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**MPA submission to the Consultation on Environment Agency Charge Proposals from 2018**

The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar, silica sand and other industrial mineral industries. With the recent addition of the British Precast Concrete Federation (BPCF) and the British Association of Reinforcement (BAR), it has a growing membership of 450 companies and is the sectoral voice for mineral products. MPA membership is made up of the vast majority of independent SME companies throughout the UK, as well as the 9 major international and global companies. It covers 100% of cement production, 90% of aggregates production and 95% of asphalt and ready-mixed concrete production and 70% of precast concrete production. Each year the industry supplies £20 billion of materials and services to the Economy and is the largest supplier to the construction industry, which has annual output valued at £144 billion. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors.

We welcome the opportunity to comment on the proposals to revise the fees structure for sites operating under the Environmental Permitting Regime as delivered by the Environment Agency on behalf of the Secretary of State. We note that subject to the outcome of the consultation it is proposed that any changes to the fee structure would come into effect in April 2018 and would only be applied to permit variations/applications and subsistence fees delivered after the date of introduction. Given this, it will be essential that the EA track, record and invoice the time and effort associated with their case work load accurately.

MPA do not support the proposals taking effect from April 2018 as there are still many areas of uncertainty, issues where greater transparency and clarity are necessary, and some topics where, ideally, further consultation or discussion would be beneficial.

The proposals will have a significant impact on MPA members, given the breadth of mineral processing activities that fall under the environmental permitting regimes. As the full proposal details were only published at the end of November 2017, it was not possible for operators to accommodate the extent of the revised charges in business budgets for 2018/19.

In addition, it would be beneficial to amend the charging structure alongside proposed amendments to the performance/compliance banding approach to ensure the greatest transparency and to minimise confusion.

Consequently, MPA strongly urges the Environment Agency and the Secretary of State to delay the proposed amendments until the following charging year (2019) and following further consultation with relevant stakeholders.

Our responses to the formal consultation questions are presented as an annex to this letter, but alongside these we would offer further comments around the following themes.

### Overview

The proposed hourly charge for advice and services provided by the EA is comparable to the rates charged by commercial consultancy organisations for executive staff. The nature of these charges - whereby applicants and operators are now paying for every element of the licensing service they receive - means that there is quite rightly a growing focus and emphasis on the quality, timeliness, assurances and warranties, and value for money of the individual services provided. The EA themselves refer to the 'customer experience' throughout the licensing process and a consequence of this is that the relationship between regulator and the applicant will shift towards a more commercial transaction, with all the attendant expectations that go with this. Culturally, this will represent a significant change in the way that Agency staff will be expected to deliver their traditional functions, particularly in terms of the transparency and accountability for services being provided and the associated costs that these entail.

### Risk based regulation

The Agency, in its consultation and the accompanying Guidance is unambiguous that, as a fundamental principle, regulation should be based on risk. However, it appears that the review of charges process has not taken into account the actual risk presented by regulated activities, and therefore whether the level or regulatory effort perceived as necessary by the Agency is appropriate, and as a consequence whether the costs modelled through the review of charges are appropriate to the actual risk. Certainly, the discussions between the Agency and representatives of the Cement and Lime sector in December 2017 indicate that additional resource directed towards the sector will not result in additional environmental benefit (see Question 46).

The Agency's risk assessment process remains unclear, and indeed, the EA have indicated to MPA that charges are not based on a formal risk assessment taking due regard of environmental performance or risk management, but are instead simply based on the time and resources that EA officers believe is required to regulate the permitted activities.

As a final observation, we would note that there is no impact assessment associated with this consultation. Given the fundamental change to the nature of the charging approach, the introduction of variable charges and new charging services, it seems inappropriate that such a consultation should not be accompanied by an impact assessment. It is particularly disappointing since the MPA contributed to a supporting study, commissioned by the EA and

conducted by RPS, assessing potential impacts on the sector. There has been no feedback from the EA regarding the outcomes of the study either directly or published as part of an impact assessment.

#### Level of detail provided by the consultation

We are concerned that although the consultation documents go some way to describe the model used and the broad scope of regulatory activity included within the fixed costs, they do not clearly establish the basis for the current level of effort associated with regulatory intervention. Equally, the consultation and draft EPR Guidance does not clearly set out the service level which regulated sites may expect to receive for the additional costs they are likely to incur.

While section 2.1 of the consultation document states that the EA can “*demonstrate that we are cost-effective, and deliver ongoing efficiency gains for both us and our customers*”, no such information is provided in the consultation document as to how this will be delivered and demonstrated in practice. Associated with this, as there is no indication of the actual functions and actions which will be delivered by the charges to be incurred, there is no means for operators to determine whether there are any efficiency savings which might be possible. There should be a mechanism in place so charges can be reduced if an efficiency is identified and delivered.

#### Time and materials recovery

Although we agree with prescriptive fixed charges for some of the regulatory functions delivered by the Agency, complex activities (with the potential to incur a range of costs) or activities above a certain threshold should be charged on a time and materials basis to properly account for the site-specific circumstances of each application rather than being based on an average cost derived from a range of individual cases as appears to be the case at present. Given the purpose of this consultation is to ensure the Agency is able to recover their costs, charging on a time and material basis will reduce the potential for cross project subsidisation and provide much needed transparency to customers. However, the hourly rates proposed are high and always assume executive staff are involved. The Agency must urgently review the proposed hourly rates and scales against those of the open, commercial market, to ensure that it has a transparent value proposition and cannot be accused of exploiting its unique regulatory position. We note that discretionary and unplanned work are already proposed to be charged on a time and materials basis. Our understanding is that for discretionary services, the EA will estimate the time and cost for the service before any work is undertaken. This will then be amended if necessary, and agreed in writing with the operator, once information is received. Similarly, for unplanned work, such as that following an incident, the EA will use time and material charging but will keep operators fully informed of such charges. There would already, therefore, appear to be the capacity to deliver services on a time/materials basis, based on an initial cost estimate against which costs actually incurred can be monitored against.

#### Cost review/ challenge procedure

Without an effective mechanism or governance structure that allows applicants to formally challenge or question the value for money or quality of service they receive (distinct from the established appeals process around a decision), we would suggest there is limited incentive or motivation to change established practices and therefore drive improvements in the quality of the services that are being provided by an organisation. This point is particularly relevant given that applicant companies represent 'captive customers', unable to go elsewhere for the monopoly services being provided by the regulator for which they are ultimately being charged. With the proposed increase in the hourly rate to be charged from April 2018, the need for an effective and transparent governance structure is something that should be addressed with some urgency.

Whilst MPA welcome the positive ambition to move from a complex, outdated scheme towards one that is simpler and more transparent, we do consider that given the complex and wide ranging issues that these proposals raise it would be prudent for the Agency and the Secretary of State to delay its implementation until April 2019. This would give more time to allow full discussions with stakeholders, the proposals and underpinning risk assessments to be made more transparent and available, and for a more complementary and agreed performance banding/compliance assessment approach.

Our responses to the formal consultation questions are presented as a separate annex to this letter. We hope you find our comments constructive, but if you require any further information please contact the undersigned.

Yours faithfully

**Nicola Owen**  
Environment and Waste Policy Executive  
Mineral Products Association

## ANNEX 1: MPA Responses to Consultation Questions

1. Do you agree with the proposals to charge fixed charges where we have greater certainty over costs and time and materials in other instances?

