



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

# **Environmental Protection Authority Cost Recovery Practices**

**A component of the Review of the Effectiveness of the  
Environmental Protection Authority**

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# 1 Introduction

## Context

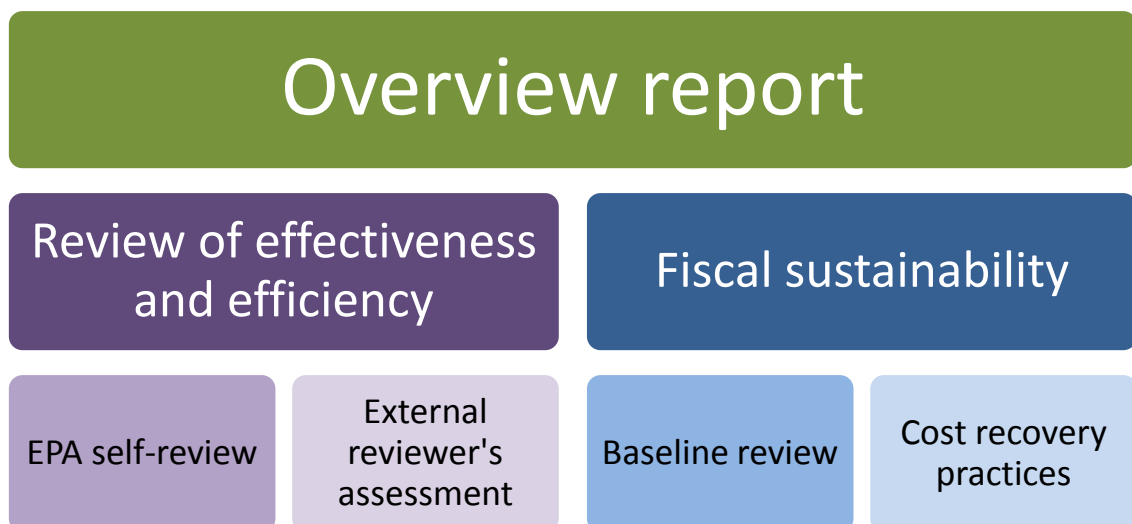
The Ministry for the Environment (the Ministry) is currently undertaking a review (the Review) of the Environmental Protection Authority (EPA). The Review was mandated by Cabinet, who directed the Ministry to review the effectiveness of the EPA three years after it became operational [CAB Min (10) 19/9 refers].

The Review includes two key components:

- An analysis of the EPA's effectiveness and efficiency, applying the Performance Improvement Framework (PIF) (outside the formal PIF process). This component includes the EPA undertaking a self-review and an external reviewer assessing the EPA's effectiveness and efficiency.
- An assessment of the EPA's fiscal sustainability, including a review of the EPA's baseline funding requirements, and an assessment of the cost recovery regimes it operates as well as how it operates them.

Figure 1 provides an overview of the components of the review and how they fit together.

**Figure 1: Overview of the EPA Review**



This report contains the findings of the assessment of the EPA's cost recovery practices. It will feed into the review of the EPA's fiscal sustainability and baseline funding requirements and will also be one of the inputs used in the overarching report.

## 2 Summary of report

### Purpose

The purpose of this analysis is to understand the cost recovery regimes that the EPA operates, and how it operates them, to identify whether or not changes are necessary to improve them.

When reviewing the cost recovery regimes, we first considered whether they were consistent with the guidelines for setting charges in the public sector as published by the Treasury<sup>1</sup> and the Controller and Auditor General.<sup>2</sup> We then explored whether:

- the EPA could cost recover a wider range of existing (or new) services
- there was scope to increase the proportion of costs recovered from existing services
- the fees charged remain appropriate.

### Overall findings

We have found that:

- A number of services provided by the EPA primarily have public benefits. Where costs cannot be recovered as part of overheads, these should continue to be funded by the Crown.
- There are limited opportunities to apply cost recovery to a wider range of EPA services because most costs are already able to be recovered where there is an identified private beneficiary.
- There is scope to increase the proportion of costs recovered in some regimes, but cost increases may discourage applicants and/or compliance, so any moves to increase recovery would need to be considered on a case-by-case basis.
- There is scope to improve the operation of existing cost recovery regimes and bring them up-to-date. This includes:
  - improving the consistency and transparency of cost recovery approaches both within and across regimes (for example, the impact that different board of inquiry processes have on applicant costs, and the different charge out rates that apply for the same type of EPA resource under different regimes)
  - the EPA developing a more comprehensive understanding of the cost and value of its services
  - more regularly reviewing the fees that the EPA charges.
- The hazardous substances and new organisms (HSNO) cost recovery regime, in particular, would benefit from a review that reconsiders the drivers and principles for cost recovery.

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<sup>1</sup> <http://www.treasury.govt.nz/publications/guidance/planning/charges/charges-dec02.pdf>.

<sup>2</sup> <http://oag.govt.nz/2008/charging-fees/docs/charging-fees.pdf>.

