

REGULATORY APPRAISAL

TOWN AND COUNTRY PLANNING, WALES

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS AND DEEMED APPLICATIONS) (AMENDMENT NO.2) (WALES) REGULATIONS 2006

Background

1. Monitoring, and if necessary enforcement, of the complex and technical planning conditions that govern both mineral and landfill waste sites is important to ensure high environmental standards and to maintain the credibility of the planning system. Local planning authorities have long expressed the view that the standard fees for initial planning applications do not cover this long-term monitoring and enforcement commitment. The 1998 Comprehensive Spending Review (CSR), undertaken by the UK Government, therefore concluded, that local planning authorities should be empowered to recover the costs of monitoring and enforcing planning conditions to ensure that they have sufficient resources to carry out this aspect of their work properly. The review stated:

"when a legislative opportunity arises, the scope of charges should be extended to allow mineral planning authorities to recover the costs of monitoring and enforcing planning conditions."
2. Under section 303 of the Town and Country Planning Act 1990 (the 1990 Act) and before amendment by section 53 of the Planning and Compulsory Purchase Act 2004 (the 2004 Act), the Welsh Assembly Government was able, through regulations made by the National Assembly for Wales, to make provision for the payment of a fee to a local planning authority in respect of an application made to them. The fee for a planning application did not cover the monitoring of the development and the 1990 Act does not provide for such a fee to be set. This is in contrast to the Building Regulation regime, where a separate fee is paid for monitoring. Similarly, the Environment Agency charges a fee for monitoring compliance with a waste management licence.
3. Section 53 of the 2004 Act amended and widened the scope of section 303 of the 1990 Act. This now enables the Welsh Assembly Government to put before the National Assembly for Wales regulations to provide for the payment of both charges and fees relating to planning applications and other functions of local planning authorities.
4. In order to make provision for local planning authorities to charge fees for their monitoring function, the National Assembly for Wales will need to make regulations under section 303 of the 1990 Act (as amended).
5. The proposals will affect local planning authorities in Wales only, although it is understood that the Office of the Deputy Prime Minister (ODPM) in England is taking similar action and the Scottish Executive will

consider taking similar action when enabling primary legislation is in place. Both have recently consulted on similar proposals.

6. The recent consultation on increasing and broadening the scope of planning fees explains that consideration will be given to extending the scope of planning fees to cover monitoring and enforcement of all planning conditions in the light of the outcome of the consultation on this proposal.
7. Each local planning authority in Wales has a statutory power under the Town and Country Planning Act 1990 (as amended) to determine development applications made to it for planning permission by granting permission either unconditionally or subject to such conditions as they think fit or they may refuse planning permission. Local planning authorities also have the power to issue enforcement notices where it appears that there has been a breach of planning control and it is expedient to do so.
8. Mineral planning permissions are unique in that they are implemented progressively as mineral is extracted, and the process of “development” can therefore last for many decades. If no specific end date has been set, permissions do not expire until 2042. Similarly, sites for the landfill of waste can be used for that purpose for a number of years. Regular monitoring of such ongoing development to ensure compliance with operating conditions is essential, as it can be impracticable to enforce conditions once a breach of control has been undertaken. Regular monitoring and, if necessary, enforcement of the complex and technical planning conditions that govern both minerals and landfill waste sites is important to ensure high environmental standards and maintain the credibility of the planning system.
9. There are few local planning authorities in Wales with a large number of minerals and landfill sites and therefore, most authorities integrate development control and monitoring work. This structure does not enable them to give priority to regular monitoring and enforcement activities because of the pressure of meeting statutory timescales in relation to their development control activities.

Purpose and intended effect of the measure

10. These Regulations introduce a new charging regime to recover the costs to local planning authorities in Wales of carrying out their existing monitoring function of mineral and landfill permissions according to best practice procedures, as given in the “Good Practice Guide on Monitoring Minerals and Waste Management Sites”, published in 1998 by the Planning Officers Society . The proposed new regime will affect operators of mineral extraction and landfill sites and also operators of other waste activities (such as waste transfer stations, recycling and composting) where these are located on a mineral extraction site or landfill site and are an integral part of the operation of the site. The fees would be charged to the operator of sites based on a fee per scheduled visit of

£288 for active mineral and landfill sites and £96 per visit for dormant or inactive sites. A maximum number of 8 chargeable site visits will be payable by the operator of an active site. The frequency of visits will be determined by the local planning authority according to a number of factors, namely: whether the site is active or dormant; whether complaints have been received and whether the planning conditions have been complied with to date. Non-statutory guidance was circulated to local planning authorities by the Welsh Assembly Government's Planning Division on 10 March 2006, covering the operation of the fee regime including the determination of the number of scheduled visits that would be appropriate for each site. These proposals would ensure that operators would then be paying for a regulatory activity which currently costs them nothing.