Although we agree with the principle of charging fixed charges where the EA have greater certainty over costs for some installations and activities, not enough evidence has been provided on how the fixed charges have actually been calculated - particularly the range of potential costs that they may be addressing. Without further information (as discussed in our introductory letter) we cannot support these proposals.

A time and materials charge should also be considered for activities where there may be a wide range of time/material costs depending on the site-specific circumstances. The purpose of this consultation is to ensure the Agency is able to recover the costs they have directly incurred. Charging on time and material basis will prevent cross project subsidisation and provide transparency to customers. Supplementary time and materials activities will need to be controlled, monitored and measured to ensure inconsistencies do not occur due to regional variations in the availability and capability of EA staff and resources.

We are unclear why the EA's charging model within the consultation document includes charging costs for Bad Debt and Financing (depreciation and cost of capital). The consultation says the model is 'required to include' whilst HM Treasury's Managing Public Money<sup>1</sup> document includes (in Box A6.1A) bad debt, depreciation of start up and one-off capital items, and capital charges, in its list of 'elements to cost when measuring fees'. It is also noted, (in paragraph A6.1.4) that not all elements will apply to every service. Hence, it is arguable whether the EA are 'required' to include bad debt and financing provisions in their charging models, particularly as:

- These items may well be unrelated to the costs of delivering the regulatory framework to installations - there is no information included in the consultation to show that they are related;
- There is no justification given why installations should pay a proportion of bad debt and financing costs through permitting charges, except to say it is 'required';
- The HM Treasury's Managing Public Money specifically excludes 'externalities imposed on society (e.g. costs from pollution and crime)' and 'enforcement costs', from its 'elements to cost'. These exclusions might be taken to exclude the bad debt provisions the Agency makes for not complying with the charging requirements with the EPR.

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<sup>1</sup> HM Treasury, Managing Public Money, July 2013, with annexes revised as at August 2015 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/454191/Managing\\_Public\\_Money\\_AA\\_v2\\_-jan15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf)

Against this background, it is not clear how this element of the cost structure can be justified given the need to ensure that any fees incurred only relate to the case in question, and don't offset, underwrite or subsidise any other case or function where losses may be incurred?

Given that these costs make up around 5% of the 'chargeable income' for the EA (see page 14 of the consultation document), we would suggest that this element of the fee should be removed unless a more substantive justification for the inclusion of these costs in the EA's charging model can be provided.

2. Please tell us if you have any comments about the proposed transitional arrangements outlined in section 2.8

Considering the level of detail required by the consultation, it is difficult to see how the plan to implement the new scheme in April 2018 provides the EA with sufficient time to consider responses in a meaningful way. Although there has been some pre-consultation activity it is inevitable that as a trade association we are unable to consult fully with our Members until the consultation document is out with all the details. Even then, the level of detail available through the pre-consultation and in the consultation itself has been insufficient to fully consider the proposals. MPA would like to see the implementation of the proposals delayed until April 2019, as:

- the consultation period ends so close to the implementation date;
- the full proposal details were only published at the end of November 2017;
- the proposals will have a significant impact on MPA members;
- it has not been possible for MPA Members to accommodate the extent of the revised charges in business budgets for 2018/19.

MPA Members operating in the cement and lime sectors have recently undergone a permit review process to implement the Industrial Emissions Directive within the permits. As a result, new permits include numerous Improvement Conditions. At the time these Improvement Conditions were set by the EA there was no indication that there would be any charge related to the assessment of the fulfilment of the conditions. For this reason, the contents of Improvement Conditions were not necessarily questioned, or the time required for assessment of fulfilment of these Conditions considered. Thus, it is inappropriate for the Improvement Conditions that are embedded within existing permits to attract the proposed time and materials charges.

Furthermore, the consultation itself does not describe any safeguards to ensure that any Improvement Conditions proposed in the future are appropriate and the costs of assessment minimised and are consistent. Such safeguards are necessary to assure operators that the EA will not be able to set Improvement Conditions purely as a means to generate revenue. Equally, the consultation does not set out methods by which operators are able to challenge the inclusion of Improvement Conditions, or the costs associated with assessing that such Improvement Conditions have been fulfilled.

MPA notes that Improvement Conditions are often used by the Agency to gather information that is not available at the time a permit application/variation is determined. If there is to be a charge associated with assessing Improvement Conditions then the EA need to assure itself and operators that Conditions included when a permit is issued or varied are absolutely necessary and unambiguously worded. In addition, when including Improvement Conditions, the Agency should provide operators with an estimate of the time expected to be required to assess the reports arising from the Condition and what the anticipated charges will be for the operator.

Section 2.1 of the consultation document states that the charging proposals mean that “Cost recovery is stable from one year to the next, and charges are broadly predictable and don’t create perverse behaviours”. However, a system whereby Time and Materials charges are a routine part of assessing the fulfilment of Improvement Conditions, which have been set through a permit review process at the behest of the EA, does not allow predictable or stable charging.

3. Please tell us if you have any comments about the common regulatory framework outlined in section 3.1.

Again, we would consider that there is a significant lack of detail provided behind the common regulatory framework described. Although we cannot disagree with the wording within the consultation the devil is in the detail which is wholly lacking.

Regulated businesses will expect to see improvements in the delivery of the services provided by the EA given the significant increases in the delivery costs being incurred. Our Members frequently report problems with the permit application process in particular and we would expect that by increasing the cost a better service can be provided. It remains unclear how this will be demonstrated in practice.

Equally, the MPA has noted a disconnection between the level of compliance intervention and the environmental performance achieved by the sector which suggests that the proposed regulatory framework does not fully take account of the actual risk presented by well managed industrial activities. Thus, the EA’s charging scheme proposals do not achieve the aim to “encourage good environmental compliance and particularly to meet the objective of cost reflectivity, where the level of charge reflects the level of regulatory effort.”

For example, in the cement and lime sector, the EA has stated that only two thirds of compliance intervention the Agency has ‘modelled’ in the charge proposals was delivered in recent years. Despite this, the cement and lime sector has remained well managed and maintains a high level of environmental performance. This suggests that the additional one third of compliance intervention modelled by the EA, and included in the proposed subsistence charges for the sector, is unnecessary activity that will not reduce the environmental risks presented by the sector, does not take account of efficiencies that could be made in compliance interventions, and will not offer any environmental benefit for the additional cost.

Equally, the Agency has indicated to MPA that the application costs, and therefore variation fees, included in the consultation have been built up from time recording of the previous ten years. This suggests that the modelling is based on historic processes known to be inefficient and applicable to manufacturing processes, environmental risks, and abatement technologies no longer appropriate to the sectors in question. This underlines that the Agency need to provide significantly more clarity on the basis for the proposed application fees than is given in the current consultation document.

4. We anticipate that there will be time saving for businesses if you no longer are required to complete an OPRA profile. Do you agree?

The time saving will be minor in comparison to the increased subsistence fees and the uncertainty of costs associated with time and material charges. The OPRA system, whilst imperfect, allowed operators a degree of transparency which is not present in the current system.

The OPRA system changes very little from one year to the next so the only saving will be in not completing it for the first time, and then the time saving will be minimal compared to the application process.

5. How much time do you think will be saved by not having to complete an OPRA profile as part of a permit application? (in hours)

MPA believes that the time savings will be minimal in comparison to the overall time spent on a permit application process.

6. Who usually completes the OPRA profile that is required when applying for a waste, installations or mining waste permit?  Manager, director or senior official  Scientific or technical staff  Administrative or secretarial staff  Third-party consultant  Other  Not applicable

7. How much time do you think will be saved by not having to annually review your OPRA profile? (in hours, per year)

There will be no meaningful time saving for operators that is not offset by the increased and open-ended fees proposed by the EA or subsumed by the increased compliance activity proposed by the Agency. The only review of the OPRA profile happens when the number of points has changed significantly, and if so, what has caused the change. This would take no more than 15 minutes a year.

