



Response to consultation by the Environment Agency on Materials Facilities charges and Definition of Waste Panel charges from 2014

(April 2014 to 20 June 2014)

Introduction

The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to government and regulators with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared jointly by UKELA's Waste Working Party.

UKELA makes the following comments on the proposals, primarily from a practical perspective rather than a legal standpoint.

Question 1: Given that we [the Environment Agency] have to recover our costs, do you support the activities listed and therefore a charge for applicable facilities of £2,240 per annum?

It is not clear how the charge is calculated, and therefore whether it is reasonable. The Environment Agency (EA) has set the annual charge on the basis that it covers "the extra time required for specific compliance and data handling activities in addition to [the EA's] existing work associated with these sites". These are listed as:

- maintaining records of who has notified as qualifying;

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- one pre-arranged inspection per site each year to check sampling, measuring and recording systems to ensure reported data is representative;
- one unannounced inspection per site each year for the same purpose;
- a small number of short additional visits to underperformers;
- receipt of reported data, chasing missing submissions, putting it on public registers, dealing with data queries and forwarding the combined data set for publication on the web; and
- administrative and IT system support costs associated with the above.

However, the EA does not give a breakdown of time allotted to each activity and it is, therefore, not possible to assess, or comment on, whether the charge truly reflects the costs.

Also some EA time will be duplicated with, and recovered from, existing substantial charges for environmental permitting work on a site. Therefore, contrary to the EA's claim, it is not necessarily in addition to the EA's existing work at these sites. In practice, the EA may only be making two visits in a year and undertaking a small amount of administrative work that will mainly be electronic.

We query how many facilities will be subject to the charge. The level of charge should be reduced if there are significantly more than the 200 facilities that the EA estimates.

Question 2: Do you support our proposal to recover our costs of continuing to administer the Definition of Waste Panel by introducing charges?

Yes. UKELA recognises the commercial and reduced compliance risk benefits to business of achieving end of waste status for specific materials and applications. It also recognises that the Environment Agency's resources are increasingly limited and understands that some cost recovery is necessary for the Agency. However, while supporting the principle of charging for the assessment of submissions to the National Definition of Waste Panel, UKELA would expect to see a target timeframe for decisions to be reached by that Panel following the provision of a suitably detailed submission. We would propose eight weeks as such a timeframe.

Question 3: Would you use the service provided by the Panel following the introduction of these charges?

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Yes. UKELA members in their commercial and professional work outside of UKELA are engaged on behalf of clients to prepare submissions to the National Panel. It is anticipated that the introduction of the charges will not deter businesses from using the service.

For and on behalf of UKELA

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