Risk assessment

11. Two research studies commissioned by the Office of the Deputy Prime Minister (ODPM): ("Mineral Planning Authority Fees for Monitoring Mineral and Landfill Permissions": April 2000: Arup/Bailey, and a report with an identical title by GHK/LUC dated August 2004) concluded that there were inadequacies with regard to operator performance in complying with conditions attached to mineral or landfill permissions and current levels of monitoring of these conditions.
12. Many of the problems rest with a few operators who do not have the same high standards as the majority and with those carrying out operations, mostly waste disposal, without a planning permission. The latter are outside the scope of this proposal but there are powers available to local planning authorities to take enforcement action wherever possible against those operating without the necessary permission. However, there are also problems with properly permitted operations where operators sometimes fail to comply with all of the conditions in their permissions and this can lead to environmental problems and adverse impacts on the local community. Arup/Bailey considered that the current levels of funding of local planning authorities were insufficient to monitor all sites to an adequate level to avoid such problems developing. Both studies found that current practice fell short of best practice (as assessed by the Planning Officers' Society) by some considerable margin.
13. The risks of inadequate monitoring and enforcement are particularly significant in relation to minerals and landfill development, as it is often impracticable to restore land where unauthorised development has taken place or conditions not enforced. If the monitoring fees are not introduced the following risks arise:
 - Wales will be out of accord with England, raising competitiveness issues for the industry; and
 - local planning authorities will not be able to fully undertake monitoring. Therefore, the conditions imposed on planning

permissions will not be enforced adequately with resulting adverse impacts on the environment and local communities. The lack of enforcement is often irretrievable because of the nature of operations, for example, it is impossible to replace hard rock quarried from land beyond the limits of the permitted extraction area.

Options

Option 1: Do nothing

14. Under this option, local planning authorities would continue monitoring at the same inadequate level as at present and without making a charge. This is unacceptable if an adequate public service is to be provided to properly monitor minerals and landfill permissions.

Option 2: Self-regulation by operators with Environmental Management System accreditation (EMAS/ISO14001) (no legislation required)

15. This option would remove, (to some extent but not all, as the Environmental Management system is voluntary), the responsibility of local planning authorities to carry out the monitoring function in respect of operators that have a good record of compliance with planning conditions. Local planning authorities would need to continue to monitor poorer performing operators as at present.

Option 3: Make the legislation

16. This option would fulfil the Comprehensive Spending Review (CSR) commitment; enable local planning authorities to monitor sites to a level of best practice; and make operators, who benefit from permissions, pay the average cost of the regulatory function. The option was identified as the clear favourite from a range of options considered during a consultation exercise in 2001.

Option 3A: Make legislation to implement a combination of a standard charge per site with charges per visit

17. This is a hybrid of Option 3 and another option considered by Arup/Bailey, which was consulted upon in 2001. This would allow the possibility of covering the basic costs of a minimum level of local planning authority monitoring with the scope to cover additional visits depending on site circumstances.

Option 4: Make legislation to establish a new fee-charging regime based on local or regional costs (legislation required)

18. This option would, enable individual local planning authorities to set charges on a local or regional basis, to reflect the actual costs that apply in different parts of the country and the actual time taken to inspect individual sites.

Benefits

Economic

19. The benefits of implementing these Regulations are that it would place the financial burden of this Regulatory function on operators and ensure that the 'polluter pays'. It would ensure that local planning authorities were able to recover the costs of a best practice level of monitoring in their areas and would bring about local authority savings of £0.162m, which could be used for other purposes.
20. Poorly performing operators would need more monitoring visits to ensure full compliance with conditions. Consequently a system that charged for each site visit would encourage poor performers to improve their performance, thus reducing the number of visits needed and total costs, and freeing up more local planning authority time to devote to other issues (such as taking enforcement action against unauthorised operators). A regime based on a nationally-set fee for each visit calculated from average local planning authority costs has the merit of simplicity and equity for large companies operating in different parts of Wales.

Environmental

21. Monitoring to a best practice level would lead to an improvement in compliance with planning permissions, particularly amongst poorer performers. This should ensure that the unacceptable environmental impact of minerals and waste permissions would be minimised.

Social

22. Monitoring to a best practice level would lead to an improvement in compliance with planning permissions, particularly amongst poorer performers. This should ensure that the unacceptable social impact of minerals and waste permissions would be minimised.

Costs

23. There will be no financial implications for the Assembly apart from those associated with producing and distributing the guidance to accompany the Regulations, which was taken from existing divisional running costs from the Planning Division. Local authorities will benefit from the new monitoring fees, as they will receive additional funds to support their monitoring service. Although there will be some initial setting up costs to introduce the new fee system, these will soon become cost effective over the lengthy periods that minerals and landfill planning applications operate and fees will be received annually. It is not possible to quantify the set up costs as they will depend on the internal arrangements for each individual local planning authority and also on the number of mineral and landfill sites within the local authority.
24. The minerals and waste industry will be affected by the new fees imposed on their operations as currently, planning application fees are provided only once, at the initial planning application stage. This one-off fee at the time of making the planning application does not cover the requirement for local authorities to monitor and enforce planning applications relating to such long-term development.

25. It is estimated that the number of minerals and landfill sites in Wales subject to monitoring is approximately 250. The cost of a best practice approach of monitoring these sites would be just over £1,000 per site per annum, making a total cost of around £0.27m per annum (at 2003/4 prices). Under this option, local planning authorities would also be able to recover the costs of monitoring sites to a best practice level from operators for the first time. This would have the following implications:

- i. current local authority spending of £0.162m (£0.27m x 2.7 (which is estimated to be the current average frequency of annual monitoring visits) divided by 4.5 (which is the recommended average best practice frequency of annual monitoring visits) could be used for other purposes;
- ii. there would be a regulatory burden on approximately 250 operators, which did not previously exist, amounting to £0.27m per annum (just over £1,000 per active site);
- iii. nationally prescribed fees based on average costs, irrespective of the size and type of site, would place a heavier burden on small and medium sized enterprises;
- iv. there would be self-imposed pressure on operators to improve their performance (which would carry costs) in order to reduce the number of visits to sites and thereby reduce the monitoring costs; and
- v. the reduction in visits postulated in iv) would facilitate more time for local planning authorities to devote to other activities.

