Report 00.49
31 January 2000
File: K/4/3/4

Report to the Rural Services and Wairarapa Committee,
and the Environment Committee
from Geoff Skene, Manager, Environment Co-ordination

Charges for Council Responses to Environmental Incidents

1. Purpose

To establish a mechanism for recouping costs incurred by the Council in responding to pollution call-outs and other environmental incidents which are contrary to its regional plans.

2. Background

Every year the Council's pollution response services (in Masterton and Wellington) deal with numerous situations where an activity is occurring that contravenes the rules of our operative (or proposed) regional plans. These situations include:

- Discharging contaminants into rivers, stream, and the coast;
- Dumping rubbish in river beds (e.g., old cars);
- Discharges to air from non-consented activities (e.g., odour);
- Non-consented earthworks, illegal gravel takes, water abstractions, bores etc; and
- Non-consented coastal structures (e.g., retaining walls).

In the past, the Council has borne the cost of this work, and has not sought to recover its costs, except for those major and high profile situations which have led to legal action.

However, the Resource Management Act 1991 (the Act) is premised on the notion that resource users should pay for the "costs" of their use on the environment. This applies to those who abuse the environment, as well as to those who use it legally.

As the number of incidents rises, the need for a way of recouping some of these costs has become apparent, as well as the possibility of charges improving compliance and thus creating a more sustainable Region. Until now the Council has lacked the right "tool" for dealing with these numerous, and

often small-scale, incidents both in terms of recouping costs, and in deterring future incidents. The "tool" proposed in this paper seeks to fill this gap.

3. What Incidents will the Charge Apply to?

The new charge will enable the Council to recoup its costs where a person (or organisation) carries out an activity which contravenes sections 9 (relating to land use), 12 (use of the coastal marine area), 13 (river and lake beds), 14 (water uses), 15 (discharges to water, land, or air), 327 (noise in the coastal marine area) and 329 (water shortage directions) of the Act. In general these sections control how resources may or may not be used and state that if an activity is contrary to a rule in a regional plan (or proposed plan), or not permitted by a rule, then it may not take place.

Of course, having a resource consent does permit some of these uses as well. These charges are not intended to provide for situations where a person with a consent uses that consent improperly and where a Council response is needed. The Council's Resource Management Charging Policy, 1997, provides for this situation.

4. What is the Basis of the Charge?

The Council has a duty to enforce the observance of its regional plans under s.84 of the Act. This requires action by way of inspection when non-compliance comes to light, i.e., the work of the Pollution Response Service.

The Act itself does not provide a way to charge for these specific costs of inspection. However, s.690A of the Local Government Act 1974 empowers councils to charge for inspections where these are carried out, but where there is no direct charging mechanism in the Act which empowers the inspection (in this case, the Resource Management Act 1991).

5. What can the Council charge for?

The full range of actions that can be recouped is laid out in section 1.1 of Attachment A. In brief, we can charge for officers' time in identifying the offending activity and the person responsible, advising the person how to deal with any adverse effects, travel time, and any disbursements (such as, for example, laboratory costs in identifying a contaminant).

Any charge will only be such as to allow the Council to recover its actual and reasonable costs, and will only be made to the extent that the person (or organisation) has actually caused the Council to take the steps it does. Although not required to be, this is exactly the same basis as laid down in the Resource Management Charging Policy.

6. When will a Charge be Made?

The situation must be a genuine and clearly identifiable one. It will be necessary to be able to demonstrate who caused the incident before charging that person or organisation.

7. Can the Council Charge for Dealing with any Adverse Effects?

In many cases when staff attend an incident it is necessary for someone to take some action to stop any effects on the environment from getting worse or to clean up what has already taken place. Unfortunately, s.690A does not give the Council power to recover its costs should staff deal with a pollution problem in this way (clean it up), or otherwise "avoid, remedy, or mitigate" the effects of any incident. This power is contained expressly in the Resource Management Act itself in s.314, but only where the Council applies to the Environment Court for an enforcement order for such costs.

