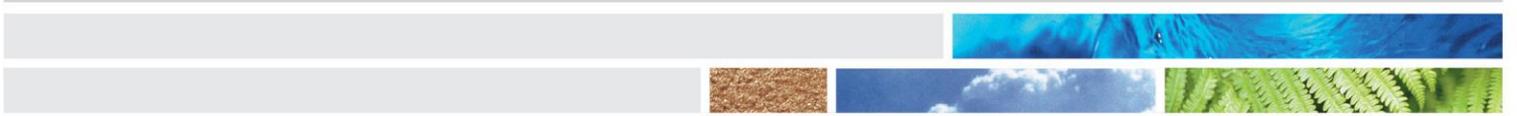




Environmental
Protection Authority
Te Mana Rauhi Taiao



Emissions Trading Scheme

Compliance and enforcement programme

January 2019

Purpose

This document sets out the Environmental Protection Authority's (EPA) compliance and enforcement programme for the Emissions Trading Scheme, or ETS. The programme supports our strategic goal that people have trust and confidence in our work (see the EPA's Statement of Intent).

We all benefit when everyone follows the rules. The ETS is New Zealand's principal policy response to climate change. We need to make sure everyone follows the rules, in order for the ETS to work properly to protect the environment.

People are more likely to follow the rules if they are sure the system is being run properly, and fairly. Part of being fair means taking the right action against those who don't follow the rules

This document outlines our compliance and enforcement programme, including:

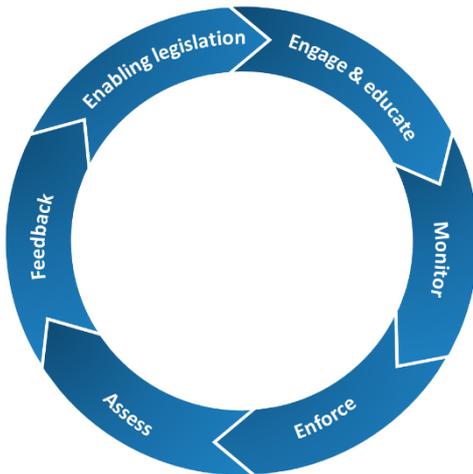
- how our compliance function relates to the EPA's vision;
- the roles of the EPA and other ETS agencies in relation to compliance;
- what parts of the ETS are regulated by the EPA; and
- our approach to compliance and enforcement in a self-reporting scheme.

Later in this document we set out what this programme means for you, including:

- the EPA's expectations of the regulated community in an established and embedded Emissions Trading Scheme.
- the compliance tools we have available when people fall short of their obligations, the penalties that apply and criteria we consider when we apply a penalty for a consistent application under the Act.
- the fact that you should be prepared for periodic reviews of your ETS compliance.

The EPA's vision

The EPA's vision is "An environment protected, enhancing our way of life and the economy". In order to achieve this the EPA's strategy states that we work "collaboratively with other agencies and the private sector to support the effectiveness of the environmental management system" and that we have "robust decision making processes so that everyone is confident about the quality of our decisions".



We aim to be a proactive regulator, focusing on work to achieve our vision and strategic objectives, with the help of other ETS agencies.

We see that compliance and enforcement are not the end goal of regulation: they're part of a cycle that ensures the best result for the regulated community, and for New Zealand as a whole.

Context

The EPA's role: The EPA is responsible under the Climate Change Response Act 2002 (the Act) for ensuring compliance with the ETS. Like the Income Tax regime, the ETS is 'enabling', in that people are able to do things for themselves. People register themselves, assess their own obligations, and then do their own reporting. To be effective the self-assessment nature of the scheme must be supported by adequate monitoring and compliance measures.

This is an important role, because we need everyone to meet their obligations to make sure the scheme works properly to protect the environment.

Make sure you understand your responsibilities

The Emissions Trading Scheme has been established and running for a number of years now. Many non-forestry participants have been reporting on their activities since 2010. Those participants should therefore have sufficient experience to be fully accountable for the records they keep and the documents submitted to the EPA.

The ETS is a self-reporting scheme, so the timeliness and accuracy of ETS reporting is the responsibility of the participant. Our compliance checks do not change the participant's obligation to take all due care, and the penalties for failing to do so may be severe. The self-reporting nature of the scheme also means that the EPA, as an independent regulator, is not able to provide specific advice to participants. However, it is considered that over the time the Scheme has been running there are now experts available to assist newcomers to the Scheme to be able to meet their requirements under the Act.