Issues of equity and fairness

26. These Regulations will transfer the cost of monitoring compliance with planning conditions from the local authority to the operator. Where the operator could demonstrate, through continued satisfactory compliance, that he or she was discharging his or her responsibilities in a reasonable manner, the local authority would need to visit the site less often than those of less reliable operators and the costs would reduce in consequence.

27. All conditions attached to minerals or waste permissions should be complied with in order to avoid unacceptable environmental or social impacts. Poorly performing operators would therefore receive more visits to ensure compliance and thereby incur more costs. A flat rate of charge, irrespective of the size of the operation and the size of the company, would impact more on small and medium sized enterprises.

28. The proposed flat rate charge based on average costs, which would be administratively easier to operate than a system based on actual costs, would impact slightly differently on different types of operation. For example, hard rock quarries take longer to inspect than sand and gravel operations, where visits might be shorter but more frequent. A flat-rate charge would be slightly inequitable with respect to sand and gravel operations therefore, with the operator paying the same charge for

shorter visit. Under the proposal, however, both the rationale for a flat rate charge based on average costs and its level would be kept under review.

29. There are no issues of equity and fairness arising in respect of rural areas or race equality. However, these Regulations are likely to have an impact on health and well-being because best practice monitoring will help to ensure full compliance with planning conditions. This, in turn, should ensure that polluting emissions, such as dust and noise, are minimised.

Competition Assessment

30. The minerals extraction industry contains a wide range of operators of various sizes. Turnover can vary considerably, depending on the type of mineral that is being extracted, the size of the site and the amount of winnable mineral.
31. A competition filter test has been carried out, which indicated that the proposal was likely to have little or no effect on competition.

Consultation

With Stakeholders

32. Consultation on the principles of introducing a monitoring fee regime was first undertaken in November 2001. A further consultation was carried out from 22 July 2005 to 30 September 2005. It was necessary to re-consult on the proposed fee regime for a variety of reasons. It had been some time since the first consultation in 2001 and re-consultation provided an opportunity to report back to stakeholders on the comments received previously. The new consultation paper also reported the findings of the further research undertaken by the Office of the Deputy Prime Minister (ODPM) in 2004 to validate the costs, which were questioned in 2001.
33. The consultation sought views from a range of industry and business organisations, professional bodies, the Welsh Local Government Association, voluntary sector groups and local planning authorities on proposals to introduce a new monitoring fees regime. A list of consultees is attached in Annex A.
34. In summary, there was general support for the principle of introducing monitoring fees from local planning authorities but, the trade associations for the quarrying industry were very reluctant to accept the need for a new fees regime as they consider they are already being charged for this service through existing regimes such as the uniform business rate, Council tax, Landfill Tax and the Aggregates Levy. The introduction of monitoring fees would reflect the unique ongoing costs of ensuring that the continuous process of development is undertaken in accord with mineral and landfill permissions and the conditions imposed to mitigate environmental impacts. Minerals and waste operations may last for

decades and are governed by complex and technical conditions. The cost of monitoring is not included in the calculation of planning application fees. The aggregates levy and landfill tax were introduced for quite different reasons.

35. Most respondents agreed that guidance should be produced to advise on the detailed mechanism of the fee system and the majority that monitoring reports should be produced to improve transparency in the monitoring process. A summary of the consultation responses is attached at Annex B.

With Subject Committee

36. The item was notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation on 5 October 2005 (EPC(2)11-05(p.7) Annex 1, item no.12) at that time, the title of the Regulations was the Monitoring Fees for Minerals and Landfill Permissions Regulations 2006. However, they were also notified to the Committee on 1 February 2006 (EPC(2)-02-06(p.3) item no. 36) (68PE)) under the correct title. These Regulations were scrutinised by the Committee on 8 March 2006 (EPC(2)-04-06(p.7) and were approved without amendment. A copy of the draft transcript is attached at Annex C.

Consultation with small business: the Small Firms' Impact Test

37. It is likely that the majority of mineral extraction sites can be termed micro businesses identifying sites as small and medium sized enterprises does not, of course, reveal their ability to pay the proposed charge. Depending on the mineral being quarried or mined, or the nature of the landfill, the turnover and profits can be substantial, compared to the numbers of workers employed.
38. These Regulations would impact on all operators of minerals and landfill sites by imposing a flat-rate charge based on average costs for a regulatory activity that was previously provided free to the minerals and waste industry by local authorities and so funded by taxpayers and/or Council Tax payers. Small operators with tighter margins might find the burden of payment heavier than would larger operators.
39. We would keep under review the possibility of moving to a regime, which reflected actual costs, but this would only be possible when local authority management cost systems are fully developed. Fully developed management accounting systems would enable mineral planning authorities to demonstrate transparency in the calculation of the charge in terms of both time spent during the site visit and the unit costs of staff undertaking the visit. In the meantime, providing operators comply with their planning conditions, it would be possible for the number of visits, and therefore the overall costs, to be minimised.
40. All operators within Wales would be affected equally by the flat-rate charge. Given the relatively small scale of the proposed charge per visit and the scope for minimising costs through a reduction in scheduled site

visits as a result of compliance with the planning conditions, the Welsh Assembly Government would not expect the proposal to have a significantly adverse impact on the competitiveness of operators in Wales compared to other operators in the rest of the UK

Enforcement and Sanctions

41. Enforcement of these Regulations would be dependent on the local planning authority having a right of entry to land in order to carry out the monitoring function. They would be able to rely on the powers in section 196A of the Town and Country Planning Act 1990 to achieve this end.
42. The relatively small scale of the proposed flat-rate charge should result in a high rate of compliance with the new regime. However, in the event of non-payment by the operator, recovery would be expected to be pursued by the local planning authority as part of its day-to-day debt recovery operations.
43. Any disagreements between local planning authorities and operators about the proposed number of monitoring visits each year and visits required to follow up justified complaints could be resolved by the local planning authority's internal complaints mechanism or, ultimately, through judicial review.