# Recommendations

## General recommendations

Several recommendations apply across the cost recovery regimes that the EPA administers:

- The Ministry and the EPA should work together to update hourly rates for cost recovery and to determine whether the rates can be made consistent across the EPA's regimes.
- The EPA could consider setting a limit for the number of 'free hours' to be included in pre-application services, and charge applicants once those hours have been used.
- Performance against target cost recovery rates should be monitored on a regular basis by the EPA.
- Further analysis is required to determine the extent to which the EPA is recovering all justifiably recoverable costs (examples include whether management time is adequately captured in overheads, and whether policy development to support future decision-making can and should be recovered). This should be a joint effort between the Ministry and the EPA.

## Regime-specific recommendations

Our recommendations for specific regimes apply in addition to the above more general recommendations. They are that:

### *Supporting decision making for nationally significant proposals (NSPs)*

- The EPA could explore the possibility of increasing cost recovery for:
  - pre-application services, by setting a limit on the number of free hours
  - training costs associated with improving service delivery.

These activities are important for supporting and maintaining the NSP function, and benefits may accrue to the public and to applicants.

### *Consenting and monitoring activities in the EEZ*

- The EPA should review how it calculates overheads, in particular to ensure management time (among other corporate services) is adequately captured.

### *Hazardous substances and new organisms (HSNO)*

- The cost recovery regime for HSNO should be reviewed by the Ministry and the EPA. The review should include consideration of:
  - the existing target rate of cost recovery (currently at 17%)
  - the method of charging (ie, comparing the existing fixed fee model with other options such as recovering actual and reasonable costs (like its other cost recovery regimes), or charging a levy)
  - the scope of cost recovery including:
    - the possibility of recovering the cost of supporting the HSNO Committee
    - the possibility of charging interested parties to view the EPA's 'HSNO applications' and 'substance exposure limits' registers.

### *Ozone and import-export regulations*

- The issuing of ozone and import-export permits should remain a free service. While our high-level analysis has identified this as a mixed benefit service (ie, there are benefits for both the applicant and the general public), imposing partial cost recovery of these activities risks creating non-compliance issues.

### *Administering the New Zealand Emissions Trading Scheme (NZETS) and New Zealand Emissions Unit Register (NZEUR)*

- We do not recommend any changes to the current system at this time. A review of the regime is scheduled for the end of 2015 and this would be a more appropriate time to consider and make any possible cost recovery changes.

**Table 1: Summary of cost recovery approaches**

	Nationally significant proposals	Marine consenting	Marine compliance	Hazardous substances and new organisms	Ozone depleting and Hazardous substances, imports and exports	NZETS and NZEUR
Target cost recovery rate	Close to 100%	Close to 100%	Limit of 80%	17%	N/A	In theory could be up to 100%
Method of cost recovery	Hourly rate, set by the EPA	Hourly rate, prescribed in regulations	Hourly rate, prescribed in regulations	Fixed fees	Cost recovery not allowed by legislation	Hourly rate after 4 hours of processing, prescribed in regulations
Charge for an EPA senior adviser	\$108.43	\$116.12	\$116.12	N/A	N/A	\$117.50
Most recent consideration of fees	2011	2013	2013	2012	N/A	2010
Ability to extend scope of activities charged for	✓	✗	✗	✓	✗	✓
Potential for higher recovery rate	✓	✓	✓	✓	✗	✗
Recommendation to amend or review regime	✓	✓	✓*	✓	✗	✗

\*The monitoring regime is in its infancy. A review may be appropriate if the level continues to remain low.

## 3 Objective and method

### Objective

The EPA was established on 1 July 2011 by the Environmental Protection Authority Act 2011 (the EPA Act). The EPA's functions are set out in a number of Acts, including the Resource Management Act 1991, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the Hazardous Substances and New Organisms Act 1996, and the Climate Change Response Act 2002.

These Acts enable the EPA to recover costs from applicants for some of its activities. However, the methods and rates of cost recovery vary across the EPA's functions depending on the enabling legislation, and on the approach applied by the EPA.

The outcome sought from this review is to ensure that the EPA's cost recovery approach contributes to the ongoing fiscal sustainability of the EPA, as well as meets government expectations for how costs are recovered by public sector organisations.

### Method

#### Identifying the activities that form each function

The first step of the analysis was to identify the activities/services that the EPA delivers as part of each function. The EPA provided a list of activities and this was cross-referenced with the EPA's Statement of Performance Expectations.<sup>3</sup> The activities are outlined in the separate sections below.

#### Assessing the existing regime

The next step was to assess each existing cost recovery regime. This involved identifying the primary beneficiary for each activity, then identifying if the activity is currently cost recovered.

