

# COST EFFECTIVE ENVIRONMENTAL MANAGEMENT

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## Abstract

Spending money on environmental issues can be a sound business decision. It can save companies money. The areas where money can be saved include minimising the cost of the project by avoiding delays, the avoidance of liability and minimising the cost of risk capital and insurances.

Most people in the oil industry are aware of the need to prepare a comprehensive and sound oil spill contingency plan. The cost effectiveness of preparing such a plan to prevent significant clean-up costs and liabilities are obvious. This same principle applies to the other aspects of petroleum exploration and production activities.

This paper is set in the New Zealand context and outlines the environmental requirements for petroleum operators in this country. The paper outlines the ways to meet these requirements in the most cost effective ways. In particular the paper covers environmental consents, environmental impact assessments, consultation as a means of managing outcomes, compliance and how to achieve it, and dealing with the various regulatory agencies.

## Introduction

The Resource Management Act, despite its frustrations, complexities and shortcomings, has widespread political and community support, and all facets of New Zealand businesses, including the petroleum industry, are increasingly coming into contact with the legislation. One of the most common criticisms lodged against the Act has been its financial implications. Clearly there are significant cost implications, and the purpose of this paper is to highlight these, and provide some practical suggestions to assist in achieving cost effective environmental management.

## The Resource Management Act

Before describing some specific provisions of the Act, it is appropriate to comment on a more general matter. The Act, by virtue of its broad scope, its involvement at all levels of Government, and its concern with the environment in the widest sense, is a piece of legislation that has one of the highest profiles in the public mind. One of the consequences of the legislation has been to heighten community awareness regarding environmental responsibility, and also to heighten corporate responsibility — the latter being influenced by both corporate image and financial liability considerations.

Turning to more specific provisions, the Act establishes explicit liability for breaches of its provisions. Not only are these onerous in terms of potential effect on company finance, but they also include personal liability.

The penalty provisions of the RMA are severe. Any person who commits an offence as defined in the Act relating to land, subdivision, coastal marine area, beds of certain rivers and lakes, water, discharges of contaminants and enforcement/abatement notices, is liable on summary conviction for a term of imprisonment not exceeding 2 years or a personal fine not exceeding \$200 000.

If the offence continues, a further fine of up to \$10,000 per day during which the offence continues can be imposed. Furthermore, the Act, whilst retaining the liability of an employee or contractor, also makes the principle (of the employee or contractor) liable as though he or she had personally committed the offence.

Whilst the penalty provisions are severe, the Act also sets out the basis for a defence:

If the person did not know (or could not reasonably be expected to know) that the offence was being committed or

Reasonable steps were taken to prevent the offence.

This basis for a defence applies to individuals and corporate bodies.

The interpretation and application of these penalty provisions will become clearer as case law is established. To date, one significant case resulted in fines and costs of over \$35 000.

Separate from these penal provisions, the other main area in the Act of relevance to cost factors relates to the permitting and planning consents needed. As any experienced oil sector operator in New Zealand will confirm, prior to doing anything you need to obtain consent! And obtaining the consent can be an extremely time-consuming and costly exercise. The cost factor embraces numerous components: cost of technical studies, legal costs, consultancy costs and, often the most significant factor, cost of delays.

Whilst the Act has, for reasons including the above matters, been subject to criticism, it has to be recognised that firstly, despite this criticism the philosophical thrust of responsible environmental management is deeply embedded in the 'New Zealand Culture', and secondly, what is happening in New Zealand is reflected throughout the world, both developed and developing.

Having broadly identified the main aspects of the environmental legislation that potentially impact on a company's balance sheet, in the remainder of this paper I discuss how cost effective management can be achieved.

## Permitting and Consents Process

Prior to undertaking any new activity, particularly if the location is a 'greenfield' site — on land or at sea — one or more consents (termed resource consents) are required from the relevant Regional or District Councils. **Land Use Resource Consents, Water Permits (to use) and Discharge Permits** (water and aerial discharges) are the most common requirements. Some (a limited range) of activities are (or will be in the new Regional and District Plans) given 'Permitted Activity' status, which means they are allowed of as right — but in 99% of cases applications will be needed.

Seeking consents can be either a painful, costly exercise, or if carefully managed, quite painless and relatively inexpensive (but nevertheless still representing a cost factor to be budgeted for). The *key areas* where cost effective management is critical are:

- scoping the issues
- clearly defining the technical studies
- clearly defining the consultation strategy and programme
- managing the studies and consultation programme
- documentation

Briefly commenting on these.

### Scoping

It is important to ensure that the *real* issues are addressed and focused on, and that time and cost is not wasted on 'red herrings'. The wider the scope, the costlier the exercise. However, it is equally important to ensure that the focus is not too tight, that relevant issues are not left out.

### Technical studies

Avoid providing funding for Ph.D. studies! Baseline environmental work can be as long as a piece of string; it should be limited to providing useful information relevant to the agreed issues.

### Consultation strategy and programme

The Act requires *effective* consultation involving two-way communication. To be cost effective, the parties to be consulted need to be identified at an early stage, the methods of consultation need to be agreed on, and a timetable established.