Monitoring and review

44. ODPM and the Welsh Assembly Government recognise that there would be a need to monitor the progress of these Regulations closely, to ensure that they operated effectively and to see if they needed to be improved in any way.
45. The following issues would be a matter for further investigation:
 - the appropriateness of the charge per site visit and whether it should be raised from time to time to take account of inflation;
 - the possible introduction of a local or regional, rather than national, charging approach

Summary

46. It is recommended that Option 3 be implemented because it would ensure that the charge for monitoring is paid by the operator or landowner that benefits from the implementation of the planning permission. This would enable monitoring and enforcement to occur at best practice levels. This option would provide the simplest regime to operate but would be reviewed to consider future refinements. The intention is to establish a new fee regime according to option 3 to commence in April 2006.

Annex A

List of Consultees

Welsh County and County Borough Councils

Welsh National Parks

RAWPs – North and South Wales

Operators, Professional Associations and other interested organisations:

Aggregate Industries UK Ltd
Association of Council Secretaries and Solicitors
Association of Drainage Authorities
Association of Local Government
Association of National Park Authorities
Association of Planning Supervisors
Brick Clay Development Association
British Aggregates Association
British Cement Association
British Geological Survey
British Nuclear Fuels Ltd
British Precast Concrete Federation Ltd
British Slate Association
British Stone
British Waterways
Building Services Research & Information Association
Cadw
CCW
Chartered Institute of Environmental Health
Civic Trust
The Coal Authority
Coalfield Communities Campaign
COALPRO
Confederation of British Industry Minerals Committee
The Confederation of UK Coal Producers
Construction Industry Research & Information Association
Construction Products Association
Council for National Parks
Council for the Protection of Rural Wales
Council on Tribunals
Country Landowners Association
Country Land and Business Association
The Countryside Agency
County Surveyors' Society
The Crown Estate
Department of Culture, Media and Sport
Electricity Association
The Environment Agency (Wales)
Environmental Services Association
Estates Farm
Farm and Rural Conservation Agency
The Federation of Small Business
Forestry Commission
Friends of the Earth
Geological Society
The Green Alliance
Groundwork Associates Ltd
Gwendraeth Residents Association
Hanson Aggregates UK Ltd
Hanson Quarry Products Europe

Health and Safety Executive
Hills Minerals and Waste Ltd
HM Principal Inspector of Health & Safety (Quarries)
The Institute of Civil Engineers
Institute of Quarrying
Institute of Management
The Institute of Materials, Minerals and Mining
Institute of Revenue Rating & Valuation
Institute of Civil Engineers
Institution of Environmental Sciences
Institute of Quarrying
Institute of Materials, Minerals and Mining
Institution of Mining and Metallurgy
Joint Nature Conservation Committee
Journal of Planning Law
Lafarge Redland Aggregates Ltd
Lands Tribunal
Landscape Institute
The Law Society's Planning Committee
Local Authority Valuers Association
Local Government Association
Local Government International Bureau
Local Government Ombudsman
Local Government Planning and Environmental Bar Association
Marine Conservation Society
Merthyr Initiative
Minerals Planning Magazine
The Mining Association of the UK
National Farmers Union
The National Trust
Nuclear Industry Radioactive Waste Executive (UK NIREX)
The Planning Inspectorate
Planning Officers' Society Wales Minerals and Waste Topic Group
Quarry Products Association
The Ramblers Association
RMC Group Plc
Royal Institute of British Architects
Royal Institution of Chartered Surveyors
Royal Society for Nature Conservation
Royal Society for the Protection of Birds
Royal Town Planning Institute
Silica and Moulding Sands Association
The Stone Federation of Great Britain
Tarmac Central Ltd
Town and Country Planning Association
J F Tripp
UK Coal
UK Onshore Oil Producers Association
Water Companies Association
WBB Minerals Ltd
Welsh Local Government Association
Wildlife and Countryside Link
D R Williams

Annex B

REPORT OF CONSULTATIONS: MONITORING FEES FOR MINERALS AND LANDFILL PERMISSIONS

SUMMARY OF COMMENTS

The consultation received **14** respondents, including **7** Mineral Planning Authorities (MPAs), **3** Industry associations, **1** Private Landowner and **1** local environmental group.

8 Agreed, **5** Disagreed,.

	Agreed	Disagreed	No Comment
Industry/owner	0	4	-
Mineral Planning Authority (MPA)	7	-	-
Others	2	1	-

Industry associations form the majority of respondents that disagreed with the fee regime, as compared with none from the MPAs. Most of them felt that a universal charge for the regime is not justified. Some suggested introducing a hierarchy of fees that relates to circumstances and size of a site, and the nature of a visit.

