

EPA policy for recovering costs

For Exclusive Economic Zone and
Continental Shelf (Environmental Effects)
Act 2012 functions

2021



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Purpose of this policy

The Environmental Protection Authority (EPA) has a number of functions and powers under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act) and Regulations.

Section 143(1) of the EEZ Act provides that “the EPA must take all reasonable steps to recover as much of the direct and indirect costs incurred in performing its functions and providing services under this Act as are not provided for by money appropriated by Parliament for the purpose” (Crown funding).

The EEZ Act specifies the following functions and services, but notes that this is not a limiting list:

- a. assisting a person in the preparation of an application for a marine consent, whether or not the application is made
- b. receiving, processing, and deciding applications for marine consents
- c. receiving impact assessments provided under section 22, 161 or 166 of the EEZ Act
- d. administering, monitoring, and supervising marine consents
- e. certifying that an activity complies with regulations
- f. advising a person proposing to undertake a permitted activity
- g. processing information that regulations require a person undertaking a permitted activity to provide, and monitoring a permitted activity if the monitoring is required by regulations
- h. reviewing the conditions or duration of a marine consent.

The Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 (the EEZ Fees Regulations) specify the charge-out rates for EPA staff, and who is liable to pay the charges. The regulations also specify that the EPA must charge the actual and reasonable costs for any expenses that the EPA reasonably incurs.

The purpose of this policy is to outline how the EPA will apply the allowable recovery of charges and costs.

Context

The EEZ Fees Regulations have been determined taking into account criteria specified at section 143(3) of the EEZ Act and the methods of cost recovery specified at section 144 of the EEZ Act.

There are two additional documents that set out the general principles that underpin all cost recovery by government entities:

1. the Controller and Auditor-General’s guidelines *Charging fees for public sector goods and services, June 2008* (the Auditor-General’s Guidelines 2008)
2. the Treasury’s *Guidelines for Setting Charges in the Public Sector, April 2017* (the Treasury Guidelines 2017).

The EPA’s Policy for charges and fees (approved by the EPA Board on 3 September 2020) has the objective to support a transparent and consistent approach to setting charges and fees, and the EPA’s recovery of costs.

The following are the principles underpinning the EPA's cost recovery stated in the charges and fees policy.

| Principles | |
|----------------------|---|
| Authority | Charges and fees, and cost recovery, must comply with the authorising Act. |
| Transparency | <p>The basis of a charge or a fee is transparent, clear, predictable and easy to understand.</p> <p>The fees take into account actual costs.</p> |
| Efficiency | <p>Options for pricing have been considered in terms of what would be most efficient to charge and will drive efficiencies in the provision of the EPA's services.</p> <p>Fees take into account EPA's commitment to efficiency and process improvements.</p> |
| Effectiveness | <p>Charges or fees align with, and are not a barrier to, other outcomes desired by government; for example, economic growth, innovation, and environmental protection.</p> <p>This may include considering the public and private benefits of applications, and whether application fees could discourage applications.</p> <p>Staff who are appropriate to the task to be undertaken are used.</p> <p>Under the HSNO Act, there is recognition that, in some cases an approval can be used by both the applicant and others (for example, a HSNO Act hazardous substances approval).</p> |
| Simplicity | The cost recovery regime is straightforward and understandable, costs of participation have been kept low, and there is certainty and predictability. |
| Equity | <p>The charge or fee is fair and just. In general, it is more equitable to charge those who benefit directly or singularly from a service than to spread the cost.</p> <p>A charge, fee, or charge-out rate applies equally to every person or applicant who may be charged for our work.</p> <p>There is a process for resolving disputes or objections to costs.</p> |

This policy is aligned with the EPA's policy for charges and fees.

Staff charge-out rates

Staff charge-out hourly rates are set out in the EEZ Fees Regulations. Rates include general overhead costs and exclude GST. The rate:

- a. for a principal technical advisor is \$290 per hour
- b. for a project leader is \$140.80 per hour
- c. for a senior advisor is \$116.12 per hour
- d. for an advisor is \$103.75 per hour
- e. for an administrator is \$97.43 per hour.

The principal technical advisor role in the Applications team is for those circumstances where the EPA employs a technical specialist (for example, for oil and gas or seabed mining) on a fixed-term staff contract.