### Management

Tight and rigorous management of the technical studies and consultation programme is essential, to keep control of costs and time. However, unlike building a plant, the process needs to have a *controlled degree of flexibility*; the relevant importance of issues changes as a clearer picture of a project's effects (impacts) emerges, for example, the engineering design throws up new issues.

### Documentation

The formal applications are required, under the Act, to be accompanied by an 'Assessment of Environmental Effects' (usually referred to as an EIA). This is a key document, it needs to be technically robust, easily understood, and to reflect a responsible and professional corporate image.

In summary then, by addressing the above matters, the likelihood of cost effective consent securing is maximised. Of greatest importance is to plan the consent programme, not

simply muddle along from one crisis to another. Money and time spent in preparing a good application will be repaid several times over in terms of limited litigation and speedy consent acquisition.

## Environmental Management: Operations

The previous section dealt with obtaining consents. As indicated previously, the other key cost factor relates to the penal provisions of the Act, and the associated corporate environmental responsibility and profile. Environment management represents the key to addressing these aspects cost effectively.

Expressed simply, *environmental management means managing your activities in a way that recognises their interaction with the environment, and aims to ensure that this interaction is as benign as possible*. No business would consider operating without financial or personnel management — increasingly, in exactly the same way, environmental management is being seen as an essential component.

The key to cost effective environmental management as it relates to operational activities involves the following:

- Identifying those activities that interact with the environment ('audit').
- Establishing rigorous procedures to ensure that such interaction is controlled and managed and does not 'just happen'.
- Establishing contingency measures that automatically 'lock in' in the event of an environmental misadventure.
- Formal incident reporting and follow-up procedure.
- Staff training and awareness raising.
- Establishing a 'management culture' that genuinely (and not cynically!) seeks to ensure that a high standard of corporate environmental responsibility permeates the organisation.

Before commenting on and highlighting a few of the above points, I stress that, referring back to the penal provisions of RMA noted earlier, the above measures all contribute to providing the basis for a defence in the event of those provisions being initiated. Thus, from a narrow 'cost' viewpoint, the measures are crucial to the success of cost effective management.

Each of the points noted above are important, and essential if a robust management system is to develop. Of the six items noted, in my opinion the last one, the setting of an appropriate management culture, is the most important. Without 'top down' support and encouragement, systems and procedures, whilst in place, will be seen by staff as simply another aspect of operations to be ticked off with, to varying degrees, lip service payment. This topic is complex, but I can summarise my view by saying that the management culture, whilst acknowledging that the penal/financial provisions may be the catalyst for environmental vigilance, needs to take the 'higher ground', recognising that the community's and society's environmental welfare and expectations require serious corporate response. Once this ethic is ingrained into an organisation, the other matters of detail — training, systems, and contingency planning, for example — can all fall into place, and there is a far greater chance of their being effective.

Highlighting one or two of the other points raised, I stress the importance of having formal procedures and systems in

place. For example, the conditions on a water or discharge permit set the legal parameters of what you can and cannot do; it is essential that the operators of the relevant component of the plant be aware of these conditions, that proper monitoring procedures are in place, that monitoring results are recorded, that in the event of an exceedence the incident is recorded and the follow-up remedial action is taken and also recorded. All of this provides the 'evidence' for any defence, but more importantly provides the basis for improving the ongoing environmental performance of the plant.

Staff Training is also an essential component. How many of your staff are aware of the actual provisions re penalties of RMA? Are they aware of the requirements for EIA preparation if resource consents are needed, and the time and cost implications, for example?

## Conclusions

In an era of increased cost awareness, at first glance environment issues might seem superfluous and unimportant. In practice, these are, more and more, becoming an important cost factor in any industrial type activity. The statutory framework now provides the 'bottom line' penal provisions — community expectations reflect the 'top line' corporate environmental performance expected from any responsible company.

By bringing environmental management into the front line of overall management, affording it the time and effort needed to get a systematic approach up and running, and, most importantly, adopting a genuine management stance that aims to pro-actively ensure that environmental values are reflected in company culture through words and deeds, cost effective objectives will be achieved.

## Author

JIM CLARKE is a senior consultant with Kingett Mitchell and Associates Ltd, an environmental consultancy practice which specialises in resource developments. Mr Clarke specialises in environmental permitting and in particular the environmental and social impact of resource projects. Mr Clarke has over 20 years experience working in New Zealand, England, South Africa, Saudi Arabia, Malaysia, Indonesia and Western Samoa. Some of the New Zealand petroleum projects he has been involved with are:

- preparing the environmental implications of the Maui B platform
- assessing the environmental implications of an onshore/offshore pipeline for the Maui B project
- undertaking the consultation process with the community and regulatory agencies and preparing scope of environmental studies for the Waihapa onshore oil project
- co-ordinating the environmental permitting of McKee onshore oil project
- editing the environmental studies for the Waihapa onshore oil project
- scoping and managing the technical environmental studies for the Marsden Point Oil Refinery
- preparing the social impact assessment and as editor of the environmental impact report for the Maui A offshore project