8. Who usually completes the annual review of your OPRA profile?  Manager, director or senior official  Scientific or technical staff  Administrative or secretarial staff  Third-party consultant  Other  Not applicable

The review of OPRA profiles is dependent on the size, scale and nature of the business and permit activities but in all cases, will only offer a minor time and/or cost saving for the organisation involved.



9. Do you agree with the proposal to include only basic pre-application advice in all of our application charges?

Yes, not all applications will require detailed pre-application advice. Likewise, it should be up to the applicant to decide whether it is required, or not. Please also see our response to question 10.

The Agency should be aware that, in order for the application service to have credibility, that a useful level of pre-application advice will be necessary; which may vary between sectors. Without a quality service delivered through the basic pre-application service, applicants will feel that they are being forced to take up an enhanced service for which there is only one provider, the Agency.

For cement sector, the pre-application advice is usually limited to a discussion of what type of variation is required, so the proposed level of advice needs to be sufficient to authoritatively cover this first step.

10. Do you agree with the proposal for a discretionary enhanced pre-application advice service?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

We agree that the applicant should pay for pre-application advice if they require it so that the EA can recover the costs of their involvement. However, the status of any advice provided at the pre-application stage also needs to be clarified, given the desire to front-load the application process. Such an approach can be advantageous so long as the advice that is provided is not caveated to such an extent that it becomes worthless.

We would consider that such pre-application advice should be binding unless substantive new evidence can be provided to justify why a position has changed. Otherwise it is difficult to see what advantage it offers to a developer - particularly given they will be paying for the service they receive. This is important to differentiate between an organisation/corporate position and the views/opinion of an individual who may be working within that organisation.

11. To recover our costs we intend to charge each time we review a waste recovery plan. Do you agree with this approach?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

No, we do not agree. Our Members utilise waste in the restoration of quarries, an activity which is usually classified as “recovery”. With the lack of Guidance available to industry it is often difficult for applicants to have the correct content within their Waste Recovery Plan (WRP). This can result in re-submission of a modified version of a previously refused WRP in an attempt to “second guess” what the EA would like to see for it to be approved. This to some extent will also depend on the level and experience of the Agency officer dealing with the application as a more experienced officer may be able to determine a WRP that a less experienced officer may not. If the EA charge each time a WRP is reviewed it should be

made very clear why the WRP has been refused. Perhaps the EA should include the applicant in discussion over the assessment process.

12. Do you agree with our proposal to retain a proportion of the fee to cover costs associated with processing poor applications?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

Yes, but only if the application cannot proceed past the “duly making” point once the operator has being contacted and offered the opportunity to respond. Only then should the EA have the right to recover costs they have incurred to this point. Timescales should be set out clearly so operators know when they must respond by. Similarly, it would be beneficial if the EA published their duly making checklist.

13. Do you agree with the proposals to recovering additional costs for determining public interest applications through time and materials?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

Yes, as long as the charge is transparent and demonstrates what work officers have undertaken. The EA must provide a clear process for identifying sites or applications of high public interest at the outset. The current highly-flexible approach is not an adequate starting point. However, the EA’s public participation statement means that all application for bespoke permits or for installations, or for significant variations to these will be treated as of ‘high public interest’ and thus attract time and material costs as £100/hr. However, this approach provides no room for the Agency to reduce costs and improve efficiency by taking into account the actual level of public interest previously demonstrated. For example, recent significant variations to cement permits received no interest from the public, although they would be deemed by the Agency’s public participation statement to be of ‘high public interest’.

14. Do you agree with the fixed charge approach for application amendments during determination?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

Further details on how the £1,930 fixed fee has been determined are required before we can fully answer this question. We would consider a time and materials charge may be more appropriate, rather than applying a gross assumption that each amendment will incur 16 hours effort to process and resolve. The applicant might be expected to pay for any costs that arise from the applicant varying a permit application during determination only if the changes are significant to the application as a whole and involve further consultation or technical assessment.

15. Do you agree with our proposal to recover costs of determining permits for novel activities through time and materials charging?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

Whilst it appears reasonable to recover costs in this way, the Agency should discuss the charging approach with operators on a with operators on a case by case basis and the EA should provide an estimate of the expected cost of processing the application, as well as providing regular updates on the progress of the application and the time spent, with transparent itemisation. Furthermore, if significant additional cost is incurred in scrutinising permits for novel processes, the EA should feel sufficiently confident in the delivery of the activity to offer a reduced first year subsistence fee, that is, without the first year premium proposed by the Agency.

16. Do you agree with our proposals to charge for further information requests not covered within the baseline charge?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

Whilst there are no objections in principle to this, there is deep concern that, based on past experience, the EA will ask for the same information to be presented several times although it has already been submitted, or was reviewed and agreed by the agency previously. Thus, it will be important that the EA establish a quick and efficient process for the Agency to deal with operator challenges to such charges.

17. Do you agree with our proposal to use the new application fee as the basis for variation and surrender charges?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

The EA has confirmed to MPA that, where the baseline activity includes Part A2 or Part B activities, then any variation which only involves in those activities should be charged on the basis of the application fees for the Part A2/B activities, as set by the Local Authority Charging Scheme, and not for the 'whole' permit application or the Part A1 charge. It would be helpful if the Guidance provided clarity on this point.

MPA has noted that the list of activities given as covered by administrative variations, whilst noted as not exhaustive, is different to that given within the current Charging scheme guidance. The current charging scheme states: "*Variations that are administrative only as opposed to any change that requires assessment by us are free*" and confirms that administrative variations includes: "*Changes solely to the list of wastes the facility is permitted to accept, provided the change would not alter the nature of the facility's operation or increase the environmental risk posed.*"

MPA would welcome confirmation that such changes remains administrative variations in order continue to facilitate the use of wastes as raw materials and fuels in cement and lime manufacturing. The permits for cement and lime manufacturing using wastes as raw materials and fuels embed the requirements of the "MPA Code of Practice" which was agreed with the Agency. This includes a risk assessment process to ensure management of environmental risk, should an operator wish to introduce a new waste to their manufacturing process. Thus, the Agency should be able to continue to enable changes to the lists of waste at cement and lime installations as administrative variations.

Given that the charge for minor variations, currently fixed at £1,280, is proposed to increase to more than £5,000 and £4,000 for cement and lime installations respectively, it is important that, to avoid embedding perverse incentives in the charging scheme, that the addition of wastes in accordance with the MPA Code of Practice are treated as administrative variations. Without this, cement and lime producers will be unable to deliver the environmental benefits of recycling small quantities of wastes which are not already covered by the permit, as the time and costs of variations would make such recycling uneconomic.

MPA has noted that the minor variation fee will be more than 1.5 times more for 78% of the permits where minor variations are possible, that is, it is increasing to more than £1,920 or around 22 hours work, and more than double for 57% of cases. Given this significant level of cost increase, it should be possible for the EA to establish a process whereby variations which are not administrative, but which will also not result in the level of activity commensurate with a minor variation, to be charged on a pre-agreed time and materials basis or a pragmatic approach taken to limit minor variations and above.

MPA is concerned that the 90% substantial variation charging level is a disproportionately high proportion of the time spent on a new application compared to the actual time spent. For example, the EPR draft guidance cites Industrial Emissions Directive derogations as an example of a significant variation, but MPA experience suggests that derogation applications should not take time equivalent to 90% of a new application to determine.