We assessed each of the EPA's cost recovery regimes against the following high-level principles outlined by the Treasury and the Controller and Auditor General in their guidance documents:

- Authority – the EPA must have legal authority to cost recover for existing practices.
- Justification – even with legal authority, the EPA should still be able to justify why it is charging a fee for a service. In general:
  - activities with primarily public benefits should be funded by the Crown
  - activities with private benefits (ie, a single beneficiary can be identified) should be funded by the individual(s) benefiting from the activity
  - activities with mixed benefits should be co-funded by the Crown and by the individual(s) benefiting.
- Accountability – the process for identifying costs and setting fees is transparent, and where necessary, surpluses and deficits associated with the fee regime are recorded to avoid over-recovery.

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<sup>3</sup> Environmental Protection Authority. 2014. *Statement of performance expectations 2014–15*. Wellington: Environmental Protection Authority.

- Efficiency – the EPA has an accurate understanding of the direct and indirect costs of the goods or services being provided, and consequently is achieving value for money.

## Recommended changes to the regime

Assessing the regimes against the above principles helped to establish whether there was a *prima facie* case for change. We then considered the following criteria to determine the feasibility of making changes:

- Does the rate of cost recovery support the achievement of wider outcomes sought by the Government?<sup>4</sup>
- Would any transaction costs associated with implementing changes be justified when compared with the anticipated benefits (ie, costs of collection, compliance and enforcement)?
- Would changes in cost recovery practices reduce the use of EPA services, or lead to higher levels of non-compliance?

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<sup>4</sup> For example, the Speech from the Throne 2014 for the State Opening of Parliament identifies that: the Government plans to build a more productive and competitive economy, supporting more jobs and higher incomes, as set out in the Business Growth Agenda; balanced and sensible management of our natural resources can meet environmental responsibilities while creating economic opportunities; the Government will continue to encourage petroleum and mineral exploration while adhering to strong environmental and safety provisions; legislation will be introduced to amend the Resource Management Act to provide more certainty, timeliness and cost-effectiveness around resource allocation decisions.

## 4 General findings from the analysis

### Public benefit activities

We have identified a number of activities across all of the EPA's functions that provide primarily public benefits.

It is appropriate these activities continue to be funded by the Crown, especially where the Crown is the main beneficiary (eg, activities to meet our international obligations, and recommending improvements and providing input to legislation changes).

However, there may be an opportunity to include the cost of some of these public benefit activities into chargeable overheads, in particular where they are important for supporting a well-functioning regime, and ultimately improve processes for applicants. Possible examples include raising awareness of the EPA (and how it operates) among both applicants and submitters, and undertaking training or participating in international fora that lead to improved practice.

We recommend the Ministry and EPA jointly undertake further analysis to confirm the appropriateness of including public benefit activities that support a function into overheads; the impact that this would have on its fees and charges; and the anticipated response by applicants to those changes.

### Limited opportunities for new cost recovery

We consider there are limited opportunities for new cost recovery because in general costs are already recovered where there is a private benefit, particularly where the activity is to process an application. Three areas where there may be opportunities for new cost recovery are:

- the proportion of costs recovered for providing advice to submitters for nationally significant proposals (NSPs) at the pre-application stage
- the costs associated with supporting the HSNO Committee.

In our view these are unlikely to result in significant increases in the amount that the EPA ultimately recovers. However, further work would be required to confirm this.

We have not assessed the potential for changes to the cost recovery regime where the EPA can in theory currently recover costs at 100%. This is because overcharging for cost recovery is illegal and therefore the system is already optimised where costs can be recovered at 100%.

### A consistent approach to cost recovery

Each of the four Acts establishing EPA's functions establish different regimes for cost recovery. The EEZ and Climate Change Response Acts require cost recovery to be set out in regulations, The RMA allows the EPA to recover actual and reasonable costs, while HSNO requires the EPA to publicly notify any proposed changes to the charges it fixes.

It appears that there is scope for changes to be made that would enable the EPA to operate a more consistent and transparent cost recovery regime overall, for example calibrating charge out rates across regimes, more consistent cost recovery targets, and applying one cost recovery method. This could lead to more efficient cost recovery and greater clarity for applicants, but may not result in large increases in costs recovered.

In general, it makes sense to operate an overall regime that is consistent, so it is worth testing whether the differences in regimes have occurred by design, or because of the staggered nature of their development. Further analysis would be required before proceeding with significant changes to the EPA's cost recovery regime.

## Adjusting hourly rates

Government guidance suggests charging practices should be reviewed regularly against actual costs and adjustments made as necessary.<sup>5</sup>

Many of the hourly rates have not been updated for some time, and the HSNO application fees have been in effect since October 2010. The EPA has undergone significant change since most of the fees and charges were set.

At a minimum, hourly rates are likely to need to be adjusted for the following reasons:

- inflation
- after three years of operation, the EPA will now have a better understanding of its cost drivers and the resourcing it requires to deliver its functions.

We recommend the hourly rates charged for all functions be reviewed by the EPA. The review should take the opportunity to determine whether the rates can be made consistent across cost recovery regimes (we suggest consistent hourly rates will provide greater clarity and transparency to applicants), and whether the method for calculating charges is sufficiently clear.