The EPA's compliance and enforcement programme is designed to give those who follow the rules confidence that those who break the rules will be held to account. It also helps ETS participants and allocation recipients (we call these groups the "regulated community") to improve their processes and ensures those who surrender or earn units are treated fairly. In particular our compliance activities are aimed at ensuring:

- the correct parties participate in the ETS;

- emissions are correctly reported; and
- allocations, entitlements and liabilities under the scheme are correctly calculated, claimed or surrendered.

Other ETS agencies: Some forestry-related functions are delegated to Te Uru Rākau – Forestry New Zealand. We work closely with our colleagues at Te Uru Rākau to make sure there is a consistent approach to compliance across all sectors in the ETS.

We also work closely with Ministry for the Environment (MfE) to make sure our operational decisions reflect the Government's policy intentions, and to identify opportunities to improve the operation of the ETS. MfE is the lead policy agency for the ETS, so we will direct enquiries to MfE if we consider them to relate to policy, rather than compliance, matters.

The EPA is responsible for many aspects of the ETS

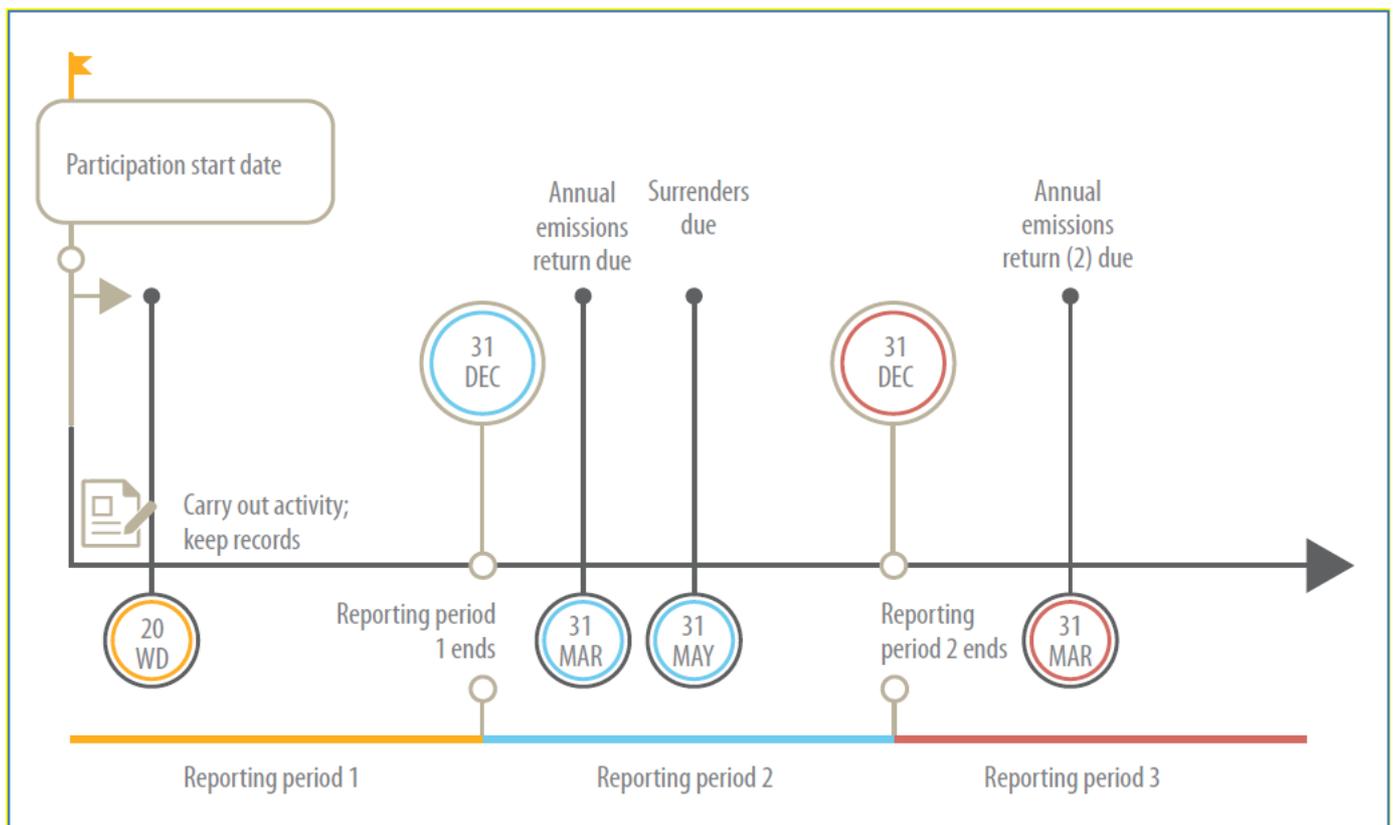
You will have contact with us if you're involved with:

