

Oxfordshire County Council - Protocol on Fees in respect to monitoring of mining and landfill sites in Oxfordshire.

Introduction

The County Council is responsible for determining planning applications relating to minerals and waste, referred to as “County Matters”.

When applications are granted, most planning permissions will have conditions attached to them, for example specific hours of working, number of vehicle movements allowed per day or noise abatement measures. Some conditions will also require the submission of details (such as landscaping) prior to development commencing. Quite onerous conditions will also deal with the restoration of sites once development or mineral excavations have ceased.

The reasons for attaching conditions to planning permissions can include seeking to minimise disruption during development or protect particular areas, such as trees. Conditions are always put on for a reason and it is important, therefore, that they are complied with throughout the duration of any development. In some cases, conditions can apply to a site after development has been completed.

To ensure that operations and developments are being undertaken in accordance with planning permissions and conditions and legal agreements attached to them, a programme of site monitoring is required. Regular monitoring of sites is particularly important for developments which have long lives and which cover large tracts of land, which is common amongst minerals and waste sites.

This has culminated in Regulations⁽¹⁾ from Central Government that came into effect on 6 April 2006. The Regulations allow for Minerals and Waste Planning Authorities (MWPAs) to charge for the monitoring of mining and landfill sites. With the Regulations came a good practice guide⁽²⁾ for their implementation.

This protocol is written in direct reference to the above guide⁽²⁾ and sets out how Oxfordshire County Council will carry out conditions monitoring at all sites not only those falling within the remit of the Regulations, but with particular regard to:

- The process for agreeing the number of inspections in liaison with the site operator(s), including the factors to be taken into account in deciding the number of visits;

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(2) Fees for monitoring of mining *and landfill sites in England*- A guide to implementation and good practice April 2006 - Office of the Deputy Prime Minister: London

(3) Freedom of Information Act 2000 and The Environmental Information Regulations 2004

- The invoicing arrangements including liaison with the site operators to decide which operator should be invoiced;
- The arrangements for liaison with the Environment Agency to avoid duplication of work;
- The fee recovery arrangements – dealing with cases of non-payment;
- The format and timing of written follow-up reports.

It is also important to monitor sites where unauthorised activity has been identified as taking place and which do not have the benefit of planning permission. However, the purpose of this protocol is to deal with the monitoring of sites where planning permission has been granted.

It does not seek to monitor unauthorised sites, which are dealt with separately by the Council's Local Monitoring & Enforcement Plan, which was adopted in October 2013, and can be found at www.oxfordshire.gov.uk/planning

Fee Charging Regime

The Regulations⁽¹⁾ that have been introduced only allow us to charge for our monitoring at sites that have mineral or landfill permissions in place or other activities if they are integral to such activities. We are not currently able to charge for our monitoring at sites that have other types of permitted activities being carried out and which are not linked to mineral or landfill permissions. These include waste transfer, composting and metal recycling sites.

Throughout the year, we may need to visit a site in connection with new applications received in order to give pre-application advice and in response to complaints that we may receive about a site. Depending on circumstances, such visits will not be part of the formal monitoring scheme and therefore we will not charge for them. However, we may revise the site categorisation and visit frequency as a result of our investigation of justified complaints relating to a site, and the determination of new applications. Please refer to Number of Annual Visits section below.

Monitoring staff will hold appropriate authorisation from the County Council in order to exercise their right of entry to land under the Town and Country Planning Act 1990 (as amended), for the purpose of the implementation and enforcement of planning control. We will use specialist consultants from time to time in order to undertake some aspects of our monitoring e.g. site surveys.

Each visit will be chargeable at the rate set in the Regulations, which is currently £331 for active sites and £110 for inactive sites.

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Number of annual visits

Guidance⁽²⁾ from central Government is that an average active site, which is fully compliant, should be inspected at least quarterly. The actual number of visits to a site should be determined on the basis of an assessment, which will have regard to a number of factors;

- i. size and type of development;
- ii. number and complexity of conditions;
- iii. number of issues requiring monitoring;
- iv. stage of development. For example, more frequent visits to mining sites are likely to be needed during initial site preparation (e.g. construction of site access and wheel washing equipment, installation and commissioning of processing plant/offices), soil stripping and replacement and the creation of soil storage and screening mounds, restoration planting and the final removal of plant equipment on completion of restoration;
- v. whether the operator has ISO 14001 or EMAS accreditation;
- vi. progressive nature of working/restoration (i.e. sand and gravel sites may require more frequent visits than hard rock);
- vii. breaches of planning control observed;
- viii. complaints received for the site which have proved to be justified.