Changing hourly rates would require new rates to be calculated by the EPA then:

- the Ministry would need to lead changes to the regulations to amend the cost recovery rates for marine consenting (including monitoring and compliance) and the New Zealand Emissions Trading Scheme
- the EPA would lead changes to its cost recovery policy for nationally significant proposal applications, and hazardous substances and new organisms applications.

Consultation will be required before any of the rates for cost recovery can be amended, so the possibility of having a single consultation document should be explored by the Ministry and the EPA.

## Pre-application stage

We consider that the EPA needs to develop a better understanding of the value of the services it provides during pre-application for NSPs and marine consents, and the implications of this for its rate of cost recovery. We recommend that the EPA consider implementing explicit policies, which are publically available, on the number of 'free hours' covered by the pre-application stage in each regime, and consider charging applicants beyond those hours.

Some HSNO applications also consume EPA services at the pre-application stage. The approach taken with providing information to HSNO submitters should be consistent with the approach taken in the other cost recovery regimes where possible.

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<sup>5</sup> The Treasury. 2002. *Guidelines for Setting Charges in the Public Sector*. Wellington: The Treasury.

## Alternative funding approaches

We have briefly considered the possibility of the EPA applying a levy as an alternative funding approach.

We suggest the main issue with the EPA charging a levy would be identifying a group of beneficiaries on which to fairly impose such a charge. Our initial analysis suggests there is not an obvious group of beneficiaries for the EPA to levy in a way that would be fair and transparent. Where potential groups to levy do exist, they are generally a comparatively small eg, compared to the number of road users), and/or they are not well funded, potentially resulting in non-compliance. The membership of such groups can also vary from year to year, depending on when organisations are making use of the EPA's services.

There is a high risk that an alternative approach, such as a levy, could result in under- or over-charging due to the newness and uniqueness of the function. Additionally, charging a levy instead of actual and reasonable costs could result in welfare gains and losses for different groups of users, depending on when they lodge their application. A company would receive no benefit from the levy in the years they do not lodge an application.

Further analysis would be needed to compare the use of a levy to other cost recovery options before this could be implemented. However, for the reasons outlined we do not recommend proceeding with further analysis at this time.

# 5 Function-specific analysis

## Nationally significant proposals (NSPs)

### Context

The EPA undertakes a number of activities associated with supporting applications for decisions that are considered to be of national significance under the Resource Management Act 1991 (RMA). The EPA roles include:<sup>6</sup>

- providing information to applicants, submitters and other interested parties
- advising the Minister if an application is nationally significant and should be called-in
- supporting the board of inquiry process
- making recommendations on improvements to the legislation.

### Authority

Section 149ZD of the RMA provides that the EPA may recover certain actual and reasonable costs associated with its functions and duties related to NSPs. The Minister may recover the actual and reasonable costs associated with a BOI process<sup>7</sup> and this is currently recovered by the EPA on the Minister's behalf, as delegated under section 29(4) of the RMA.

Section 149ZD(1) also provides for Local Authorities to recover actual and reasonable costs incurred by the local authority in complying with the NSP provisions.

### Justification

Administration of the NSP process results in benefits that accrue to applicants and to the public more generally. These are outlined in table 2 below.

**Table 2: Assessing who benefits from the nationally significant proposal activities**

Mostly private benefits	Mixed benefits	Mostly public benefits
Pre-application assistance Assessing the national significance of applications Advice to Ministers on a specific application Servicing boards of inquiry to enable them to make decisions	Providing information and advice to assist potential applicants and submitters	Supporting awareness among RM decision-makers Participating in international activities to ensure that BOIs are applying best practice Recommending improvements and providing input to legislative changes

The current practice is for the EPA to charge applicants an hourly rate, which includes overheads, for the time spent supporting applications for NSPs. The EPA anticipates cost recovering approximately 55% of its NSP-related total costs in 2014/15.

<sup>6</sup> Environmental Protection Authority. 2014. *Statement of performance expectations 2014–15*. Wellington: Environmental Protection Authority.

<sup>7</sup> Section 149ZD(4) of the RMA.

## Accountability

The rates for cost recovery associated with the EPA's functions for NSPs are set by the EPA. The EPA's policy for cost recovery of this function is provided on its website.<sup>8</sup> Table 3 provides the hourly rates currently charged by the EPA for supporting the NSP process. The rates are based on the average salary for each category of employee, plus overhead costs (comprising personnel costs for additional support staff, plus corporate overhead costs apportioned across all non-support staff), divided by an average of 1,352 working hours per staff member per annum.<sup>9</sup>

**Table 3: Current cost recovery rates for NSPs**

Category of staff	Hourly rate
Project administrator	\$90.96
EPA advisor	\$96.85
EPA senior advisor	\$108.43
Project leader	\$131.43

## Efficiency

The EPA sets hourly rates rather than them being set in regulation. The EPA considers this to be a fairer more accurate system of cost recovery for the applicant.<sup>10</sup>

However, providing cost estimates for NSPs is complex and relies on numerous variables which change through the process. BOIs have no oversight of the EPA estimates and set their own inquiry procedures (for example, some Judges want legal counsel to be present for the entire hearing), therefore the process is not entirely repeatable between proposals and costs can be inconsistent. To manage this, the EPA maintains budgets that are re-phased during the different stages of the process.