- **Emissions reporting and surrender:** those who carry out mandatory and voluntary non-forestry activities under the ETS must report their emissions to the EPA annually. We monitor to ensure that everyone with mandatory obligations has registered as required by the ETS, and ensure that all ETS participants report their emissions accurately and meet their surrender obligations on time.
- **Unique Emissions Factors (UEF's)**
UEF's can be applied for by a participant who has eligible activities and can prove that their emissions are below that of the default emissions factor (DEF). The application process requires independent third party verification before the UEF is issued. Participants who look to maintain that UEF each year can expect requests for verifying documentation or an audit carried out by an independent third party provider at the request of the EPA.
- **Industrial allocations:** we allocate emission units to emissions-intensive and trade-exposed industries. We make sure we give applicants the right allocation, and only for eligible activities, and we check that they keep appropriate records to meet legal requirements.
- **The New Zealand Emissions Trading Register (the Register):** we operate the Register, which means we manage users, accounts, and other transactional aspects of the ETS. We ensure the right people use the system, and their accounts are set up properly so they meet all the legal requirements. We also check all accounts are associated with legitimate entities, and the information held in the Register is correct. We facilitate domestic trading of emission units, allow participants to meet their surrender obligations, and process ETS allocations and entitlements.
- **Entitlements for removal activities:** those who carry out certain non-forestry activities that remove or avoid emissions, such as producing products that embed carbon, or exporting synthetic greenhouse gases from New Zealand, can submit returns to the EPA on a quarterly basis to receive emission units. We make sure people are given the right number of units to account for their activities based upon their calculations and supporting documentation requested.

- **Levy on importing synthetic greenhouse gases (SGGs):** importers of vehicles and other goods that contain SGGs pay a levy for the quantity of gas imported in their products. We do not administer those levies¹, but we are responsible for monitoring compliance with the levies.
- **Certain forestry functions:** while the majority of forestry related functions are administered by Te Uru Rākau under delegation from the EPA, we are responsible for managing accounts, and transferring unit surrenders and entitlements for forestry participants and allocation recipients in the Register. We also assess penalty decisions for late or missed surrenders and repayments.

Our approach to compliance and enforcement

Our compliance activities are focussed on the cycle of non-forestry ETS requirements which is summarised in the diagram below:



Note: The Forestry cycle will differ and can be located at <https://www.teururakau.govt.nz/growing-and-harvesting/forestry/forestry-in-the-emissions-trading-scheme/>

¹ The goods levy is administered by the New Zealand Customs Service and the vehicles levy is administered by the New Zealand Transport Agency.

A principles-based approach

Our assurance framework is based on seven core principles, so that our approach is:

- **Risk based:** we target our efforts according to the perceived risk profile of sectors, activities and ETS organisations.
- **Proportionate:** compliance activity is proportionate to the risk presented by the sector, activity or customer, and the attitude and behaviour of each person or business.
- **Consistent and fair:** all stakeholders must have confidence and trust in the compliance regime and how it is applied.
- **Cost effective:** compliance activity should be cost effective for both the EPA and the regulated community.
- **Responsive:** potential risks are anticipated and mitigated, and the assurance framework accommodates change over time as the scheme matures.
- **Credible:** compliance activity demonstrates that real action will be taken in response to non-compliance.
- **Evidence based:** responses to non-compliance are based on accurate and reliable information.

If you want to learn more about these principles, you can find the document “EPA Compliance: Our Approach” on the EPA website.

We use different methods to monitor compliance

We know most people want to follow the rules, though some might need a bit of help to get it right. We follow an internationally-recognised model² to make sure we take the right approach to compliance.

If you are a participant in the Emissions Trading Scheme, the EPA does the following to assist you to follow the rules by:

- **Communicating and educating:** we communicate regularly through established channels such as e-Newsletters, website updates³, emails, letters and phone calls. There is also a Contact Centre for any queries on 0800 254 628.
- **Standardised and easy-to-use reporting:** the online emissions reporting tool (the Register) allows Participants to enter what data they are required to report. The Register also contains our online application for industrial allocations which has customised activity-based calculators to help people complete accurate allocation calculations. Additional features such as the option to assign preparer and approver roles to emissions reporting provides the Participant with an extra level of confidence in the information they are providing.
- **Automating:** where possible, the Register automatically prompts users to follow all the steps they need to complete for a given process. For example, when someone submits an emissions return, they are automatically sent an online form to help them surrender the right number of units. The form is generated using

² The EPA’s compliance approach is based on the Ayres Braithwaite compliance model

³ www.epa.govt.nz/industry-areas/emissions-trading-scheme; www.emissionsregister.govt.nz

the information from the emissions return, so please ensure that data is accurate. If people don't approve the surrender straight away, they are sent reminders as the statutory deadline approaches.

