



An altered state

Changes to the Environment Agency charging schemes

In April 2018 the Environment Agency (EA) introduced a new charging scheme as a result of its Strategic Review of Charges (SRoC) programme, which set out to simplify the way customers work out their charges. Further changes to the charging scheme came into force on 1 April 2019, aiming to add clarity to the scheme, accommodate subsequent changes in the costs of regulation and cover areas not included in the SRoC. The changes have been designed to ensure that the EA can recover the costs of regulation.



Supplementary charges

Broadly speaking, charges fall into categories relating to an application charge or an annual subsistence charge, based on either fixed charges or time and materials charges. In April 2018, the EA introduced supplementary charges for some customers on top of the fixed application and annual subsistence charges, where the EA needs to do "extra or unusual" regulatory work.

For example, a fixed cost supplementary charge will be applicable when extra work is needed to support a permit application.

Time and materials supplementary charges will be added when it is hard to predict the amount of work the EA will need to do, as in the case of an investigation following an incident, charged at an hourly rate for the officers' time plus the cost of any materials or equipment used. Time and materials charges for regulatory work needed after the suspension of a permit have applied since 1 April 2018, and for regulatory work needed as the result of an unplanned event (for example a pollution incident) since 1 October 2018.



Overview of the changes

The new charging schemes came into force on 1 April 2019. Charges for the following regulatory regimes have been changed or clarified:

- Environmental Permitting (England and Wales) Regulations 2016 (the EP Regulations) including Closed Landfill, Radioactive Substance Regulations and other EP Regulations changes)
- Polychlorinated biphenyl (PCB)-containing equipment registration
- EU Emissions Trading System (EU ETS)
- Producer Responsibility for Waste Electrical and Electronic Equipment (WEEE)
- Water Resources (Dee and Wye Standard Unit Charges)

The changes included:

- The introduction of six categories of an annual charge for closed landfills, where the costs of the regulatory work at a closed landfill is aggregated into an annual bill. This follows a concern from the EA that once activity has ceased, landfills continue to present a threat to the wider environment and charges have not kept up with the costs of regulation;
- An increase to the Radioactive Substances Regulation (RSR) hourly rate;
- Extending the scope of the habitats assessment charge to permits affecting other protected areas, such as a site of special scientific interest within the meaning of the Wildlife and Countryside Act 1981;
- Additional application categories for hazardous and non-hazardous waste installations, with differentiation in the application charges;
- Clarification on the charges applicable to medium combustion plants and specified generators;
- New charges for equipment containing PCBs (with four charge bands depending on the number of PCB-containing equipment held and number of sites);
- Amendments to terms used in the Waste (Miscellaneous) Charging scheme to bring it in line with the WEEE regulations;
- An increase of 5% to the Dee and Wye standard unit charges for 2019/2020, with a further increase planned for 2020/2021; and
- The inclusion of an abatement provision in the EU ETS charging scheme.



A 'Fee for Intervention' approach?

In December 2018, the EA launched a consultation with its customers in relation to its charge proposals. Some of the responses referenced sufficient powers under a 'Fees for Intervention' approach, like that operated by the Health & Safety Executive (HSE), to address any additional regulatory intervention, without the need to raise baseline charges. The HSE charge an hourly rate for investigating and taking enforcement action should you be found in breach of health and safety law. However, the EA was clear that it does not have the legislative ability to charge fees under any 'Fee for Intervention' scheme, but did not know of any reason in law that would prevent it from making a charging scheme that would enable it to recover the costs of regulation. Previously, it did recover some costs through additional time and materials charging, but the circumstances where this applied were "limited, specific and reactive".

However, the impact of the supplementary charges is similar to that of a Fees for Intervention approach. We have seen the EA switch to performance based regulation for the EP Regulations, under which compliant sites pay lower charges and have fewer regulator inspections, from an operational risk appraisal assessment. As you might expect with a risk-based model relating to performance as opposed to potential hazards, those interacting with the EA in dealing with an unplanned event which causes or gives rise to a risk of significant harm to human health or the environment arising from the authorised activities, investigation or suspension, will be subject to additional charges.

For more information on the above please contact health and safety lawyer Claire Watson or a member of the Eversheds Sutherland UK EHS Team.



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