Although respondents from MPAs showed no objection to the regime, some of them have expressed concerns on the feasibility of the detailed proposals. Some MPAs were concerned about the significant increase in workload as a result of the fee regime. In general, they welcomed a clear and straightforward system that effectively assists the monitoring activities.

MPAs also welcomed more guidance from the Assembly Government on specific matters to ensure a fair and consistent approach for the whole of Wales. These issues include the number of scheduled site visits per year, fee setting for dormant sites and charging for visits resulting from justified complaints.

1 ISSUE 1: SCOPE OF THE FEE REGIME

1.1.2 Do you agree with the proposed scope of the fee regime, as expressed in paragraph 4.17, that charging should be extended to the following categories:

- all mineral extraction sites;
- all landfill sites;
- all other waste activities located on a mineral extraction and/or landfill site which are an integral part of the operation of the site?

10 Agreed, 0 Disagreed.

There was no objection to this issue.

Queries were raised on whether the fees should be extended to the following:

a) Colliery spoil tips?

b) All types of Landfill, e.g. inert, controlled, hazardous?

PemCNPA & PemCC also suggested the Assembly Government should clarify that the regime relates only to permitted sites, not unauthorised ones.

1.1.3 What are your views on the conclusion that further investigation of costs would be necessary before the regime could be considered for extension to all categories of waste management site monitoring, including smaller waste facilities?

4 Agreed, 0 Disagreed.

1.1.4 What are your views on the proposal to extend the scope of the new regime to include the monitoring of sites under the provisions of Parts 19 to 23 of The Town and Country Planning (General Permitted Development) Order 1995, as set out in paragraph 4.1.8?

2 Agreed, 0 Disagreed, 3 Undecided.

SnowdNPA stated that Parts 19 to 23 relate to mineral exploration, which is largely short-term (28 or 42 days) operation.

PemCNPA & PemCC suggested that monitoring implications for GDPO developments could not be ignored. However, national guidance should clarify whether Part 19 to 23 would fall to be considered as an 'integral part' of operations at the mineral site.

2 ISSUE 2: THE BASIS FOR FEE-SETTING

1.1.5 Do you agree with the proposed charging option of a rate per visit with the MPA determining frequency? (Option 4 in paragraph 2 of Appendix C)

6 Agreed, **3** Disagreed

Comments on 'a rate per visit':

Some respondents suggested that a rate per visit is unfair.

SnowdNPA and BAA felt that charges should be proportional to size of operation and value of the mineral extracted. E.g. sand and gravel operators should not pay the same fee as a limestone operator. PemCNPA & PemCC felt that charges should be proportional to the staff structures of the MPA.

Comments on 'MPA determining frequency':

Most respondents welcome the suggestion for MPA to determine frequency of visit. Some suggested the regime should include discussion between the operator and MPA at the beginning of each year to determine frequency so as to make it acceptable for both parties. Guidance should be produced to help MPAs agree a schedule of site visits with operators.

QPA suggested a Government advisory cap on the number of chargeable visits of no more than 6. The regime should also provide the operator with some form of appeal if there is no agreement on the frequency of chargeable visits.

3 ISSUE 3: NATIONAL/LOCAL CHARGING

1.1.6 Do you agree that a charge per visit should be set nationally initially, but that the prospects for moving to a locally based charging system to recover actual costs should be considered perhaps 5 years after the proposed new regime is established?

Nationally initially: **9** Agreed, **0** Disagreed

Move to locally based: **2** agreed (SnowdNP & YMCC), **7** Disagreed

All respondents agreed to set a national charge per visit initially (this include both MPAs (5) and Professional Bodies (4)) but 2 of them proposed a future move to a locally based charging system. Most respondents suggested that a national fee would provide certainty to the regime. Advantages of the national fee include:

- 1) prevent MPAs misusing local discretion (QPA),
- 2) avoid disputes over the calculation of fees between operators and MPAs (LawSoc).

On the other hand, two MPAs agreed with the move to a locally based charge that recovers the actual travel cost. This may be due to the different distance, size and number of sites within these authorities. SnowdNPA further suggested the move to be considered after 3 years instead of 5.

4 ISSUE 4: DEFINITION OF A CHARGEABLE VISIT

1.1.7 Do you agree that a 'chargeable visit' should be restricted to those cases where an MPA enters the site to monitor one or more conditions

or to investigate a complaint and that charging should be on the basis of a set fee per site, irrespective of the number of officers attending? (Paragraph 4.4.5)

7 Agreed, 1 Disagreed

Most respondents agreed with the suggested restriction on 'chargeable visit'. However, concern was raised about sensitive cases, and cases with planning conditions that require frequent, specialist monitoring. *VoGlam* suggested that these cases might require far more than quarterly visits (e.g. blasting – approx 50 visits per year).

Concern has also been raised by *VoGlam* about 'reactive complaints' that tend to relate to operational issues that are matters for the Council to consider and prioritise as part of casework, and hence, should not be chargeable to operator.

YMCC objected to the suggestion, and felt that charging should be confined to scheduled visits on the basis of 'a rate per visit with the MPA determining frequency' (Issue 2), so as to secure fairness to those operators working entirely within the limit of a consent.

5 ISSUE 5: NUMBER OF VISITS ANNUALLY

A number of MPAs were concerned to clarify the basis of the yearly period. Does it start in the beginning of each year, and do new sites have variable years?