- **Monitoring your returns or applications:** Systems alerts highlight significant variations to identify possible problems as early as possible. We consider previous returns and applications, industry movements and other relevant information to perform initial checks and where we identify potential problems we contact people to seek clarification. Our checks do not change the participant's obligation to take all due care.
- **Periodic reviews:** our annual review cycle includes a combination of third-party and desk-based reviews. We have a pre-approved panel of independent ETS review providers who we use to conduct site visits and inspect source data and records. Our reviewers report back to us on any findings, and we then work with the relevant organisation to address any compliance issues. We also conduct a number of desk-based reviews each year, which generally involve phone-based interviews with members of the regulated community so we can understand their processes better and, where necessary, agree on improvements to practices.

If you are a new, or think you might be a new ETS participant

We strongly recommend that you contact us as early as possible if you think you or your organisation may be carrying out an ETS activity. As noted above, the EPA will not provide you with definitive advice on whether you are, or are not, required to register as an ETS participant. However we can point you towards various online resources which will assist you or your independent advisor to make those determinations for yourself.

If you or your organisation's activities fall within the ETS, you must familiarise yourself with your obligations under the Act and relevant regulations, in particular the requirements in relation to data collection and reporting and the rules for retention of emissions and allocation related records.

You should always be prepared for a review

We consider a range of factors when selecting organisations for an ETS review each year, however all participants and allocation recipients should be prepared for a review at any time. In selecting organisations for review we consider factors which include:

- The materiality of the risk;
- The compliance history of the organisation;
- The nature and complexity of the activities; and
- Other external factors which may influence compliance rates.

We develop a review plan at the start of each financial year, which identifies the organisations selected for review that year, and the rationale for those selections. The firms to be reviewed will be selected by the EPA in accordance with the selection criteria set out above.

If your organisation is selected for a review, you'll usually be asked to take part on a voluntary basis. However, we have extensive powers under the ETS legislation to require information from participants and allocation recipients to ensure compliance with the ETS.

The EPA will engage with you in relation to any findings from the review process. Our expectation is that organisations will engage with the EPA in a constructive manner and will promptly seek to address any improvements sought by the EPA.

Investigation and enforcement powers

The self-assessment nature of the ETS is supported by extensive legislated enforcement powers. These include financial penalties, make-good provisions and civil and criminal actions. We give confidence to the public and the compliant majority that non-compliance will be detected and rectified through:

- **Investigation:** we may receive information about possible non-compliance from a range of sources including our own compliance activities or through self-reported non-compliance by the organisation in question. Our policy is to take a measured and proportionate approach to investigations and to follow current best practice. We have a range of legal powers to support our investigative activities.
- **Penalties:** there are automatic penalties when a person fails to surrender or repay units when required to do so. In addition to the missing units, the ETS legislation imposes an automatic \$30 per unit penalty for every unit not surrendered or repaid by the due date.
- **Discretion:** When considering a particular instance of non-compliance, we take into account the circumstances of a particular case, and apply the principles set out in our policies so that as far as possible everyone is treated consistently. It is important to note though that we are now taking a stricter approach towards non-compliance with the scheme. This change in approach reflects the maturity of the scheme, and highlights the importance of 'getting it right'.

Automatic ETS penalties can apply if participants or allocation recipients make errors in their ETS reporting, so care must be taken to ensure accurate information is provided to the EPA.

The law encourages voluntary disclosure of non-compliance by enabling us to consider potential reductions in penalties in certain circumstances, where non-compliance is voluntarily disclosed.

Some of the factors we can take into consideration include the following (this is not an exhaustive list)

- The compliance history of the organisation;
- The nature and complexity of the activities;
- Level of cooperation by the Participant;
- Type of error: accidental, careless or deliberate;
- Extent of the liability created by the misreporting; and
- Other external factors which may influence the ability to comply.

- **Prosecution:** the law gives us extensive prosecution provisions, which we can use if people decide not to comply with the rules. Successful prosecutions could result in significant financial and criminal sanctions.

Where an enforcement power is delegated to another agency, for example for the forestry sector, we work closely with those agencies to ensure a consistent approach across the ETS. We have cross-agency operational policies and a compliance group which works to ensure the agencies are communicating regularly on compliance activities. For the SGG sector we have mutual agreements in place which ensure responsibilities are appropriately allocated and activities are regularly monitored.