

Competent Authority Guidance on cost recovery for COMAH activities

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Introduction to cost recovery arrangements

- 1 This guidance explains how the Competent Authority (CA) recovers costs associated with regulation under The Control of Major Accident Hazards Regulations 2015 (COMAH). It clarifies what is cost recoverable and what isn't. It also explains how the amounts recovered are calculated. There are two types (tiers) of establishments which are subject to COMAH, known as Upper Tier (UT) or Lower Tier (LT) depending on the type and quantity of dangerous substances they hold. These terms are defined in Regulation 2(1).
- 2 Detailed guidance on the COMAH Regulations is provided in HSE publication The Control of Major Accident Hazards Regulations 2015 (L111, Third edition) available at: www.hse.gov.uk/pubns/books/l111.htm. The Regulations place specific duties on operators, but broadly require an operator to take all measures necessary to prevent major accidents and to limit their consequences for human health and the environment.
- 3 COMAH is enforced by a Competent Authority (CA) which consists of the Health and Safety Executive (HSE) or the Office for Nuclear Regulation (ONR) for licensed nuclear sites, working in conjunction with the appropriate environment agency. In England the CA is HSE or ONR and the Environment Agency (EA); in Scotland it is HSE or ONR and the Scottish Environment Protection Agency (SEPA); and in Wales it is HSE or ONR and Natural Resources Wales (NRW).

- 4 The Health and Safety at Work etc. Act 1974 (the 'HSW Act') s. 43 (2) allows ministers to set fees by regulations. Using this provision, Regulation 28 of COMAH requires operators to pay a fee to the CA for the work it carries out under the Regulations. Regulation 28 also provides for HSE or ONR to recover its costs for conventional health and safety work (known as Relevant Statutory Provisions or RSPs). This applies at some UT COMAH establishments, except where the presence of dangerous substances at an establishment is for a purpose ancillary to the main activity.
- 5 In all cases the mechanism of cost recovery is based on the amount of resource used in discharging the relevant functions.

What is cost-recoverable?

- 6 For the CA, the cost of carrying out COMAH functions and enforcing the Regulations at all establishments is recoverable.
- 7 For HSE, COMAH cost recovery is extended to all regulatory work associated with RSPs at UT establishments where the COMAH activity is not ancillary to the main business. Operators of UT establishments will be advised by their COMAH Intervention Manager (CIM) if RSP work will not be cost recovered under COMAH.
- 8 LT establishments will be subject to cost recovery in respect of contraventions of RSPs, not covered by COMAH Regulations, under Fee for Intervention (see www.hse.gov.uk/fee-for-intervention/index.htm). Fee for intervention (FFI) does not apply to licensed nuclear sites; for further guidance on nuclear relevant cost recovery see paragraph 40.
- 9 Cost recoverable work can be by any member of HSE staff carrying out work linked to a specific function.
- 10 Where an establishment is also regulated under the Environmental Permitting Regulations in England and Wales, or the Pollution Prevention and Control Regulations in Scotland regulation will be undertaken by the appropriate environmental agency. Further information on the relevant charging schemes can be obtained from the relevant environment agencies.

Application of cost recovery to establishments using contractors

- 11 Irrespective of whether activity at an establishment relates to work carried out by CA employees or third parties, costs are recovered according to the criteria in paragraphs 6-9.
- 12 If, as part of a COMAH investigation, it is necessary to visit a contractor that had been working at an establishment, costs will be recovered from the operator. However if such enquiries lead to further investigation of health and safety issues not related to the responsibilities of the operator, no further costs will be recoverable from them.

Cost-recoverable activities

Examination of safety reports

- 13 Examination of safety reports is cost recoverable. This will mostly be desk based and will not involve site visits. If examination of the safety report leads the CA to believe that a site visit is appropriate then it will be cost recovered under the category of inspection.
- 14 The amount of time spent on the examination of a safety report is dependent on the type of report (e.g. new, modification etc.), the nature of the hazards present and the complexity of the information presented. As part of its examination the CA may make a request for further information it considers to be necessary and recover costs for the assessment of this additional information.
- 15 This also includes work to assess pre-construction or pre-operation safety reports.