1.1.8 Do you agree that the frequency of visit should be determined by the MPA on the basis of established site performance? (Paragraph 4.4.9)

7 Agreed, 1 Disagreed

Some MPAs raised concern about particular activities that require additional/more intensive monitoring. Such activities include:
a) new sites (*PemCNPA* & *PemCC*)
b) blasting (*VoGlam*)

QPA felt MPAs should determine the number of chargeable visits according to the operator's performance, i.e. 'discount for good behaviour'.

MPAs who commented on this issue requested guidance to set out the basis for the number of scheduled site visits with operators. A consistent approach was required and one recommended *the Planning Officers' Society Good Practice Guidance* to help MPAs to determine frequency of visits.

1.1.9 Do you also agree that guidance should be used as the means to suggest indicative minimum and maximum thresholds? (Paragraph 4.4.9)

7 Agreed, 0 Disagreed

PemCNPA & PemCC suggested a minimum of 4

CoalProl suggested a maximum of 4

All respondents agreed to have guidance on min and max thresholds. It could be used to set criteria/thresholds for good site performance, which would allow easier assessment of when to reduce frequency of visits.

However, *PemCNPA & PemCC* felt that different MPAs could have different thresholds because of the different size of MPA, competence of operators, intensity of the site operations, intermittent working, increased activity as a result of fulfilling certain contracts for special projects, and seasonal variations.

6 ISSUE 6: DEFINITION OF A SITE

1.1.10 Do you agree that the definition of a site should be either a single mineral or landfill waste permission or, where the authority consider it expedient, the aggregate of a number of permissions as set out in paragraphs 4.4.13 and 4.4.14?

7 Agreed, 0 Disagreed

All respondents agree that the definition should not be limited to a single permission, but should include the aggregate of a number of permissions.

7 ISSUE 7: DORMANT/INACTIVE SITES

1.1.11 Do you agree that charges for monitoring dormant and inactive sites should be on the basis of one visit per annum, with the level of fees being limited to one third of the standard fee for a visit to an active site? (paragraph 4.4.16) Where possible, it would be helpful to have supporting data on the time taken/costs of monitoring dormant or inactive sites.

One visit per annum: 4 Agreed, 4 Disagreed, 1 Less than active sites

One third of the standard fee: 6 Agreed, 3 Disagreed

Comments on 'frequency':

1) PemCNPA and PemCC felt that the number of visits should be for each MPA's judgement.

2) YMCC suggested a more frequent inspection rate, once every six months to cover minor activities.

Comments on 'charges':

Concern was raised about the fact that one fee including the travelling cost would mean only 1/3 of the cost being recovered for

dormant sites. Even so, most respondents agreed to set fees initially at 1/3 of the standard fee, and some also suggested a review of charges in 2 years from introduction to cover actual cost.

3) *Some MPAs* felt that it was difficult to identify the owners of dormant sites.

Other respondents disagreed with charging for visits to dormant sites because:

- a) It prevented a more sensible and sustainable approach to be developed for such sites.
- b) Dormant quarry general no income. A chargeable annual visit is in effect another tax not linked to the owner's ability to pay. It would also be a second add to the burdens due to SSSI designation, which already reduced the value of site.

8 ISSUE 8: LIABILITY TO PAY THE CHARGE

1.1.12 Do you agree that the operator should pay the charge for the monitoring, given that it is compliance with operating conditions that is being monitored? (Paragraph 4.5.3)

4 Agreed, 3 Disagreed, 2 Undecided

Most respondents felt that it would be simpler for the owner to be charged and for them to recoup the charges from the operator.

Other respondents had the following concerns:

- a) it would be more equitable to apply the fee to anybody with an interest in the land.
- b) for inactive sites, whether the previous operator or the land owner would be liable to pay the fee, as the landowner may be absent or have no expertise in the operation.

1.1.13 Do you agree that the primary operator should be responsible for paying the fee? (Paragraph 4.5.4)

6 Agreed, 0 Disagreed, 1 Undecided

9 ISSUE 9: LEVEL OF FEES TO BE ADOPTED FOR A SCHEDULED VISIT

1.1.14 Do you agree that the core charge for a scheduled visit should be £241 at 2004 prices (or £259 at 2006/07 prices)? (Paragraph 4.6.5)

3 Agreed with 2004, 3 Agreed with 2006/7, 2 Agreed with both, 0 Disagreed

No objections were received on the above suggested price level.

10 ISSUE 10: CHARGING FOR TRAVEL COSTS

1.1.15 *Should the core charge per visit be increased by £26 at 2004 prices (or £29 at 2006/07 prices) to cover the average travel costs of MPAs for monitoring purposes or should MPAs charge their actual travel costs? (Paragraph 4.6.5)*

5 *Agreed with including the average travel cost, 4* *Agreed with including actual travel cost.*

In general, those who support the averaged cost felt that it would be fairer and simpler. PemCNPA and PemCC felt that 2006/7 price to cover the average travel cost should be the figure to reflect the recent increase in fuel prices.

However, some MPAs felt that different authorities have significantly different sites in terms of their size and distance from the authority. SnowdNPA in particular, felt that travel cost would not be recovered in the average cost.

11 ISSUE 11: CHARGING FOR VISITS RESULTING FROM JUSTIFIED COMPLAINTS

8 *Agreed to charge for justified complaints, 1* *Disagreed to charge.*

1. *Respondents considered that this issue was unclear and hence would require further clarification on:*

- 1) *What constitutes a justified complaint?*
- 2) *Who is to judge what is a justified complaint?*

QPA suggested introducing a hierarchy of chargeable visits with a reduced charge for the briefer visits, such as those required to undertake a simple, quick issue to check.

