compliance, for case officers within the group, although this impact is difficult to quantify at this stage. The view of members is requested on this issue.

Work that will be required to implement

16. In order to charge formally, we will need to introduce the system to relevant site operators. We will also need to agree site visit frequencies for each site with the operator and thus in order to do this we need to adopt the service category monitoring frequencies.
17. The ODPM guidance suggests that we should prepare our own guidance explaining how we will administer the scheme and approach site monitoring. The Adams Hendry work suggests that this would represent an excellent service category and that it would assist in the delivery of a clear and transparent service. They suggest that as this will take time, we issue interim guidance briefly setting out the process and the procedures for invoicing, fee recovery and disputes.
18. Improvements to our databases and systems will also be required, in order to be more efficient and effective.
19. We will need to recruit sufficient additional appropriately skilled staff.

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20. We need to be realistic about the level of monitoring that can be delivered given that we do not currently have additional resources in place to do this work. I would also advise that we are experiencing considerable difficulty in recruiting experienced planners with appropriate minerals and waste experience. However, it is proposed that we adopt an excellent service, from the outset. In so doing we will need to divert resources from routine compliance monitoring at other types of permitted sites; issue interim guidance to operators and agree initial visit frequencies within the site categorisation process with operators, taking account of the available resources. It is intended that this work should be undertaken over the next four months. There will be insufficient resources to complete an initial visit to all sites to finalise the visit frequency within this timescale. With phased implementation, initial visits could be completed to sites in categories 3 – 5 within this timescale and the remainder completed between October and March 2007. During such time we will trial interim guidance before issuing finalised guidance in 07/08. In my opinion, and supported by the Adams Hendry work, we would not be able to complete subsequent visits to monitor at excellent service without additional resources within the year.
21. We will need to be flexible with implementation in order to allow variation to the phasing of monitoring visits, according to resource availability. We will need to consider whether there are other more appropriate options for phased implementation, as we develop the system in Kent. For example, it may be preferable to deliver monitoring at a reduced number of sites and carry out more visits per site (within the frequencies agreed with the site operator). Our options will need to be kept open as we develop our interim guidance for operators and agree site category and visit frequencies. The view of members is also requested on this issue.

Recommendation

22. I RECOMMEND that MEMBERS:

- 1) Note the introduction of Regulations that allow us to charge for monitoring at minerals and landfill permissions at a prescribed fee.
- 2) Support the introduction of an excellent level of service, which delivers monitoring to good practice using appropriate resources, as set out in paragraph 15 above.
- 3) Support development of the scheme and the introduction of the scheme to operators by setting out our own interim guidance, and agreeing initial visit frequencies with operators in accordance with the provisional programme set out in paragraph 20 and 21 above.

Case Officer: H Mallett
Background Documents: see heading

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Appendix 1

Site categories and monitoring frequencies at excellent, above average and average service category

Site category & description of activities	Indicative initial monitoring frequency for sites falling within the service category, for which a fee may be charged in a 12 month period		
	Average	Above Average	Excellent
Category 1 - inactive because it has ceased operating, temporarily or otherwise and no restoration or aftercare is being undertaken to any substantial extent. Subject to a minimum monitoring frequency.	1	1	1
Category 2 – active sites subject to routine restoration and aftercare; small scale / minor operations with limited monitoring requirements; seasonal / sporadic operations with limited monitoring requirements. Subject to a below average monitoring frequency.	1	1	2
Category 3 – active sites in the early stages restoration; complex restoration within a sensitive location; sites considered to be compliant with planning permission and legal obligations and which do not warrant more than an average monitoring frequency. Subject to an average monitoring frequency.	2	3	3 or 4
Category 4 – active sites in the initial stages of development; planned activities in the next 12 months warrant closer monitoring; sites with satellite operations; several complex planning permissions / legal agreements; a range of activities being carried out on the site, which would warrant separate specialist monitoring; variations of conditions or amendments to working methods that require monitoring. Subject to above average monitoring frequency.	2	4	Between 4 & 6
Category 5a – active sites which are not operating in accordance with planning permission / legal agreement and where formal enforcement action has not yet commenced. Sites where there have been substantiated complaints. Subject to a maximum monitoring frequency.	3	5	Between 6 & 8
Category 5b – active sites which are not operating in accordance with planning / legal agreement and where formal action has commenced and is in progress, including follow up actions as a result of formal enforcement. Subject to a maximum monitoring frequency, which will be influenced by the requirements of the enforcement activity.	Between 0 - 8	Between 0 - 8	Between 0 - 8