18. Do you agree with our approach for discounting batch transfers to a single operator at the same time?  Yes  No  Not applicable If not, please explain why.

19. Do you agree with the approach we have used to cover our costs associated with determining permits at multi-activity sites?  Yes  No  Not applicable If not, please explain why.

Yes, but we would again consider that this may be best done on a time and materials basis. Whilst approach appears acceptable, the consultation does not provide any evidence to support setting the discounted levels for additional activities at the same site at 50%, and for multiple activities at the same site as 10%. For transparency it would be helpful if the EA could publish the evidence base for these decisions.

20. Please tell us if you have any comments about the approach to annual subsistence charging outlined in sections 4.5 and 4.6.

Although we agree with only charging for the baseline subsistence fee, there is not enough evidence provided as to how these charges have been determined. As noted in our response to Question 3, the EA's charging inputs appear to be based on an increased and idealised level of compliance intervention, rather than the level of compliance intervention delivered in recent years. This means that the proposed baseline subsistence charges are disconnected

from the environmental performance of a sector and increased charges are unlikely to deliver any environmental benefits.

The additional supplementary charges proposed are also a cause for concern. Most notably the consultation and Guidance do not indicate any mechanism for operators to challenge additional costs, or a robust and rapid resolution approach to such concern. This makes the introduction of additional supplementary charges very difficult to support as such charges could become unmanageable and spiral out of control without a clear management and challenge mechanism.

Whilst there are consultation questions below on time and materials charges for unplanned works and other supplementary charges, there are no questions related to charges for approvals required by permit conditions. Pre-operational conditions or conditions that specify 'as agreed with the EA' are common in permits. This issue has not been addressed in the consultation, and the cost impacts of this Agency practice not considered. However, the costs of this may be significant.

The consultation and Guidance are not clear on how the time and materials charges for approvals required by permit conditions are determined? Will they be estimated and agreed, as per discretionary services, or will they be communicated on an ad hoc basis as per the charges for unplanned events. This also needs to be clarified before the proposals can be supported.

Also note the response to Question 2 regarding transitional arrangements and improvement conditions (approvals required by the permit).

21. Do you agree with our approach to charging for non-planned compliance work at permitted sites?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

No. Whilst we are supportive in principle, as long as the charges applied and transparent and consistent and operators are kept fully informed of the costs as they accrue it is not possible to fully support the proposals until a robust challenge and resolution mechanism is in place.

In moving to a time and materials approach, the Agency need to be mindful of achieving value for money when purchasing or hiring materials and equipment, so that the attributed costs which are passed through to operators are equivalent or better than recognisable market rates.

As the Agency intends to recover the costs of any community engagement work resulting from unplanned events, it will be important that decisions related to community engagement are made in tandem with operators where possible. It should be possible for the activity and costs of much of this community engagement work to be planned and agreed in advance with the operator, in a similar manner to the enhanced application services.

22. Do you agree with the additional charge to cover extra regulation work in the first year of operation on an activity?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

No, we disagree. This is wholly dependent on the applicant in question. If further effort and engagement is required this should be provided on a time and materials basis and agreed in advance with the operator. Similarly, the new operator may have previously held an Environmental Permit under a different company name. It is unlikely additional regulatory work would be required in these circumstances.

23. Do you agree that this first year charge should apply across all regimes and sectors under EPR or should it apply to some sectors only? (If so which sector/s?)  All regimes and sectors  Some regime and sectors only  Don't know If you have answered some regimes and sectors only, please tell us which regimes and sectors it should apply to.

It is not clear whether it will be required and if so, how much extra regulation the application it will require. Consequently, we recommend that a standard charge is dropped and further effort/ engagement is charged on a time and materials basis which is agreed in advance with the operator.

24. Do you agree with our approach to charging for pre operational and pre construction?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

No, due to the lack of transparency surrounding some of the current EPR activities we do not support the proposed approach to charging for pre operational and pre construction. We urge the Agency to review and publish its reasoning for charging waste incinerators and co-incinerators a fixed pre-construction fee, and to charge a subsistence fee from the date of construction.

25. Please tell us if you have any comments regarding our proposed arrangements to recover regulatory costs at multi-activity sites?  Yes  No  Not applicable If not, please explain why.

No comment

26. Do you agree with our interim arrangements for compliance rating outlined above?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

No, it is inappropriate to apply the compliance discounts or escalators from OPRA compliance banding to the new charging approach given that the baseline charges are built up in an entirely different way and as previously stated should take effect at the same time in April 2019.

Under the OPRA system, whilst the risk assessment for an operation might not have been transparently established in the first instance, the process for calculating charges was apparent and accepted by operators.

Under the proposed charging system, the EA have indicated to MPA that charges are based on the time which EA officers deem necessary to regulate the sector, but without regard to the current time spent, the current environmental performance delivered by existing levels of intervention, or to the additional environmental benefit anticipated from the additional time spent on regulation.

In the first year, and perhaps on an ongoing basis, it would be more appropriate to provide a monthly time and materials statement to operators so that they can see how much additional value remains on their account, and then to start charging on a time and materials basis when additional interventions are needed for poorly performing sites. This would serve to focus action whereby the costs of poor performance were directly visible and avoidable within year, and might deliver substantial environmental benefits.

Given that there are already substantially increased subsistence costs proposed in most sectors, the addition of a further 'first year' element based on a perceived need seems excessive. Particularly since there is no evidence provided to demonstrate that this 'first year' supplement will deliver benefits to the operator, the community or the environment. The EA might consider providing this as an additional discretionary service rather than a requirement mandated on all permits. This would provide the EA an opportunity to develop an evidence base for its customers which demonstrates the value of the additional 'first year' service and thereby make the discretionary service more desirable (creating pull not push).

27. Do you agree with our proposals for flood and coastal risk management permitting charges?  Yes  No  Not applicable If not, please explain why.

No comment

28. Please tell us if you have any comments in relation to our flood and coastal risk management proposals. In particular, do our proposals cover all activities you may undertake as an operator?

No comment

29. Do you agree with the proposals outlined for Radioactive Substances Regulations Nuclear?  Yes  No  Not applicable If not, please explain why.

No comment

30. Do you agree with our revised permit categories for disposal of radioactive waste from unsealed radioactive sources?  Yes  No  Not applicable If not, please explain why.

No comment

31. Do you have any comments on our proposal to move from a charging scheme which considers the volume, chemical content and receiving water into which a discharge is made, to a simpler activity-based charging scheme?

No comment

32. Do you have any comments on the proposed approach to reflect the costs of Operator Self-Monitoring?  Yes  No  Not applicable If not, please explain why.

No comment

33. For water and sewerage companies we have proposed to phase the AMP6 EDM permitting workload across AMP6 and AMP7 to smooth the cost of introducing charges for these variations and to reduce permitting workload pressures. Details are to be confirmed by separate agreement. Do you agree to the proposed approach?  Yes  No  Not applicable If not, please explain why.

No comment

34. Do you have any comments on the proposed approach to variation charges specifically relating to Water Discharge and Groundwater activity permits?

No comment

35. Do you have any other comments on the Water Discharge and Groundwater Activity proposal?

No comment

36. Do you agree with our proposals for the installations: chemicals sector permit charges?  Yes  No  Not applicable If not, please explain why.

No comment

37. Do you agree with our proposals for the installations: refineries and fuels sector permit charges?  Yes  No  Not applicable If not, please explain why.