## Recommendations

The EPA can already recover the majority of the costs associated with supporting NSP decision-making. However, there appear to be some options for increasing the figure actually recovered figure:

- The EPA could adjust overhead calculations to recover more costs associated with maintaining a level of expertise to be able to manage applications and BOIs to a consistently high standard (including recovering a higher rate of overheads for training, information provided to the community, and policy and legal communications and management). These costs have mixed benefits because they improve public understanding of the process and should result in improved public confidence in the system and process. They may also benefit the applicant by improving the overall efficiency and quality of the BOI process.
- At present, the EPA does not charge for initial meetings and the EPA could consider increasing the scope of costs it recovers during the pre-application process. There are private benefits to the applicant in receiving advice and information pre-application to

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<sup>8</sup> [http://www.epa.govt.nz/Publications/Cost\\_Recovery\\_Policy\\_Proposals\\_National\\_Significance.pdf](http://www.epa.govt.nz/Publications/Cost_Recovery_Policy_Proposals_National_Significance.pdf).

<sup>9</sup> Working hours excludes leave, sick leave, training and time required for administrative and miscellaneous tasks.

<sup>10</sup> Environmental Protection Authority. Unpublished. MfE Cost Recovery Review Work-Stream Three Year Review of the EPA: EPA Cost Recovery Opportunities for Nationally Significant Proposals (meeting note).

test the adequacy of their evidence and application, and these could be recovered where an application is subsequently made.

- The Ministry and the EPA should jointly review existing charge out rates to confirm whether they need to be adjusted.

It should be noted that increased cost recovery would increase applicant costs, and this should be taken into account before making any amendments to the regime.

## Consenting and monitoring activities (EEZ Act)

### Context

The EPA is responsible for making decisions on applications for marine consents to undertake activities in the Exclusive Economic Zone and continental shelf (the EEZ). It is also responsible for monitoring activities in the EEZ, and enforcing compliance with the permitted activity regulations and any conditions of marine consents. The EPA's roles include:<sup>11</sup>

- making decisions on marine consents and rulings
- providing advice and support for EEZ processes and committees, including supporting and advising applicants and submitters
- monitoring and enforcement of the permitted activities regulations and conditions of marine consents
- making recommendations on improvements.

### Authority

The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act) enables the EPA to recover the direct and indirect costs associated with performing its functions under this Act, where there is no appropriation from Parliament to cover costs. The EEZ Act details which functions and services can be charged for<sup>12</sup> and identifies the different mechanisms that might be used for cost recovery.<sup>13</sup> It also requires that the charges be prescribed in regulations.<sup>14</sup>

The corresponding regulations are the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013. These regulations prescribe the hourly rate that can be charged by the EPA and stipulate that charging for the EPA's EEZ monitoring functions is limited to 80% of the prescribed hourly rates.

### Justification

Making consent decisions and monitoring activities in the EEZ results in benefits that accrue to applicants and to the public more generally. These are outlined in table 4 below.

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<sup>11</sup> Environmental Protection Authority. 2014. *Statement of performance expectations 2014–15*. Wellington: Environmental Protection Authority.

<sup>12</sup> EEZ Act, Section 143.

<sup>13</sup> EEZ Act, Section 144.

<sup>14</sup> EEZ Act, Section 146.

**Table 4: Assessing who benefits from the EEZ activities**

Mostly private benefits	Mixed benefits	Mostly public benefits
Pre-application assistance Processing and deciding applications	Providing information and advice to assist potential applicants and submitters Monitoring consents, existing activities and permitted activities <sup>1</sup> Appeals <sup>2</sup>	Enforcement activities Internal government and international reporting Education and public information awareness Participating in international activities to ensure applying best practice Recommending improvements and providing input to legislation changes

<sup>1</sup> Note monitoring of activities that are permitted under international obligations, and government-funded permitted activities, are currently not cost recovered.

<sup>2</sup> There is uncertainty on where the benefit of an appeal lies until the decision has been made. Therefore, this activity is not cost recovered, but the EPA can seek to recover costs from the appellant where an appeal is unsuccessful.

### Consenting activities

Consenting benefits fall largely to the operator who benefits from receiving access to a public natural resource.

All costs associated with making rulings, preparing, processing and deciding marine consents are considered to benefit the applicant and the EPA looks to cost-recover these services.