Domino effect: Provision of information to other establishments

- 16 Work required to designate groups of establishments where the likelihood or consequences of a major accident may be increased because of the location and proximity of other establishments as domino groups is cost-recoverable.

Inspection

- 17 The CA recovers costs for work associated with inspection including all work checking compliance with the duties placed on an operator under COMAH.
- 18 The amount of time cost recovered will vary depending upon the individual circumstances of each inspection but will include time spent preparing, reporting on findings as well as conducting the inspection. Time spent reviewing an operator's response to actions raised following a visit will also be recovered.
- 19 Activity to ensure the operators of UT establishments have complied with requirements to provide information to the persons within their Public Information Zone (PIZ) and provide information to their Local Authority for the purposes of preparing an external emergency plan will be cost recovered as part of an inspection.

Investigation

- 20 The CA investigates all major accidents and serious incidents which could have resulted in a major accident as well as complaints meeting certain criteria. This activity is cost recoverable. During the initial stages of an investigation it may not always be clear whether the incident is COMAH related, the CA will advise the operator as soon as it becomes evident whether the work will be subject to

COMAH cost recovery.

Enforcement

- 21 Subject to the exclusions outlined in paragraphs 22-24, costs connected with enforcement activities are recovered from operators.
- 22 Where a possible offence comes to the attention of the CA, any activities carried out to enable the CA to decide whether to prosecute and in preparing a summons or, in Scotland, preparing a report for the Procurator Fiscal is cost-recoverable. This may include consideration of facts, gathering evidence, taking statements and other legal work. Where costs have been recovered as a result of these activities the CA will not seek to recover them as legal costs.

Designated Authorities

- 23 The environment agencies may have a role in external emergency planning, as Designated Authorities. Their costs may be recovered by LAs under Reg 29 of the Regulations.

Exclusions

- 24 Costs will not be recovered for:
 - legal proceedings connected with duties under COMAH from the time a summons is obtained from a Magistrates Court, and any subsequent investigation in connection with that prosecution in England and Wales or; investigation or prosecution connected with duties under COMAH from the time the case is referred to the Procurator Fiscal or the Procurator Fiscal intervenes, whichever is the sooner, in Scotland;
 - work in connection with an appeal against an improvement or prohibition notice at an Employment Tribunal from the date that the Tribunal receives a notice of appeal;
 - activity carried out by the CA in connection with the use of the Regulatory Challenge Mechanism (see www.hse.gov.uk/comah/guidance/challenge-mechanism.pdf) by an operator at Stages 1, 2 and 3;
 - activity related to cost-recovery disputes (see www.hse.gov.uk/charging/comahcharg/disputes.htm)
 - examination of external emergency plans;
 - examination of arrangements for testing external emergency plans;
- 25 Costs will not be recovered under COMAH if the work has already been recovered under another regime, such as FFI or Environmental Permitting Regulations (EPR) subsistence fees.

Provision of advice on compliance

- 26 The CA does not cost recover for advice given to operators in advance of coming into scope of COMAH. However, this does not include pre-receipt activities for safety reports for which costs are recovered. The CA expects duty holders to make best use of existing published guidance before requesting specific information or guidance from inspectors.
- 27 Operators may contact the CA for advice on compliance (see www.hse.gov.uk/comah/understanding-comah-supporting-businesses.pdf). Advice given by HSE on the general application of RSPs is not subject to cost recovery.