No comment

38. Do you agree with our proposals for the installations: Energy from waste sector permit charges?  Yes  No  Not applicable If not, please explain why.

No comment

39. Do you agree with our proposals for the installations: food and drink sector permit charges?  Yes  No  Not applicable If not, please explain why.

No comment



40. Do you agree with our proposals for the installations: onshore oil and gas sector permit charges?  Yes  No  Not applicable If not, please explain why.

No comment

41. Do you agree with our proposal to introduce a time and materials charge for our regulatory work associated with Hydraulic Fracturing Plans?  Yes  No  Not applicable If not, please explain why and how we might otherwise cover the costs incurred in relation to this regulatory work.

No comment

42. Do you agree with our proposals for the installations: paper, pulp and textile sector permit charges?  Yes  No  Not applicable If not, please explain why.

No comment

43. Do you agree with our proposals for the installations: combustion and power sector permit charges?  Yes  No  Not applicable If not, please explain why.

No comment

44. Do you agree with our proposals for the installations: mining waste sector permit charges?  Yes  No  Not applicable If not, please explain why.

Yes assuming the charges are transparent and the service provided is accountable against the costs incurred.

45. Do you agree with our proposals for the installations: metals sector permit charges?  Yes  No  Not applicable If not, please explain why.

No comment

46. Do you agree with our proposals for the installations: cement and lime sector permit charges?  Yes  No  Not applicable If not, please explain why.

No. The proposed subsistence charges for cement and lime installations are inappropriate to the level of risk, quality of risk management, and the environmental performance of the sector. The EA's own evidence in its sector plans demonstrates that the cement and lime (and minerals) sector is amongst the best performing sectors, with no persistently poor performers and no serious pollution incidents in 2016.

#### Increased regulatory effort without commensurate environmental benefit

The EA has stated to MPA that the level of regulatory effort expended in 2016 for the cement, lime and minerals sector was two thirds of the effort modelled under the proposed scheme. However, in 2016, across cement and lime manufacturing sites permitted by the Agency, ten sites were compliance rated A, four were rated B, three were rated C and one was rated D. The D rating resulted from a one-off dust incident with no environmental impact, just a nuisance issue, which was quickly rectified. For the previous three years that

installation's compliance rating was category B (only 3 years of EA OPRA data is publicly available).

This demonstrates, even when the Agency is only able to deliver two thirds of its anticipated compliance activity, the cement and lime sector maintains high standards of environmental performance. Hence, it is difficult to see where the additional environmental benefit will be achieved when the new subsistence charges, and additional staff resources, are directed towards the cement and lime sector. Thus, the implication is that the proposed cement and lime sector subsistence charges could be reduced by one third without impacting environmental performance, and therefore that the modelled charges are not based on risk.

#### Calculation of subsistence fees

The EA has provided an estimate of the time, per permit per year, which will be spent on activities within the cement and lime sectors. Even with a generous analysis by MPA Members, the levels of activity proposed and costed by the EA more than twice that estimated by MPA, and even more than that spent by operators in delivering regulatory compliance on the same issue.

For example, the EA is proposing to charge the cement sector an annual subsistence fee of £26,435 - equivalent to almost 315 hours per year, or more than 8.5 weeks of regulatory interventions. By the Agency's own admission, this is around 100 additional hours, or nearly 3 weeks, more activity per permit than was delivered in 2016. Of this, an additional £11,835 are directly attributed, in the charging schedule, the use of waste derived fuels. A similar fee differential as a result of the use of waste derived fuels is anticipated for the dolomitic lime sector.

The EA has indicated to MPA that 282.2 hours are required each year to regulate cement sector permits. However, at a rate of £84/hr, this only equates to a total subsistence fee of £23,705, 10% less than proposed by the EA in the consultation. Based on the activity information provided by the EA, lime installations that are not using waste derived fuels are being overcharged by 13%, and those using waste derived fuels, by 11%. Combining the additional fees for 'Bad Debt' and 'Financing' (see the MPA response to Question 1) then it appears the sector is being overcharged by up to 18%.

The EA and the current consultation do not contain sufficient information to explain these differences, or to help MPA Members understand how the fees have been derived.

| Information provided by the Environment Agency |                |             |              |                         |
|--|----------------|-------------|--------------|-------------------------|
| Activity grouping                              | Cement (waste) | Lime (only) | Lime (waste) | Cement + Lime + (waste) |
| Advice to Industry                             | 16             | 7           | 14           | 22                      |
| Internal Communications                        | 10             | 4           | 10           | 14                      |
| Post Application Work                          | 18             | 9           | 18           | 36                      |
| Pre Application Work                           |                |             |              |                         |
| Routine Compliance Assessment                  | 109.5          | 79.5        | 109.5        | 187.5                   |
| Additional Interventions                       | 34             | 15          | 34           | 41                      |

|  |         |         |         |         |
|--|---------|---------|---------|---------|
| Sector Group Work  | 61      | 35      | 49      | 83      |
| Waste specific   | 26      |         | 28      | 28      |
| Cross functional   | 7.7     | 5.6     | 7.5     | 10.3    |
| Grand Total  | 282.2   | 155.1   | 270     | 421.8   |
| SROC Subsistence Fee                                     | £26,435 | £14,984 | £25,414 | £40,026 |
| MPA Calculations   |         |         |         |         |
| Fees @£84/hr   | £23,705 | £13,028 | £22,680 | £35,431 |
| Difference between Fees @£84/hr and SROC Subsistence Fee | £2,730  | £1,956  | £2,734  | £4,595  |
| Difference in as number of EA officer hours              | 32.50   | 23.28   | 32.55   | 54.70   |
| Difference as % of SROC Subsistence fee                  | 10%     | 13%     | 11%     | 11%     |

At MPA's request, the EA provided more detail on the activities proposed under each of the activity groupings, and the level of activity expected for each detailed activity. MPA's analysis of this information highlights further concerns regarding the EA's modelling used to derive sector subsistence fees. MPA has included its analysis of the proposed cement and lime activities in Annex 2 of this consultation response.

The analysis of MPA Members indicates that the EA charge basis should be closer to 118 hours per permit per year, or a £9,912 per annum subsistence fee for cement installations using waste derived fuels and alternative raw materials. In addition, most of the regulatory activities do not offer any environmental benefit and therefore there is no justification for increasing any resource allocation to these activities in the SROC funding proposals.

MPA's analysis demonstrates the continuing lack of transparency on the EA's modelling related to the cement and lime sector. MPA Members are unable to rationalise the proposed subsistence costs against the current or proposed effort expended by the EA, or the activities included in the model inputs.

#### Dis-incentivising the recycling of wastes

The proposed fees for cement and lime manufacturing using waste derived materials as inputs embed a perverse incentive within the charging structure as it is almost twice the regulatory cost to recycle materials into high value construction products than to have operations that do not accept waste materials.

In fact, despite decades of experience and tangible evidence on environmental benefits that accrue from recycling wastes at cement and lime installations, the consultation document disingenuously states that "*The subsistence charge increase is due to a more accurate reflection of regulatory costs, particularly recent additional regulatory effort brought about by the use of waste fuels at some sites.*" In the past month, the importance of using waste-derived fuels to improve productivity in the cement sector was recognised by the Government Chief Scientific Adviser in his report: *From waste to resource productivity*.

The EA has not provided any justification for the ‘additional regulatory effort’ associated with the acceptance of waste. Counterintuitively, the EA has suggested that the existence of the EA-agreed MPA Code of Practice, which aims to facilitate the recycling of materials in cement and lime manufacturing through risk assessed processes, increases the charges associated with permits as operators are able to accept “*hundreds of wastes*”.