### Monitoring activities

Cost recovery for monitoring activities is limited to 80% of the prescribed hourly rates. Alternative ratios for cost recovery were considered when the EEZ cost recovery regime was established,<sup>15</sup> but the limit was adopted on the basis that:

- operators are gaining private benefit from access to a public natural resource so the financial burden for ensuring activities are operating within environmentally sound limits should fall primarily on those directly benefiting from the resource
- monitoring is part of the suite of conditions which provide operators with their ‘social license’ to undertake an activity. Monitoring will also likely result in greater regulatory certainty for operators in the long term through an enhanced understanding of the environmental effects of activities
- the EPA should bear some costs to incentivise it to limit the monitoring functions to only what is necessary to ensure compliance, rather than collecting excess information
- monitoring results in wider public benefits. Knowledge of the interaction between activities and the environment in the EEZ and continental shelf will be gained from the information provided by operators and this will inform better decision-making at both the operational and policy level. Monitoring of individual marine consents and permitted activities will also feed into the EPA’s monitoring of cumulative effects.

This year the EPA anticipates recovering 12% of monitoring costs. This figure may reflect that the regime is relatively new and there is a limited amount of monitoring activity occurring at the moment, but that investment has been necessary to provide education/information to the sector, and to ensure the EPA has capacity to carry out monitoring in the future.

<sup>15</sup> Ministry for the Environment. 2012. *Regulatory Impact Statement: Regulations under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act*. Wellington: Ministry for the Environment.

## Accountability

The EEZ cost recovery regime was first consulted on in 2012 as part of the consultation on the regulations to be made under the EEZ Act. This component of the consultation included identifying who benefited from an activity, and therefore where cost recovery was appropriate, and the different possible methods for recovering costs.<sup>16</sup>

Cost recovery is achieved by charging hourly rates for services. The hourly rates are set in regulations, and the EPA's policy for cost recovery of this function is provided on its website.<sup>17</sup>

Table 5 provides the hourly rates currently charged by the EPA.

**Table 5: Current cost recovery rates for Exclusive Economic Zone activities**

Category of staff	Hourly rate
Project administrator	\$97.43
EPA advisor	\$103.75
EPA senior advisor	\$116.12
Project leader	\$140.80
Principal technical advisor	\$290.00

## Efficiency

The EPA invoices applicants on a monthly basis, and the invoicing system is underpinned by detailed information. However, the EPA has identified some inefficiencies with its current invoicing approach including physical handling of receipts, operating a manual schedule of charges, and that decision-making committees (DMCs) compile their own detailed expenses.

## Recommendations

Opportunities for new cost recovery are limited for EEZ consenting because the EPA is already entitled to recover the direct and indirect costs associated with processing a specific application for a marine consent. However, the following opportunities could be explored:

- The extent of work that managers are doing for marine consents was not anticipated at the time of setting marine consent overhead rates.<sup>18</sup>
- The EPA's cost recovery approach for monitoring is to recover 80% of staff time costs from the applicant, and 100% of all other costs (for example, transport). The current cost recovery rate is well below this figure. The low cost recovery rate may reflect the newness of the regime, and consequently a need to have better information on monitoring costs. We recommend the EPA review the recovery rate at a time when the monitoring regime is more mature.

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<sup>16</sup> Ministry for the Environment. 2012. *Managing our oceans: A discussion document on the regulations proposed under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill*. Wellington Ministry for the Environment.

<sup>17</sup> [http://www.epa.govt.nz/EEZ/about\\_eez/Pages/cost\\_recovery.aspx](http://www.epa.govt.nz/EEZ/about_eez/Pages/cost_recovery.aspx).

<sup>18</sup> Environmental Protection Authority. Unpublished. MfE Cost Recovery Review Work-Stream Three Year Review of the EPA: EPA Cost Recovery Opportunities for EEZ (meeting note).

# Hazardous substances and new organisms

## Context

Under the Hazardous Substances and New Organisms Act 1996 (HSNO Act) the EPA is responsible for assessing and deciding applications for hazardous substances and new organisms (HSNO), and coordinating and facilitating compliance with the HSNO Act. The EPA roles include:<sup>19</sup>

- making decisions on applications for HSNO
- providing advice and support for HSNO processes and the HSNO Committee
- having oversight of the delegated new organism decision-making of Institutional Biological Safety Committees
- coordinating and facilitating compliance with the HSNO regime.

## Authority

Under section 21 of the HSNO Act, the EPA is able to fix charges to recover the actual and reasonable costs incurred in carrying out its HSNO function. The HSNO Act requires charges to be publically notified before being decided or changed.<sup>20</sup>

## Justification

The original intention was for the HSNO function to be 100% cost-recovered for processing applications. However, in 2003 Cabinet approval was sought for the Environmental Risk Management Authority (ERMA) to reduce this rate of cost recovery to a fair and reasonable level that reflects actual costs, recognises public benefits, provides predictable fees and is consistent with other policy, particularly the Government’s Growth and Innovation Framework (ie, not stifling innovation through setting high application fees). The Cabinet paper proposed a schedule of fixed fees for the various types of HSNO applications that would result in an average cost recovery rate of 17%.<sup>21</sup>

**Table 6: Assessing who benefits from the HSNO activities**

Mostly private benefits	Mixed benefits	Mostly public benefits
Oversight of IBSC* Decision on applications for hazardous substances and new organisms <sup>2</sup> (though the balance of private and public benefits could vary) Servicing and supporting the HSNO Committee	Providing information and advice to assist potential applicants and submitters Maintenance of the HSNO applications register Providing permission to use certain hazardous substances <sup>2</sup> Maintain register of exposure limits	Register of importers and manufacturers Administer biosafety clearing house Participating in international activities to ensure applying best practice Recommending improvements and providing input to legislation changes Monitor the effectiveness of the HSNO Act, support enforcement and

<sup>19</sup> Environmental Protection Authority. 2014. *Statement of performance expectations 2014–15*. Wellington: Environmental Protection Authority.