VoGlam felt that charging for the investigation of a complaint is uncommon in planning. Enforcing payment could divert attention from the daily work of officers in monitoring minerals sites and dealing with other minerals-related work.

1.1.16 *Comments are invited on the options for charging for visits arising from justified complaints as set out in paragraph 4.6.3 and on the Welsh Assembly Government's current 'minded to' position to reject the proposal for a general 15% uplift to the cost per site. (Paragraph 4.6.6)*

8 Agreed to reject the 15% uplift, 0 Disagree to reject

All respondents agreed to reject the uplift of 15% to fees to cover cost per visit of justified complaints. Some worried that the uplift would penalise responsible operators. CoalPro further suggested that MPAs should discuss complaints with operators prior to investigation.

Some respondents also stated a preference for option ii) in 4.6.3 ie. to charge for justified complaints at the same rate as scheduled visits so as to keep the process as straightforward as possible.

12 ISSUE 12: DISCOUNTS FOR 'GOOD' OPERATORS

1.1.17 Do you agree that reduced frequency of visits would be an appropriate means of reducing costs to 'good' performers? (Paragraph 4.8.6)

8 Agreed, 1 Disagreed

A majority of respondents agreed to the reduction in frequency of site inspections where operators demonstrated no compliance failure, thus providing a saving to the responsible operator. Some of them repeated their views on Issue 5 to allow MPAs to set the number of visits.

However, CCW felt that, a discount for responsible operators could lead to a slight reduction in environmental procedures within the site. It would be more appropriate to consider sanctions against poor or irresponsible operators.

13 ISSUE 13: ACCREDITATION

1.1.18 Do you agree that, until there is clear evidence that ISO 14001 and EMAS accreditation is a genuine guide to operational effectiveness, expressed as conformity with planning conditions, it should not be used as the basis for determining frequency of visits? (Paragraph 4.8.6)

3 Agreed, 4 Disagreed

Most respondents felt that accreditation should not be used to determine frequency of visits. This was mainly due to accreditation being too concerned on management issues. Most respondents felt that 'site performance' (Issue 5) was a better indicator than accreditation.

QPA, while agreeing with the use of accreditation, also suggested that accreditation should be reflected in the discussions on the required number of chargeable visits at the start of each year.

14 ISSUE 14: TIMESHEETS AND REPORT

1.1.19 Do you agree that MPAs should introduce a timesheet system for recording the activity costs of monitoring staff? (Paragraph 3.18)

7 Agreed, 1 Disagreed

A majority of respondents agreed with the timesheet system, and have suggested that it has the following advantages:
provide solid information on the amount of time devoted to monitoring,
enabling better programming of work priorities,
improve transparency in the monitoring process

PemCNPA and PemCC have further suggested MPAs with such systems in place already should share their experience, and the Assembly Government should issue guidance to help a consistent approach.

However, CoalPro objected to the whole suggestion on the basis that the system would provide no benefit to the national average charge, and would merely add unnecessary bureaucracy.

1.1.20 Do you agree that MPAs should routinely produce reports, following site visits which should be copied to operators for information? Do you agree that MPAs should produce an annual report on each site, summarising performance in complying with conditions? (Paragraph 3.1.12)

8 Agreed, 0 Disagreed

All respondents supported the suggestion and felt that annual reports would provide the following advantages:
a) Ensure transparency and confirm that best practice is being followed,
b) Demonstrate to the operators that there is justification for the charging system, and demonstrate to the public that a thorough and robust monitoring system is in place.

PemCNPA and PemCC further suggested the need for guidance to ensure a consistent approach to the reports including the use of checklists and comments in the report. The public availability of reports was queried.

15 ISSUE 15: NEED FOR GUIDANCE

1.1.21 Do you agree that there will be a need for local authority guidance on local operational issues relating to the new fee regime, to supplement more general guidance from the Welsh Assembly Government? What matters might be covered in the local authority guidance? (Paragraph 5.2.6)

6 Agreed, 0 Disagreed

CarmarCC suggested including a standard schedule of monitoring visits as a condition to be attached to future planning permissions for mineral and landfill permissions, so as to ensure consistency and give greater weight at any appeal proceedings.

CoalPro suggested the need for guidance on what constitutes a justifiable complaint.

YMCC suggested the need for criteria for determining the frequency of visits and the recovery of travel costs. Eventually the guidance should expand to cover local charging rates on the basis referred to in Para1.1.6 of the consultation document.

16 OTHER PARTICULAR ISSUES RAISED

A) Overlapping with existing tax system

One of the most frequently raised issues is whether the new fee regime is needed. Some respondents raised concerns about the misuse of tax by the MPAs, and felt that the proposed function of the new fee system overlapped that of existing fees and taxation, for example, planning application fees, business rates, council tax, aggregates levy and landfill tax. BAA believed that Scotland had already rejected these proposals for similar reasons, hence its imposition in England and Wales would be unfair.

PemCNPA and PemCC suggested it should be clarified why some operators will need to pay fees under this new regime as well as paying monitoring fees to other authorities under other legislation, for example, to the Environment Agency for waste licenses and permits, and to Local Authorities for authorisations of mobile or fixed plant.

In order to justify the distinctive function of the fees regime, future policy should demonstrate both the different functions of this fee regime and its relation to the other charges mentioned above. If any function of the new regime is found to be duplicated, QPA recommended that a matched reduction in business rates and council tax bills should be considered.