The implication is clear. Operators can reduce regulatory costs by using only primary material inputs, or will reduce the costs of regulation in the future by limiting the number of waste material accepted to a few that are available in large quantities and with abundant supply. This will drive against the acceptance of small waste streams available in small quantities, particular where a permit variation is needed to accept them.

In addition, the approach of applying higher charges for the recycling of materials in cement and lime manufacturing conflicts with the EA’s sector objectives for 2020, which includes to “*support permit holders to minimise impacts on the environment by helping to identify and support the use of waste materials which can be used as an alternative to raw materials or fuel.*”

In addition, MPA Cement members will be penalised by the proposed fees for deployment to land, which may increase costs by jeopardising the cost effectiveness of current recovery methods for kiln dusts - see the MPA response to Question 48.

#### High priority/high profile installations

MPA Members have noted, for example, in relation to cement installations, there are no high profile sites which require regulatory intervention and it is entirely erroneous to charge these costs across all sector permits where they do not apply.

Furthermore, the EA is proposing to use the OPRA compliance adjustment process to enable escalated subsistence fees to be collected from operators with compliance ratings of category C and lower. If this proposal is adopted, the Agency will already have a system for covering the additional costs of regulating operators with lower compliance ratings and so, there is no justification for the additional regulatory effort to be applied to all sites within the sector.

#### EA Sector Plan Objectives

The proposed charging approach to increase regulatory effort by one third without tangible environmental gain or reduction in risk is directly in opposition to the EA’s 2020 sector objective that states: “*We will identify areas of regulatory burden in the Cement, Lime and Minerals Industry. We will identify where money and resources can be saved without reducing our level of environmental protection.*”

MPA notes that the EA have confirmed that subsistence charges for Part A2 and B activities, which have previously been charged separately, are now included in the proposed subsistence charge.

47. Do you agree with our proposals for the installations: intensive farming sector permit charges?  Yes  No  Not applicable If not, please explain why.

No comment

48. Do you agree with our proposals for the waste: land spreading (mobile plant) sector permit charges?  Yes  No  Not applicable If not, please explain why.

No. The introduction of both a subsistence fee and a significant increase in deployment fees are counterintuitive to facilitating the beneficial recovery of wastes to land. Given the known inefficiencies within the Agency which have resulted in a routine backlog in delivering deployment permissions, the basis for Agency cost estimates for delivering deployment permissions must be questioned. Although it is known that the Agency have recently implemented efficiency measures within the service, insufficient time has passed between the adoption of new measures and these proposals for landspreading charges to determine if there are any further efficiency gains which could be made that would further reduce deployment costs. The speed and efficiency with which deployments are processed and approved need to improve to be hours rather than days, or the current weeks, to justify a 120% increase in deployment fees.

These proposals will have significant implications for the beneficial deployment of kiln dusts from the cement sector to land. MPA are in full support of the EA ensuing that there is consistent regulation within the land spreading sector. However the proposed increase in deployment fees from £780 to £1,718 for kiln dusts is unsustainable, despite around 200 successful deployments in 2017. The proposals equate to an increased cost of around £200,000 per annum. The perverse outcome will be that this beneficial and recoverable material is sent for landfill disposal as alternative recovery options are already maximised.

The proposals will specifically impact the cost of landspreading kiln dusts as they are used at low application rates, and so the costs of deployment will be significantly higher per tonne of material. Kiln dust application rates vary between 1 and 7 tonnes per hectare, and so the increased cost per tonne will be 5 to 15 times more than other wastes, such as sewage sludge, applied at between 50 to 100 tonnes per hectare.

At minimum, the Agency should consider introducing deployment processes which 'level' the costs of deployment between different material types, for example, by retaining a £780 deployment fee for wastes applied at less than 10 tonnes per hectare; or by enabling low tonnage deployment to apply to a large area (e.g. up to 100 hectares across multiple fields under a single deployment rather than limiting deployments to a single field up to 100 hectares).

49. Do you agree with our proposals for the waste: waste transfer and treatment sector permit charges?  Yes  No  Not applicable If not, please explain why.

No comment

50. Do you agree with our proposals for the waste: landfill and deposit for recovery sector permit charges?  Yes  No  Not applicable If not, please explain why.

No, the fees are significant and inappropriate for this area of regulation which involves minimal EA involvement once permitted.

Similarly, there is little detail as to how a supplementary charge would be added to high risk closed landfills. OPRA still applies to closed sites so if a high risk site is also measured as 'poorly performing', which is likely to be the case, this would already increase the subsistence charge. No supplementary charges should be added to this due to the lack of regulation in previous years.

51. Do you agree with the above increase for a T11 exemption?  Yes  No  Not applicable If not, please explain why.

No comment

52. Do you agree with the proposal to reduce the Thames regional charging area Standard Unit Charge?  Yes  No  Not applicable If not, please explain why.

No comment

53. Do you agree with the proposal to remove the River Alre (northern and southern reaches) from the list of supported sources in the Abstraction charging scheme?  Yes  No  Not applicable If not, please explain why.

No comment

54. Do you agree with the proposed increase in our hourly rate charged for Control of Major Accidents and Hazards (COMAH)?  Yes  No  Not applicable If not, please explain why.

No comment

55. Do you agree with the proposed introduction of a new charge for work on external emergency plans?  Yes  No  Not applicable If not, please explain why.

No comment

56. Do you agree with the proposal to move from tiered charges to one flat rate annual subsistence charge for installations operators and one flat rate annual subsistence charge for aviation customers?  Yes  No  Not applicable If not, please explain why.  Yes  No  Not applicable If not, please explain why.

MPA cannot agree with the flat rate charge while it puts increased cost burden on the smallest emitters in EU ETS. Installations emitting less than 50kt CO<sub>2</sub> per year already face disproportionate levels of administrative and cost burden as a result of EU ETS. Increasing annual subsistence fees for these smaller emitters by 17% is unacceptable even with the removal of the variation charge. The majority of EU ETS permits are flexible enough that few variations are needed and therefore the increased subsistence charge is unlikely to be balanced out by the removal of the variation charge. The consultation document notes that increased automation of the administration of EU ETS means less time is required by staff

and therefore MPA suggest that the flat rate subsistence fee is set at the level of the current subsistence fee for installations emitting less than 50kt CO<sub>2</sub> i.e. £2,550 per year. This will ensure a saving for operators with higher emissions as a result of the automation set out in the consultation document, and ensure that the smallest emitters aren't penalised by higher charges.

57. Do you agree with the proposal to amend the registry charges?  Yes  No  Not applicable If not, please explain why.

The main charge affecting MPA members is the new cost of changing the registry authorised representative. MPA strongly object to such a huge increase. The consultation document provides no evidence or reasoning behind why this charge has been introduced at such a high level. It is unacceptable for the EA to introduce a new charge with no information behind why it is needed and exactly what the charge covers.

58. Do you agree with our proposed increases to large producer charges?  Yes  No  Not applicable If not, please explain why.

No comment

59. Do you agree with our proposed increases to AATF and AEs charges?  Yes  No  Not applicable If not, please explain why.

No comment

60. Do you agree with our proposal to introduce an annual subsistence charge for compliance schemes?  Yes  No  Not applicable If not, please explain why.