<sup>20</sup> New Zealand Government. 1996. *Hazardous Substances and New Organisms Act*. Wellington: New Zealand Government.

<sup>21</sup> Minister for the Environment. Unpublished. *Review of Cost Recovery Policy: Applications to ERMA for Approvals [POL (03) 217]*.

		compliance activities Education and public information awareness Issue and maintain EPA notices
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\* Note HSNO decision-making activities are, in theory, cost recovered at 17% of the actual cost through payment of a fixed rate application fee.

## Accountability

The EPA currently charges fixed fees for various activities carried out as part of the HSNO function. Further details on these fees are available on the EPA's website.<sup>22</sup>

## Efficiency

The current fees for HSNO applications, as charged by the EPA, came into effect on 1 October 2010. These rates sought to continue to recover the cost of processing applications at 17%.<sup>23</sup> The following observations are made about the HSNO cost recovery approaches:

### *Hazardous substances*

- Setting fixed charges and using group standards has provided certainty for applicants and is an efficient way to manage costs while maintaining appropriate regulatory oversight of risk.

### *New organisms*

- Having fixed fees for 'new organism applications for release' has provided certainty in planning for applicants and the EPA.
- The information requirements to progress to full release continue to be identified as a potential barrier to attracting innovative activity and investment to New Zealand. These vary per application and are not the same thing as the application fee.

## Recommendations

Opportunities for new cost recovery are potentially limited under HSNO because increasing fees would not encourage greater innovative activity, and may lead to non-compliant behaviour. However, we recommend that the cost recovery regime for HSNO be reviewed. The aspects of the existing HSNO cost recovery regime that we recommend are considered as part of a review, in particular, are:

- The decision to cost recover HSNO decision-making at an average of 17% of the actual cost should be re-examined to identify if this rate is still appropriate (ie, could it be higher or should it be lower and why?).
- Consideration of the charging framework or mechanism for cost recovery (ie, fixed fee, recovering actual and reasonable costs, levy, etc). HSNO applicants are currently charged a

<sup>22</sup> Environmental Protection Authority. Fees and charges for hazardous substances and new organisms. *Environmental Protection Authority*. [Online] [Cited: 9 October 2014.] <http://www.epa.govt.nz/about-us/fees/Pages/default.aspx>.

<sup>23</sup> Environmental Risk Management Authority. *Fees and Charges Review – ERMA Board paper*. Wellington : Unpublished document, 2009.

fixed fee while nationally significant proposal and EEZ decision-making applicants are required to pay the actual and reasonable costs (or a percentage of these).

- The possibility of recovering the cost of supporting the HSNO Committee. This is currently not cost recovered. Recovering the cost of supporting this Committee would be consistent with the approach taken in the NSP and marine consenting areas.
- Whether the EPA could charge interested parties to view their 'HSNO applications' and 'substance exposure limits' registers. As these are primarily used by industry, there could in theory be a charge placed on their use (eg, an annual subscription or pay-per-view). However, sections 20(5) and 20A of the HSNO Act require the EPA to make the registers available for inspection to any member of the public. Therefore, it might not be possible to impose such a charge.

## Ozone and import-export regulations

### Context

The EPA has activities additional to its HSNO functions under the Ozone Layer Protection Act 1996, Imports and Exports (Restrictions) Act 1988, and Imports and Exports (Restrictions) Prohibition Order (No 2) 2004. These activities include regulating ozone-depleting substances and certain chemicals and hazardous waste controlled by international agreements.<sup>24</sup>

### Authority

The existing legislative framework does not allow the EPA to recover costs for any of these functions.

### Justification

We have identified two activities with mixed benefits:

- issuing permits and providing information and advice to permit holders for ozone-depleting substances imports and exports
- issuing permits and providing information and advice to permit holders for waste imports and exports.

#### *Ozone depleting substances permits*

The activity to issue permits and provide information and advice to permit holders for ozone-depleting substances imports and exports is predominantly related to approving exemptions to import or export ozone depleting substances. Most ozone-depleting substances are being phased out so this activity is primarily about approving exemptions where there is no suitable alternative.

The ultimate purpose of the ozone-depleting substances permitting system is to ensure compliance with the Montreal Protocol and prevent depletion of the ozone layer. In our view, charging for these permits could lead to the perverse outcome of fewer importers seeking permits and an increase in illegal imports.