Methodology used for calculating amounts payable

- 28 The amount recovered from an operator is calculated on the basis of the time expended on any particular cost-recoverable activity multiplied by the appropriate cost recovery rate. The cost of travelling to HSE or agency offices and to COMAH establishments or other locations is not recovered directly from the operator but is included in the overhead element used to calculate the relevant cost recovery charge rate.
- 29 Each CA organisation uses separate models to calculate its hourly rate. All HSE cost recovery regime hourly rates (COMAH, FFI etc) are calculated on a consistent basis. Rates include the gross salary of staff, regime overheads such as operational support, sector wide common good activity, costs of travelling to sites, management oversight and science support plus a share of wider organisational overheads such as IT, accommodation and corporate support. Work that can not be directly attributed to a specific site and function falls within the definition of overheads work.
- 30 The costs for HSE, ONR, and EA are calculated in accordance with Treasury guidance in Managing public money at: www.gov.uk/government/publications/managing-public-money.
- The costs for SEPA are calculated in accordance with the Scottish Public Finance Manual: Legislative Background and Applicability, at: <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/Intro>.
- The costs for NRW are calculated in accordance with Managing Welsh Public Money, at: <http://gov.wales/funding/managing-welsh-public-money/?lang=en>.
- 31 Each member of the CA operates a work-recording system to log the amount of time expended and applies its own cost recovery rate.

Third-party involvement

- 32 Where work is contracted to a third party, the actual cost to the CA of the service will be recovered from the operator. This will be shown as a separate

item on the invoice and the cost recovery rate may differ from the hourly rate. The CAs have management arrangements to ensure that the quality and duration of the work of third parties is properly controlled and monitored.

Who are the costs recoverable from?

- 33 The amounts to be recovered fall to the operator of the COMAH establishment as defined in COMAH.

Administrative and financial arrangements

- 34 Invoices are issued for payment direct by the relevant CA organisation who has conducted the work. Therefore, where the CA has conducted an inspection or assessed a safety report that involved work by HSE (or ONR) and the appropriate agency, the operator will receive two invoices, one each from HSE (or ONR) and the agency concerned.

- 35 Invoices from HSE will identify:

- who carried out the relevant work and the period to which the invoice relates;
- separate costs for each recoverable activity and member of the CA;
- the number of hours against each activity;
- the rate to be applied to the number of hours;
- the total payable;
- comments to support the work undertaken.

- 36 Invoicing arrangements may vary depending on the CA organisation involved. HSE, EA, SEPA or NRW pursues outstanding debts in accordance with its own debt-recovery procedures. Any queries relating to making a payment should be sent to the invoicing organisation.

Resolving disputes

- 37 If a dispute arises over the cost-recovery regime as a whole, it will be referred to senior officials from the CA. If the matter cannot be resolved, it will be considered by the COMAH Cost Recovery Review Group,

- 38 If there is a dispute over an individual invoice, efforts will be made by the CA to reach a resolution through informal discussion. In some cases, this may not be possible and the procedure for handling queries and disputed invoices should be used. For HSE, ONR, EA and SEPA, further details can be found at: www.hse.gov.uk/charging/comahcharg/disputes.htm. For NRW, contact your local office for details of the disputes process. For the FFI guidance on LT establishments subject to cost recovery in respect of contraventions of RSPs not covered by COMAH Regulations, see <http://www.hse.gov.uk/fee-for-intervention/assets/docs/ffi-queries-dispute-process.pdf>.

Specifics for licensed Nuclear sites

- 39 Costs associated with any function of ONR or an inspector under any of the relevant statutory provisions will be recovered using powers provided under The Energy Act 2013. The relevant statutory provisions are defined in the HSW Act as including the provisions of Part I of the Act and any health and safety regulations.
- 40 On nuclear sites where COMAH applies ONR will cost recover for work associated with the carrying out of its functions as part of a COMAH CA.

Exclusions to ONR COMAH cost recovery

- 41 Costs will not be recovered under COMAH by ONR for:
- the costs for legal proceedings in England and Wales connected with duties under COMAH from the time a summons is obtained from a Magistrates Court, and any subsequent investigation in connection with that prosecution;
 - in Scotland, the cost of any investigation or prosecution in Scotland connected with duties under COMAH from the time the case is referred to the Procurator Fiscal or the Procurator Fiscal intervenes in the investigation whichever is the sooner;
 - the costs incurred by the CA in connection with an appeal against an improvement or prohibition notice at an Employment Tribunal; and
 - the costs incurred by the CA in connection with the use of the Regulatory Challenge Mechanism by an operator at Stages 1, 2 and 3, where the COMAH operator challenges a regulatory decision made by the CA following an inspection or investigation relating to the operator's COMAH establishment.

Further information can be obtained at www.hse.gov.uk/comah

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