No comment

61. Have you used our Definition of Waste panel service?  Yes  No If Yes, was our opinion that your material was:  A waste (including where we were not able to make a decision due to insufficient information)  Not a waste (including by-product or end of waste)

MPA Members have been trying for some time to achieve end of waste status for kiln dusts to facilitate their beneficial use on land or in construction products. This has involved using the online 'End of Waste Tool' and discussions with members of the End of Waste Panel. Some MPA Members have made full submissions to the End of Waste Panel but never to a final conclusion.

62. Do you use the waste quality protocols or other end of waste framework?  Yes  No If Yes, which?

Yes as a reference source and in relation to recycling construction materials; it is not clear what is meant by 'other end of the waste framework'.

63. Do you support our proposal to recover the cost of providing Definition of Waste services outlined in section 6.1?  Yes  No  Not applicable If not, please explain why.

No. The service proposed is akin to a consultancy service and yet there is no competitive tension to ensure that the Agency provides a timely, efficient service. The EA is correct to note that many customers like the surety which comes with an end of waste decision, and this highlights the conflict of interest which arises when the EA sits as the enforcement agency (if they disagree with the self-assessment made by a business) and as the fee receiving competent authority on end of waste matters.

Further to this, the 'service' proposed does not suggest any 'collaborative' offering to achieve quality protocols, low risk waste positions, regulatory position statements, or other options for enable the recovery and reuse of waste within agreed controls. Without a wider selection of options, and associated service level agreements on timeliness and quality of service the proposal is very unattractive.

Nor do the proposals make sufficient reference to by-product status, which is a significant omission given the changing emphasis in the EU Circular Economy package proposals related to the Waste Framework Directive. The EA's proposals need to be reconsidered so that, rather than simply proposing to act as a legal 'arbiter', the Panel actively encourages the development of systems and processes which enable the reuse of waste materials and by-products for environmental gain.

64. Please tell us if you have any further comments on Definition of Waste Charging proposals.

The service must be transparently costed, facilitate the recovery of 'waste' materials, be aligned to emerging thinking in the European Circular Economy Package related to the presumption of by-product, and generate an outcome that can be relied upon by operators.

65. Do you agree with our proposed increase to the hourly rate charged for our bespoke spatial planning advice service?  Yes  No  Not applicable If not, please explain why.

While we agree that the EA must recover their costs with regards to providing this service, it must be done on a transparent and consistent manner that is accountable to the party bearing the costs. Please see the comments in our covering letter.

66. Do you have any concerns that the proposal to increase the charge for our discretionary planning advice service might compromise our ability to carry out our statutory planning advice duties?  Yes  No  Not applicable If not, please explain why.

No comment



67. In line with our planning advice service, do you agree with our proposal to introduce a discretionary hourly rate service for our marine licensing advice service?  Yes  
 No  Not applicable If not, please explain why.

No comment

68. Please tell us if you have any comments on our plans to review abstraction charges.

There is not enough detail to comment at this stage. However, we welcome discussions once further detail is available, including the implications for the removal of dewatering licence exemptions.

69. What factors do you think should determine how we calculate the boat registration charge?

No comment

70. We would appreciate your comments and feedback to help develop our proposals. What would you like to see included within a revised boat registration charges scheme?

No comment

71. Please rate the following elements of service based on how important they are to you, using the key below? You can choose the same number more than once. (1 important /2 like to have /3 don't mind/4 could manage without / 5 don't want or need/6 unsure) • Choose an item. Channel dredging • Choose an item. Tree and vegetation clearance • Choose an item. Assisted passage (staff to operate locks) • Choose an item. Routine patrolling by staff on patrol launches • Choose an item. Compliance and enforcement checks • Choose an item. Provision of facilities (e.g moorings / water / refuse and sewage disposal) • Other (please specify)

No comment

72. Do you have any other comments on the above plans to review Navigation charges and the boat registration charges scheme?

No comment

73. Would you be interested in attending a workshop to help us shape our new proposals? If so, please provide your contact details here:

No comment

74. Please give us any further comments on our proposals which have not been covered elsewhere in the questions, i.e. If none of the questions throughout the consultation have enabled you to raise further specific issues with these proposals please set them out here with any accompanying evidence

Please see the comments in our covering letter.

75. We would be interested in any analysis you have that suggests our proposals will influence the market conditions in your sector and whether there will be an impact on future investment decisions and on new entrants to the sector? Please provide full evidence you have to support your answer along with any possible mitigating actions

The proposals will have a significant impact on MPA members, particularly as the final details of the charging proposals were not available for 2018/19 business budgeting and the implementation date is so close to the consultation period, and the application of time and material charges uncertain, and in some instances, unclear.

MPA Cement members are concerned with the proposals and what appears to be a lack of support for use of wastes as beneficial materials both in the manufacture of cement clinker and post production. All areas involving wastes appear to be being penalised financially in the proposed charging scheme.

MPA Cement members are aware that that kiln dust deployment to land is through a small business, and the increased deployment costs of around £200,000 per year (see Question 48) will significantly impact that business - either by:

- driving up costs if the company attempts to absorb the cost increase; or
- by making landfilling a more attractive option for the waste, if the cost is passed onto waste producers; or
- by driving customers into the arms of unscrupulous operators.

None of these outcomes offers benefits to the environment and the proposals for landspreading need to be urgently reconsidered.

76. Do you have any analysis that suggests the charge increases will impact on SMEs in your sector? If so, which companies are most likely to be affected and what do you think will be the consequences? Please provide any evidence / data along with any mitigating options.

No comment

## Annex 2: MPA analysis of cement and lime sector charges

| Activity grouping   | Total EA planned activity for grouping (hrs/yr) | Activity detail   | Total EA planned activity (hrs/yr) |     |
|---|---|---|------------------------------------|-----|
|   |   |   | Min                                | Max |
| Routine Compliance Assessment   | 109.5   | Annual review of CAP including steps to deliver outcomes set out in ISL.  | 0.5                                | 9   |
|   |   | Assess annual reports such as waste min, water efficiency, EMS progress as required by permit conditions.                       | 0.5                                | 9   |
|   |   | Check returns are submitted as required by permit condition and investigate non-compliances.                                    | 0.5                                | 9   |
|   |   | Ensure correct fees are paid by permitted facilities and assist in recovery of collectable debt where notified by Finance team. | 0.5                                | 9   |
|   |   | Investigate incidents (especially noise & odour) following initial response phase (category 3 and 4).                           | 0.5                                | 9   |
|   |   | Review Odour Management Plans and Noise Management Plans where relevant.  | 0.5                                | 9   |
|   |   | Undertake an annual review of charging risk model and compliance/ performance data  | 0.5                                | 9   |
|   |   | Verification of submitted PI returns and following up outstanding returns.  | 0.5                                | 9   |
|   |   | Compliance assessment: investigating and following up permit breaches and non-compliances                                       | 10                                 | 15  |
|   |   | Ensure compliance with the additional reporting requirements of the LCPD or WID where relevant.                                 | 10                                 | 15  |
|   |   | Inspect sites in compliance bands A-C, as specified in sector-specific addendum.  | 10                                 | 15  |
|   |   | Updating systems including PAS, CCS, NIRS, OTL, EDRM, NCAD, and Public Registers within relevant timescales.                    | 10                                 | 15  |
| Inspect sites deemed high priority/high profile by sector group or national lead in order to fulfil national/sector based obligations as specified in sector specific addendum. | 16  | -   |                                    |     |