B) Enforcement

The duty to monitor activities on mineral sites is included in the remit of MPAs general planning enforcement. The fees regime would help to improve the services of specialist minerals officers and regular monitoring resources.

However, some respondents have suggested that charges should not be levied for monitoring and enforcement unless the site is in breach of the conditions attached to its permission. VoGlam has further suggested that in no other area of planning enforcement is a developer charged for the investigation of a complaint even when it is justified. It can be argued that mineral planning is different as it requires long-term/continuous monitoring together with negotiations on aftercare and restoration that are absent in the monitoring of general planning development. Nevertheless, it

would need further examination to justify the fees charged for both annual monitoring visits and visits resulting from a justified complaint.

C) Dormant sites

Most respondents have requested further clarification of dormant/inactive sites. Many MPAs also raised concern about the potential problem with inactive and dormant sites as to who should be expected to pay the monitoring fees.

Although many respondents considered the owner should be charged first and for them to recoup the charges from any operator, long dormant/inactive sites may well have been sold on subsequent to the grant of planning permission. It is sometimes difficult to identify the owners of dormant sites as well as the owner of the mineral rights. It may also be unfair to impose fees on a subsequent owner who has no involvement with the previous quarrying activities, and has no benefit from the mineral activities.

D) Ring fencing/Self-financing fund (Section 4.7)

Different views were raised regarding the issue of ring-fencing the fees.

CCW suggested that the fees should provide adequate resources for all parts of the planning process; including staff resources from the statutory agencies such as the CCW, the Environment Agency Wales and the Agriculture Division. This is especially true when it involves SSSIs or sites with environmental designations (European and nationally designated sites of nature conservation and landscape importance).

However, most respondents felt that the fees should be fully hypothecated to the monitoring and enforcement services as stated in Paragraph 1 of the Executive Summary, otherwise, it will be hard for operators to co-operate with the new fees regime. As there may be different opinions on the monitoring or enforcement services, the Welsh Assembly Government should produce guidance to ensure a consistent approach.

E) Workload

Since the fees regime will impose an additional statutory duty on MPAs, some MPAs have expressed concern about the significant increase in workload the new fees regime would cause. VoGlam suggested that staff time dedicated to perform the new duties would easily amount to one quarter of a man-year. The 'first' round of inspection would be more time-consuming, given the need to establish formalised system and ensure the availability of up-to-date baseline information.

17 OTHER ISSUES

PembCNPA & PembCC

- 1) Will the fee be subject to VAT, whether at a nationally set level or a locally set level?
- 2) What is the position with respect to the Freedom of Information Act and public access to the site reports/annual reports? Is the industry content with this information being made available?

- 3) Monitoring restoration and aftercare conditions are not mentioned but deserve special consideration because operators may have abandoned the site (even the area), and then the fees may have to be charged to the current owner/s. This aspect needs to be covered in the assembly's guidance.
- 4) Should monitoring out of normal office working hours require an additional fee?
- 5) Borrowpits for special projects are not mentioned. They are usually of short term duration, probably not a year and the operators are often not the usual quarry operators but rather contractors. The guidance should cover this type of site.
- 6) Will the Assembly Government be writing to advise all operators and owners of permitted sites, whether active, inactive or dormant, about the introduction of monitoring fees into the press, or will it be left to the MPAs to notify operators?
- 7) For new sites could the cost of monitoring be reflected in the planning fees? This may of course involve the applicant in a financial loss if the application or subsequent appeal is not successful.

QPA

- 1) Monitoring and enforcement activities are not largely Government funded (Para. 4.7.1). Council Tax and UBR are the largest contributors to local government expenditure (45%) and 'planning' only takes 1.7% of it.
- 2) QPA has also suggested that some parts of the proposal have misinterpreted their previous comments, including those relating to Para. 4.2.4, Para. 4.3.7.

Acronyms

1	<i>Merthyr Initiative Group</i>	<i>MerthyrIG</i>
2	<i>Snowdonia National Park Authority</i>	<i>SnowdNPA</i>
3	<i>British Aggregates Association</i>	<i>BAA</i>
4	<i>Pembrokeshire Coast National Park Authority</i>	<i>PemCNPA</i>
5	<i>Pembrokeshire County Council</i>	<i>PemCC</i>
6	<i>Carmarthenshire County Council</i>	<i>CamarCC</i>
7	<i>The Law Society</i>	<i>LawSoc</i>
8	<i>Quarry Products Association</i>	<i>QPA</i>
9	<i>The Confederation of UK Coal Producers</i>	<i>CoalPro</i>
10	<i>Ynys Mon County Council</i>	<i>YMCC</i>
11	<i>Limestone Hill Quarry</i>	<i>Limestone</i>
12	<i>Countryside Council for Wales</i>	<i>CCW</i>
13	<i>The Vale of Glamorgan Council</i>	<i>VoGlam</i>
14	<i>Caerphilly County Borough Council</i>	<i>CaerCC</i>

Annex C – Extract from transcript of the Environment, Planning and Countryside Committee meeting on 8 March 2006.

Is-ddeddfwriaeth: Rheoliadau Cynllunio Gwlad a Thref (Ffioedd ar gyfer Ceisiadau a Cheisiadau Tybiedig) (Diwygio) (Rhif 2) (Cymru) 2006

Secondary Legislation: The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendments) (No. 2) (Wales) Regulations 2006

[319] **Glyn Davies:** Are there any questions or comments on the fourth Order before us today? I see that we are happy for it to go to Plenary.