In deciding the number of annual visits the Council must have regard to the resources available as well as the most appropriate way in which to apply the eight factors above. A system of categorising the sites has been developed these are listed below.

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Category	Description	Possible No. of Visits	Anticipated No. of Visits
1.	Inactive site 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
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 – 8	2
3.	Active sites in the early stages of 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 – 8	3
4.	Active sites, 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.	3 – 8	4
5.	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.	5 – 8	6
6.	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.	0 - 8	8

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Review of site categorisation and monitoring frequency

At the start of each chargeable year we will produce a statement of the number of chargeable site visits for each site and send to the site operators. It will detail: if the site is active or inactive; the number of operators at each site; the number of planning permissions to be monitored; what category we consider the site to fall within; and the number of chargeable site visits we intend to carry out in the period. At subsequent chargeable monitoring visits, we will check to ensure that the frequency is still appropriate for the site.

We will formally ask the appropriate operator to agree to the suggested monitoring frequency. Where no agreement can be reached, we will still monitor at the site. The Regulations⁽¹⁾ allow us to carry out up to 8 chargeable visits in a 12 month period for an “active” site, or one chargeable visit in a 12 month period to an “inactive” site.

If we cannot agree an appropriate monitoring frequency with the operator, we will impose a monitoring frequency and charge accordingly. The operator will be invited to write initially to the Development Management Team Leader who will review the Monitoring and Enforcement Team’s decision on the number of chargeable site visits.

A further appeal on the Council’s decision is available by following the Oxfordshire County Council’s complaints procedure which is published on the Council’s website at :

<http://www.oxfordshire.gov.uk/cms/public-site/complaints-about-oxfordshire-county-council>

Where the operator still remains unhappy with the outcome, they may ask the local government ombudsman to investigate.

We want to undertake a frequency of monitoring which is appropriate for the site and thus we will keep the monitoring frequencies under continuous review. Site operators should therefore tell us if there are any amendments to the activities being carried out at the site which may impact on the agreed monitoring frequency for the site. Such information should be put in writing and brought to the attention of the Monitoring and Enforcement Team.

Operators should note that the initial categorisation could be amended during the year, if for example non-compliance is identified, justified complaints are received or a site that is “inactive” becomes “active” during the 12 month period. We may also consider that it is appropriate to revise the initial

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categorisation (up or down), based on any evidence that is provided to us. This may include the operator's schedule of activities at the site, and our assessment of details of any quality systems such as ISO14001 and EMAS that are held. If we wish to amend the frequency, we will normally tell the operator why and when the amendment will take effect.

If we monitor more than 8 times in a 12 month period we will not charge for these additional monitoring visits. If we monitor less than 8 times in a year, we will charge only for the number of formal chargeable monitoring visits that we have carried out.

We will not charge for monitoring after we have agreed that the mineral and landfill operation has ceased and the site restoration and aftercare has been satisfactorily completed.

The format and reporting of chargeable monitoring visits

We may visit the site on either an announced or unannounced basis. We will advise you if an inspection is chargeable at the start of our inspection.

The purpose of our site visit is to inspect the activities being carried out at the site against the conditions of planning permission(s) or any legal agreement(s), which are in force. We may not monitor all the conditions on every visit. We may focus on different aspects of the activity on each monitoring visit, and on occasions we may employ specialist consultants to assist us. This may apply, for example, to the monitoring of noise from activities at a site.

We will ask operators to arrange for an appropriate member of staff to be available at the time of the visit and will report to the site office on arrival at the site to make our attendance on site known. If our visit is unannounced we will still report to the site office on arrival and make our presence known. The Regulations⁽¹⁾ allow for unannounced visits.

We will want to carry out an inspection of the permitted site in order to observe the operation being carried out. We may wish to take photographs of the activities being carried out. The Monitoring and Enforcement Team may also make written notes whilst on the site to assist in the drafting of the formal report.