#### **MPA Comments**

- The EA should note that only one cement installation has an odour or noise management plan and so allocating time to review these plans for all permits on an annual basis is inappropriate. Even on a site which has such a plan, the review could form part of an annual review rather than a separate item. This time allocation is inappropriate and should be removed.
- No time should be allocated to ensuring compliance with additional IED reporting requirements (as opposed to WID). This information is provided as part of the annual report and should be considered alongside that time allocation, otherwise there is duplication in the modelling.
- Regulatory intervention for Category 3 and 4 incidents is covered under the activity 'Investigate incidents (especially noise & odour) following initial response phase (category 3 and 4).' As there are no category 1 or 2 breaches or non-compliances within the sector which require following up, the activity 'Compliance assessment: investigating and following up permit breaches and non-compliances.' Is inappropriate or a duplication. In addition, MPA notes that regulatory interventions for significant environmental incidents will be charged on a time and materials basis so including officer time to deal with such incidents in subsistence charges is inappropriate.
- As there are no 'high priority/high profile' sites within the sector, it is not appropriate to include any activity related to the inspection of these sites within every permit subsistence fee.
- MPA believes that the maximum time allocated for routine compliance assessment per permit within the cement sector should be 30 hours per year, noting that only 3 of the activities (investigating incidents, inspecting sites, and reviewing odour/noise management plans, when undertaken) offer any environmental benefit.

| Activity grouping  | Total EA planned activity for grouping (hrs/yr) | Activity detail   | Total EA planned activity (hrs/yr) |     |
|--|---|---|------------------------------------|-----|
|  |   |   | Min                                | Max |
| Sector Campaigns   | 61  | Participate as required in sector wide QA check of PI report.   | 0.5                                | 9   |
|  |   | Participate in sector wide QA check of Charging profiles.   | 0.5                                | 9   |
|  |   | Compliance audit at sites in compliance bands A-C, as specified in sector-specific addendum.  | 10                                 | 15  |
|  |   | Conduct sector specific audit program, carrying out and reporting back to sector group on relevant findings/actions.  | 10                                 | 15  |
|  |   | OMA to be carried out for effluent discharges to water and air emissions where monitoring requirements have been specified by permit condition.                                 | 10                                 | 15  |
|  |   | Audit sites deemed high priority/ high profile by sector group or national lead in order to fulfil national/ sector based obligations as specified in sector specific addendum. | 16                                 | -   |
| Sector Group Work  |   | Attending sector group meetings/telecons, developing and reporting on sector plan, work in sub groups and all campaign/audit planning.  | 0.5                                | 9   |
|  |   | Sector specific training  | 0.5                                | 9   |
| <b>MPA Comments</b> <ul style="list-style-type: none"> <li>MPA notes that there is significant duplication in the grouping which may have head to excess time being modelled when the Agency complied the subsistence fees. For example: 'Compliance audit at sites in compliance bands A-C, as specified in sector-specific addendum' activity appears to be identical to 'Conduct sector specific audit program, carrying out and reporting back to sector group on relevant findings/actions.'</li> <li>'OMA to be carried out for effluent discharges to water and air emissions where monitoring requirements have been specified by permit condition.' Is not relevant to cement installations and should be removed from time allocation.</li> <li>As there are no 'high priority/high profile' sites within the sector, it is not appropriate to include any activity related to the audit of these sites within every permit subsistence fee.</li> <li>MPA believes that the maximum time allocated for sector campaigns and sector group work per permit within the cement sector should be 48 hours and that most of the activities offer no direct environmental benefit.</li> </ul> |   |   |                                    |     |

| Activity grouping   | Total EA planned activity for grouping (hrs/yr) | Activity detail  | Total EA planned activity (hrs/yr) |     |
|---|---|--|------------------------------------|-----|
|   |   |  | Min                                | Max |
| Post Application Work   | 18  | Area support to permit determinations and consultations. Covers extended consultation support, provision of data, supporting impact assessments. | 16                                 | -   |
| <b>MPA Comments</b>   |   |  |                                    |     |
| <ul style="list-style-type: none"> <li>MPA has already expressed concerns to the EA that the Post-Application work described is already accounted for in any application or variation fee; particularly as the EA is proposing discretionary services and component charges for some permit conditions.</li> <li>Allocating any time to this activity in subsistence fee modelling is inappropriate.</li> </ul> |   |  |                                    |     |

| Activity grouping   | Total EA planned activity for grouping (hrs/yr) | Activity detail  | Total EA planned activity (hrs/yr) |     |
|---|---|--|------------------------------------|-----|
|   |   |  | Min                                | Max |
| Additional Interventions  | 34  | All work in support of sector BREF reviews. Supplying data in a timely fashion, QA'ing Operator responses, review of BAT.                                    | 0.5                                | 9   |
|   |   | All work in support of sector permit reviews (not including any actual permitting work for NPS), reviewing data and provision of site information.           | 10                                 | 15  |
|   |   | Communication with interested parties including attendance at public meetings. Ensure there is a suitable community engagement plan in place where required. | 16                                 | -   |
| <b>MPA Comments</b>   |   |  |                                    |     |
| <ul style="list-style-type: none"> <li>The Cement and Lime BREF was finalised in April 2013 and is not due for review until 2020 at the earliest - allocating any time to this activity is inappropriate.</li> <li>The sector permit review was completed in 2017 and no further activity should be required, especially on an ongoing, annual basis - allocating any time to this activity is inappropriate.</li> <li>EA Officers rarely attend community liaison meetings as the community groups that request and lead the meetings do not ask them to attend - allocating a minimum of sixteen hours per permit to this activity is inappropriate, and 7.4 hours (1 day per permit) should be sufficient.</li> <li>The increased activity proposed under this activity category offers no environmental benefit and is not justified.</li> <li>MPA estimates that a maximum of 7.4 hours (1 day) of activity per permit, per year should be included in the modelled subsistence fee for this activity grouping.</li> </ul> |   |  |                                    |     |

| Activity grouping   | Total EA planned activity for grouping (hrs/yr) | Activity detail  | Total EA planned activity (hrs/yr) |     |
|---|---|--|------------------------------------|-----|
|   |   |  | Min                                | Max |
| Advice to industry/ stakeholders  | 16  | Trade associations   | 0.5                                | 9   |
|   |   | Provide timely and accurate advice and guidance to Operators to allow them to comply with permit requirements. | 10                                 | 15  |
| <b>MPA Comments</b> <ul style="list-style-type: none"> <li>MPA is unaware of any time where area officers have offered advice. This would usually be through sector liaison, which is covered in the EA modelled indirect costs - allocating any time to this activity is inappropriate.</li> <li>Not all permits require EA officers to offer compliance advice, and certainly most do not require this at more than 1 day per year - however, MPA understands why this has been included in the EA's model and is content for it to be present at a maximum of 15 hours per year, per permit for this activity grouping.</li> </ul> |   |  |                                    |     |

| Activity grouping  | Total EA planned activity for grouping (hrs/yr) | Activity detail   | Total EA planned activity (hrs/yr) |     |
|--|---|---|------------------------------------|-----|
|  |   |   | Min                                | Max |
| Internal Communications  | 10  | All internal facing communications providing advice, data, and views to internal partners. Including support to other Officers on sector issues and flagging emerging issues. | 10                                 | 15  |
| <b>MPA Comments</b> <ul style="list-style-type: none"> <li>MPA is concerned at this time allocation. For all cement installations this equates to 70 hours per year, almost two weeks. Not only does MPA consider this level of 'internal communication' regarding cement installations to be unjustified (and without an evidence base) there also appears to be duplication with other activities (such as 'Sector specific training').</li> <li>The activity proposed under this activity category offers no environmental benefit and is not justified.</li> </ul> |   |   |                                    |     |