For monitoring functions and services, the charge-out rate is 80 percent of the above rates as follows. Rates include general overhead costs and exclude GST. The rate:

- a. for a principal technical advisor is \$232 per hour
- b. for a project leader is \$112.64 per hour
- c. for a senior advisor is \$92.90 per hour
- d. for an advisor is \$83.00 per hour
- e. for an administrator is \$77.94 per hour.

The principal technical advisor role in the Compliance, Monitoring and Enforcement Group covers the Head of Compliance and the Principal Compliance officer roles.

Costs that we will recover

The EPA recovers all costs associated with our EEZ Act functions, except the following for which we receive Crown funding:

- a. education and raising public awareness
- b. internal government and international reporting
- c. enforcement action, including investigations (the Crown will seek to have costs awarded if enforcement is successful)
- d. investigation which does not lead to enforcement (including those investigations initiated by the public and any scheduled compliance checks by the EPA)¹
- e. additional monitoring, for example, cumulative effects
- f. permitted activity processing for submarine cabling
- g. marine consents or permitted activity processing for international marine scientific research when funded by international governments
- h. marine consents or permitted activity processing for government funded domestic marine scientific research

¹ In practice this means that the EPA will charge for any monitoring undertaken prior to 'reasonable grounds to believe' an offence has been committed are established; but will not charge from this point forward as it will be considered an investigation.

- i. business system and process development.

Our charges take into account our commitment to efficiency and process improvements

The EPA is committed to continuous improvement of our business practices, efficiency and process improvements. Our practice is that we will, as far as is reasonably possible, use staff who are appropriate to the task to be undertaken. When we are required to use contractors, we will follow our procurement policy, and ensure charge-out rates are reasonable.

In determining staff charges, we have regard to the following matters:

- a. the scale and complexity of the tasks, and whether the hours incurred were reasonable for the task required
- b. were the costs reasonably incurred at the time were determined by:
 - why they were required
 - what was to be addressed
 - was there an alternative approach that may have cost less?
- c. how have similar costs been treated by the EPA previously?

In determining actual and reasonable costs that we will seek to be reimbursed for, we have regard to the following matters:

- d. is there credible evidence of how and why the cost was incurred?
- e. was it reasonable to rely on external resources; were there internal EPA resources that could have been used²?
- f. was an estimate (or an updated estimate) provided to the duty holder and how do the costs actually incurred relate to the relevant estimate?

Our charges take into account equity

We apply the same processes and approach to every duty holder who may be charged for our work under the Act.

This policy includes a process for resolving disputes or objections to costs invoiced. It also states our approach to procurement.

Costs we will not recover

To the extent that activities arise in the course of undertaking functions in relation to multiple matters (for example, travel costs associated with sequential onsite monitoring of multiple marine consents/permitted activities), the EPA will discuss activities and costs with the person concerned to assist in determining whether more cost-effective options for undertaking the function may be available.

Costs will not be charged where:

- a. the costs arise as a result of a matter beyond the requirements of that function or service

² Section 14 of the Environmental Protection Authority Act 2011 requires the EPA to consider efficiency, institutional knowledge and meeting its obligations before contracting out any function.

such as training, administrative error, or internally directed rework

- b. the costs associated with the appointment of a BOI/Decision-making Committee (EPA board papers, ministerial papers).

Application pre-lodgement costs

We will recover EPA staff time at the rates specified in the Staff charge-out rates section, and any other reasonable costs associated with pre-lodgement of an application, including, but not limited to:

- a. the manager/team leader/project leader engaging with a person who has the intention of making an application
- b. review of draft application documents, draft impact assessment documents, and permitted activity documents by the EPA and its advisers.