This is likely to mean that in many cases this particular component of the cost of any incident may not be recouped, since the enforcement order procedure can be time consuming and complicated, or at least, sought only where the clean-up costs were considerable. However, it will be necessary to test the usefulness of this "tool" (seeking an enforcement order for costs only) before making a clear judgement as to its costs and benefits.

8. What is the Relationship of s690A Charges to Infringement Charges?

In October of last year regulations came into force giving local authorities the option, where certain offences under the Act have been committed, of issuing an infringement notice (like a parking or speeding ticket). These are another "tool" which are more in the way of a punishment for causing an offence but clearly act as an incentive not to repeat the behaviour. They can not be used to recoup costs but they are likely to have a deterrent effect.

Since the two forms of charging have different purposes, an infringement notice can be issued for an activity as well as a charge to recover inspection costs. However, the inspection cost recovery mechanism cannot be used to carry out further investigations to gather evidence or do anything that would assist towards issuing the infringement notice. These actions would not be an "inspection" under the Local Government Act 1974.

If an infringement notice is issued as well as an inspection charge, there is a procedure set out in the Infringement Offences Regulations for dealing with any defences that might be offered. Naturally, the outcome of this procedure will have a bearing on when and if the inspection charge is paid. Attachment A therefore allows for this to occur.

A paper outlining the Council's policy in relation to infringement notices is in preparation and will be reported to the Environment Committee at its next meeting.

9. How Much Income will be Generated by the New Policy?

At present this is unknown and may not be able to be known with any certainty until put into practice. As it is often difficult to identify the cause of many incidents, and who might have been responsible for them, the amount is not likely to be significant. If one hour of staff time (at $60 per hour) could be recovered on, say, 20 percent of all incidents, then the recovery would be $9,600 (based on non-consent related incidents in 1998-99).

10. What are the Funding Policy Implications?

The recommended funding mix for Pollution Response in the Approved Funding Policy, June 1997, (p.10) is 20 per cent user charge and 80 per cent general rate. As the income from this is likely to be small, it is not expected to make a significant difference to the overall funding mix.

11. What is the Procedure for Setting these Charges?

Section 690A requires these charges to be made by "resolution publicly notified". This means notice must be given in full of the new policy after the Council has adopted them. Unlike consent charges, the process for which requires a public hearing, no hearing is necessary.

However, in the interests of transparency, the Committee could also choose to advertise that the Policy and Finance Committee was going to be considering this matter prior to its next meeting, and invite interested members of the public to attend that meeting. This would be beneficial step. If the Committee is not of this mind, the recommendation made by the Committee will simply come to the Policy and Finance Committee in the normal way.

12. Conclusion

Charging for incident inspections in the manner suggested here is unlikely to be a money spinner for the Council and, given the likely income, cannot be seen as a way just to increase revenue, although it will clearly defer some costs. Its real value lies in adding another tool to the Council's "toolkit" for managing the environment in a sustainable way.

With the other tools which it compliments, such as infringement notices and enforcement orders, it will improve our ability to change behaviour and improve compliance with the community's environmental expectations as expressed through regional plans.

The Proposed Charging Policy for Incident Inspections is set out in Attachment A. It is written and formatted in such a way that it may be attached

to and read with the Council's existing Resource Management Charging Policy.

13. Communication

In addition to advertising prior to the Council meeting and notifying after it, it would be useful to issue a press release highlighting the new policy and pointing out its advantages for the environment.

14. Recommendation

That the Committees:

(1) *Recommend to the Policy and Finance Committee, for its recommendation to Council, that the Council approve the schedule of charges to recover incident inspection costs, as set out in Attachment A to this Report; and*

(2) Authorise prior notification of the Council's intention to set its policy for incident inspections before the next meeting of the Policy and Finance Committee on 9 March 2000.

Report prepared by:

GEOFF SKENE
Manager, Environment Co-ordination

Approved for submission by:

COLIN WRIGHT
Divisional Manager, Wairarapa

JANE BRADBURY
Divisional Manager, Environment