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<sup>24</sup> Environmental Protection Authority. 2014. *Statement of performance expectations 2014–15*. Wellington: Environmental Protection Authority.

### *Hazardous waste imports and exports*

A permit is required to export hazardous waste from New Zealand, with the exporter deciding if the waste they are exporting is hazardous (and consequently if a permit is required). The applicant is required to get a permit from all countries the hazardous waste transits through, with some of these other countries charging for such permits. New Zealand does not have the facilities, demand or technology in place to process such waste.

New Zealand could consider charging for the import or transit of hazardous waste and chemicals that originate from other countries. However:

- there is anecdotal evidence that current compliance with permitting requirements could be low
- charging the Pacific Island countries a fee for these permits may be counter to the intent of the Waigani Convention and New Zealand's other relations with these countries.

## **Recommendations**

Having mixed benefits suggests there is some potential for at least partially recovering the cost associated with issuing these permits. However, in our view, charging for these permits runs counter to encouraging higher levels of compliance.

We recommend maintaining the *status quo*.

## **Emissions Trading Scheme administration**

### **Context**

The EPA has a key role in the implementation of the New Zealand Emissions Trading Scheme (NZETS) and operation of the New Zealand Emission Unit Register (NZEUR). Its activities include:<sup>25</sup>

- operation of the NZEUR to enable domestic and international emission units to be traded
- decisions on activities to support registration, entitlements, obligations and the allocation of units
- monitoring the implementation of the Climate Change Response Act through compliance and reporting activities
- providing information and support to the Ministry for the Environment to ensure New Zealand meets its international obligations.

### **Authority**

The EPA is currently able to recover the costs associated with making an emissions ruling. This is authorised by the Climate Change Response Act 2002<sup>26</sup> which enables regulations to be made to prescribe fees and payment procedures.

The Climate Change Response Act also provides for making regulations to recover the costs associated with:

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<sup>25</sup> Environmental Protection Authority. 2014. *Statement of performance expectations 2014–15*. Wellington: Environmental Protection Authority.

<sup>26</sup> Section 167 of the Climate Change Response Act 2002.

- processing applications and returns
- providing, operating, and maintaining systems, databases, and other processes in connection with administration of the NZETS
- services provided by third parties.

However, to date regulations have been passed only for the Ministry for Primary Industries to recover the costs associated with processing forestry applications, and for the EPA to recover costs associated with processing emissions rulings.<sup>27</sup>

## Justification

**Table 7: Assessing who benefits from the administration of the NZETS and NZEUR**

Mostly private benefits	Mixed benefits	Mostly public benefits
Registration of voluntary participants	Making decisions on applications for allocations Registration of mandatory participants Unit holding and transaction accounting Decisions on unique emissions factors Cross border transactions Opening and closing holding accounts	Annual emissions returns Carry out directions of the Registrar Ensure compliance Audit participants International compliance

The Climate Change Response Act provides scope to increase the rate of cost recovery for the EPA to administer the NZETS and NZEUR. For example, the regulations could be amended to enable the EPA to cost recover processing applications and returns as well as funding its activities to provide, operate, and maintain systems, databases, and other processes in connection with administration of the NZETS.

## Accountability

The Climate Change (Emissions Rulings: Fees and Charges) Regulations 2010 provide the application fee for an emissions ruling and hourly rate charged after the first four hours of processing time. The current hourly rate charged is \$117.50.

## Efficiency

In theory, the EPA can cost recover making emission rulings at 100%. There have not been any applications for a ruling in the past 2–3 years. Therefore, we are unable to identify the actual rate of cost recovery of this activity compared to the theoretical rate.

## Recommendations

While there are certain opportunities to recover costs for ETS activities, implementing changes to the current system is not considered appropriate at this time.

Below are some examples of the types of issues that would need to be considered before making any changes to the cost recovery regime:

- There is a risk that imposing a charge to register voluntary participants could deter participation and could undermine an applicant’s ability to access their entitlement to an

<sup>27</sup> Environmental Protection Authority. Unpublished. *MfE Cost Recovery Review Work-Stream Three Year Review of the EPA: EPA cost recovery opportunities for the ETS (meeting note)*.

allocation if they are a forester, or to abate their emissions at the lowest cost if they are an 'opt in' participant, for example in the Liquid Fossil Fuels sector.

- In some instances, such as applying for allocations of units or registration of mandatory participants, introducing cost recovery would require an applicant to pay before receiving a benefit, which potentially undermines the applicant's ability to access their entitlement and the context of the wider ETS policy settings.
- For other activities, such as unit holding and transaction accounting where there are less than 10,000 accounts, it might be that the cost of administering any new cost recovery is greater than any benefits gained from the additional revenue generated.

The ETS Review, scheduled for the end of 2015 would be an opportunity to consider any cost recovery changes, within the context of wider ETS policy settings. As part of this review, consideration could be given to opportunities for new cost recovery of activities associated with administering the NZ ETS and NZEUR.

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