EPA costs associated with consent applications, rulings and certification or approval of plans

We will recover EPA staff time at the rates specified in the Staff charge-out rates section, and any other reasonable costs associated with the EPA's functions under the EEZ Act, including but not limited to:

- a. lodgement:
 - setting up consent files
 - determining completeness including commissioning an independent review under section 41 or where external advisors are commissioned under section 56 of the EEZ Act
 - public notice and giving copies/serving copies, or serving notice.
- b. decision-making committees/boards of inquiry:
 - all costs of decision-makers including for induction, computers, travel, catering, accommodation, business meetings
 - administrative, and secretarial services to support decision-makers.
 - all advice and reports requested under section 56 of the EEZ Act.
- c. cross-boundary consents:
 - all costs associated with applications under section 88 – 100 of the EEZ Act.
- d. hearings and decisions:
 - all costs: decision-makers, staff, contracted services, disbursements.
- e. decommissioning plans:
 - all costs associated with receiving, processing and determining decommissioning plans.
- f. rulings relating to existing structures that existed at the commencement of the EEZ Act
- g. certification of plans required by conditions of any marine consent
- h. approval of Emergency Spill Response Plans submitted in terms of section 24 of the Exclusive Economic Zone (Discharge and Dumping) Regulations.

EPA costs associated with monitoring functions and services

We will recover EPA staff time for monitoring functions and services, at the rates specified in paragraph 11 and any other costs (such as travel and accommodation) associated with monitoring functions and services on an actual and reasonable basis, including but not limited to:

- a. monitoring marine consent and deemed marine consent conditions, including, but not limited to:
 - i. site inspections
 - ii. office-based inspections
 - iii. pre-inspection planning
 - iv. post-inspection follow-up work
 - v. receipt and consideration of reports
 - vi. review and certification of plans.
- b. liaison regarding proposed non-scientific research and other activities under permitted activities regulations
- c. liaison regarding scientific research under permitted activities regulations that is not government (international or New Zealand government) funded
- d. monitoring compliance with permitted activities regulations with the exception of government funded scientific research undertaken under the regulations.
- e. operator liaison, including education and training.

Decision-making committees and boards of inquiry fees

EEZ decision-making committee members' rates will be calculated in accordance with a Group 4, Level 1 rating under the Cabinet Fees framework for members appointed to bodies in which the Crown has an interest.

Board of Inquiry member rates are set by the Minister on appointment. Boards of Inquiry are classified under the Cabinet Fees Framework as a Group 2: Statutory Tribunals and Authorities Level 1.

EEZ decision-making committee and board of inquiry members will record their time spent and provide evidence of any expenses incurred (eg, taxis or meals) to the EPA.

Other relevant disbursements will be based on GST invoices paid.

Costs/expenses incurred must be identifiable by:

- a. consent number
- b. GST receipt
- c. credit card transaction.

Other recoverable costs

The EPA will recover disbursement costs associated with the services and functions undertaken by the EPA and decision-making committees and boards of inquiry, on an actual and reasonable basis. Disbursement costs may include, but are not limited to:

- a. the cost of contractors, special advisors or technical advisors

- b. printing, postage, courier expenses
- c. hireage and costs associated with a hearing venue, or remote access facility, including recording and transcription services.

Cost estimates

A person who intends to make an application, or who may be liable for monitoring may request an indication of the type of costs that might be incurred.

If requested, the EPA will provide a cost estimate to person who intends to make an application or the duty holder who has monitoring requirements. We will undertake to provide this in a timely manner.

Cost estimates will include specific disclosure of the assumptions underpinning the estimate.

The original cost estimates will be reviewed at a key point in a project or on request by the duty holder or applicant.

Any significant costs not provided for in the original cost estimate will be discussed with the duty holder or applicant before incurring the costs.

A duty holder or applicant may also request costs incurred progress reports at reasonable times.

Regular meetings with applicants to discuss the project, including its costs, will be offered.

Person intending to make an application agree to costs

A person intending to make an application will be required to sign an Invoice Initiation Form which serves as an agreement to payment of costs.

Costs that will be recovered if an application does not proceed

Pre-lodgement discussions

Where the EPA assists an intended applicant and the matter is **not** lodged, the EPA will recover the actual and reasonable costs of providing the assistance.

Completeness assessment

Where an applicant lodges an application and the EPA assesses an application as **not** meeting the completeness requirement, the EPA will recover the actual and reasonable costs, whether or not the application is resubmitted.

Withdrawal of an application or notice of requirement

Where an application is withdrawn by an applicant, the EPA will recover the costs incurred in processing the application up until the date written notification of withdrawal is received by the EPA. We will also recover any consequential costs including advising the decision-

makers, and any person or group who has made comments or who has been contacted, and amending any public website.