Most operators should have copies of their planning permission(s) and relevant documents and plans and drawings available at the site and it would be useful if operators could arrange for such paperwork to be made available

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to us at the time of our visit. We may also want to see records of materials receipt or removal from the site.

A record-sheet will be completed by the inspecting monitoring officer and left with the site office, it will record: the time of arrival; time of departure; name and contact address of officer(s) who carried out the inspection; whether the visit was announced, unannounced or in a response to a complaint; and a short summary of what planning conditions were monitored. It should be signed by the monitoring officer and the site manager.

The findings from all chargeable visits will be written up formally. This will detail the conditions monitored and any points arising and the actions required as a result of the visit will be specified in the report. Where appropriate, a timescale for compliance with a specific condition will be imposed.

We will send the appropriate operator a copy of the monitoring report. At the same time, we may also ask if the operator has any comments about the monitoring process and/or the monitoring visit that we have carried out.

Our intention at this stage is to send the report to the appropriate operator within 4 weeks of completion of the visit. Where there is more than one operator in relation to a site, we will need to consider who else to send a copy of our monitoring report to. Generally, a report will be sent to the main operator and to any other operator that is responsible for compliance with the conditions of the planning permission.

Operators should be aware that whilst reports are not generally published they remain public documents that are accessible to the general public under the provisions of the freedom of information legislation⁽³⁾.

Non-compliance with Planning Conditions

Oxfordshire County Council fully endorses the Planning Officers Society good practice guidance that monitoring should:

- be used to minimise the need for enforcement or other action;
- identify and avoid potential problems before they arise;
- encourage good practice rather than punish bad practice; and
- be developed as a means of regular liaison with operators and the public.

However, where a persistent breach in condition(s) has been identified through the monitoring process **and** negotiation has failed to secure compliance, we will consider taking more formal enforcement action(s) in line

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with Oxfordshire County Council's Local Monitoring & Enforcement Plan, which was adopted in October 2013.

Avoiding duplication with the Environment Agency

The monitoring that we carry out is not intended to duplicate the monitoring carried out by the Environment Agency. Our monitoring is designed to monitor operator compliance with the activities and uses specified in the planning permission and the conditions detailed on it in order to control the development.

The Environment Agency also carries out site monitoring and inspection in relation to their pollution control functions. We will investigate the scope for occasional joint monitoring with the Environment Agency and consult them where necessary in order to compliment our monitoring function.

If, during our monitoring we suspect that an operator may be in breach of a permit issued by the Environment Agency, we will bring it to the attention of the Environment Agency.

Invoicing arrangements and bad debtors.

The liability to pay the monitoring fee normally rests with the main operator of the site. This is the case even if the planning permission was granted to a different operator or to the landowner.

Where there is more than one operator carrying out the works the person in overall control of the site is liable to pay the fee. If no such person can be identified, the liability rests with the landowner.

After we have completed a monitoring visit and sent the operator the monitoring report, we will send the operator an invoice requesting payment of the monitoring fee for that visit. We will request the fee after each formal monitoring visit that we complete.

The fee will be due within 30 days of the date of the invoice.

Payment can be made by cheque, BACS or CHAPs to Oxfordshire County Council. Operators should quote the invoice reference number when providing payment. The fee does not attract VAT.

Please return your payment to:

Oxfordshire County Council
Speedwell House,

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Speedwell Street.
Oxford. OX1 1NE.

If you have a query about the invoice or fee that is due please do not hesitate to contact us; by email at tellplanning@oxfordshire.gov.uk ;or by telephone 01865 815084, or by writing to the Monitoring & Enforcement Team at the above address.

We will follow Oxfordshire County Council established procedures for taking action against those who default on fees that have been requested and are due.

Resolving disagreements

Whilst we would prefer to resolve disagreements informally there may be occasions where an operator disagrees with the way in which we carry out our monitoring. Please do not hesitate to contact the Monitoring & Enforcement Team directly in the first instance; by email at tellplanning@oxfordshire.gov.uk ;or by telephone 01865 815084; or by writing to the Monitoring & Enforcement Team at the above address.

Alternatively, an operator can complain by using the Oxfordshire County Council complaint procedure which is published on the Council's website at:

<http://www.oxfordshire.gov.uk/cms/public-site/complaints-about-oxfordshire-county-council>

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