Recording and approval of staff charges

EPA staff will record their time spent on any cost recoverable tasks in 15-minute units which will be approved by the relevant manager or team leader.

All hours spent on a task, service or function associated with a particular application will be recorded. It is the responsibility of the project leader/team leader, and/or the manager, to identify what time can be reasonably on-charged in accordance with this policy.

Procurement

The EPA or EEZ decision-making committee or Board of Inquiry may commission various advice, reports and services to help them in their work. Contracts will be established for providing these reports and GST invoices will be paid on receipt of the deliverables.

The EPA will follow the Government Procurement Rules³ and the EPA Procurement policy and guidelines as required when procuring any services required for the EPA and the decision-makers to carry out the functions under the EEZ Act.

In summary, the EPA's procurement policy has the following objectives. The EPA:

- a. gets value for money over the whole of life of the services or goods purchased
- b. facilitates open and effective competition
- c. acquires sustainably produced goods and services wherever possible, while considering economic, environmental and social impacts over their life cycle
- d. gets the best possible outcomes from the goods and services that it purchases
- e. achieves the organisation's business priorities
- f. provides full and fair opportunity for all suppliers
- g. recognises New Zealand's international trade obligations and interests.

All contracts will comply with the EPA's procurement policy.

Hearing and pre-hearing costs, such as venues, catering, audio-visual and transcription services, will be paid on receipt of GST invoices.

Invoices

For applications:

- a. invoices will be provided monthly, be broken down by project phase and will include a detailed identification of line items
- b. a summary will be provided in monthly invoice letters against the cost estimate
- c. final invoices will be sent once an application has been determined or withdrawn, or

³ <https://www.procurement.govt.nz/procurement/principles-charter-and-rules/government-procurement-rules/>

activity completed.

d. invoices must be paid in full by the due date of the invoice.

For compliance, typically invoices are generated monthly.

Outstanding costs and debt due to the EPA

The EPA may suspend the processing of a consent application where the applicant has not paid costs recoverable by the EPA that have been invoiced.⁴

The EPA will give notice to the applicant of our intention to suspend processing a consent application.

The EPA will resume processing an application for a consent application once the outstanding costs have been paid to the EPA in full.

Any outstanding costs not paid become a debt due to the EPA and may be referred to a debt collection agency or may be pursued through the appropriate court.

Dispute resolution

The EPA also has a policy for considering complaints.

If an applicant has a concern with an invoice, the Manager – Land and Oceans Applications or Head of Compliance, Monitoring and Enforcement should be contacted by telephone or email as soon as possible, and desirably no later than 15 working days after receiving the relevant invoice.

If the matter cannot be resolved through initial communication, the EPA will acknowledge and set out our understanding of the concern. The opportunity will be given to correct any misunderstanding of the concern.

The Manager or Head, in consultation with the relevant General Manager, will then consider the concern, with the aim of finding a resolution as soon as reasonably practicable, and in no more than 20 working days. A report detailing the concern, the matters taken into consideration and the recommended approach to resolution will be provided to the person who has raised the concern.

Our complaints policy is that if it takes longer than two working days to resolve a complaint, then we will give updates on progress to the complainant (and continue to keep them updated on progress).

Formal objection process

There is no provision in the EEZ Act for the EPA's decision on costs to be formally challenged if a resolution cannot be reached through the dispute resolution process mentioned above. However, we do provide for the following.

⁴ EEZ Act, s147

- a. A formal objection may be made in writing and lodged by the applicant with the EPA within 15 working days of the applicant receiving the disputed invoice, or being advised the dispute cannot be resolved, if the dispute resolution process is used. The notice of objection must set out the reasons for the applicant's objection.
- b. EPA staff and the objector will be given the opportunity to provide information relevant to the objection to the EPA Chief Executive. EPA staff will provide to the objector any material provided to the Chief Executive for consideration.
- c. The Chief Executive will provide the opportunity for the objector to put forward their position.
- d. The Chief Executive can dismiss or uphold the objection, either in whole or part. A copy of the outcome of the objection will be provided in writing within 15 working days of making the decision to the objector.

Where an objection to costs has not been resolved through the objection process, the objector has the right to seek a judicial review from the High Court.

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