

# Environmental charging and supervision of environmental use

*Is control over the correctness of environmental use adequate and is the damage caused to the environment compensated?*



## Summary of audit results

A permit for environmental use covers environmental permits and integrated environmental permits. Both together are called environmental protection permit.

“Environmental permit” is used for all permits in this report for the sake of simplicity and brevity.

Source: General Part of the Environmental Code Act, § 40

The activities of the Environmental Board in granting permits for environmental use (environmental permits), approving the environmental accounting methodology and supervising environmental use is not adequate to make sure that environmental charges are paid based on the actual environmental use and that companies in the same situation are treated similarly. As the conditions of environmental permits and the fundamentals of environmental accounting are lacking, it is impossible for the Board to establish unequivocally whether environmental charges have been paid based on actual environmental use even in the case of reasonable doubt.

The audit also indicated that whilst the Environmental Board can solve minor cases of environmental damage, it is usually unable to identify the wrongdoers in more complicated cases and hold them accountable.

### Main observations

**In two out of the eight areas of environmental use, the Ministry of Climate has not established an environmental accounting methodology or there is no guidance from the Environmental Board on calculation of environmental use. In two areas, the methodology has significant shortcomings.** Companies are obliged to keep account of their environmental use and to calculate environmental charges. However, in four areas, companies calculate environmental use on different bases and, as a result, environmental charges are not paid according to uniform rules.

For example, it is allowed to calculate the amount of water pumped from mines, the amount of cooling water of power plants and the amount of waste landfilled by the oil shale industry, but the Ministry of Climate has not established a methodology for this in these areas.

To declare the quantity of peat extracted, the extracted peat must be converted from cubic metres into tons, but the Ministry of Climate has not established a methodology for this, and in practice, companies use different calculation methodologies that give different results.

**The supervision of environmental use by the Environmental Board is generally limited to checking compliance with the simplest requirements. The Board does not analyse the substantive accuracy of the data submitted.** The audit found that during the inspections, the Board mainly focused on whether the information provided by the company in declarations and reports complies with the requirements of the environmental permit. It is generally not checked whether the data of environmental use are correct and accurate.

For example, the information provided by companies on the quantities of waste landfilled is not verified. In the few cases where data have been

### Did you know that...

Environmental charges have been established in the following areas:

- extraction of a mineral resource;
- water abstraction;
- fishing;
- hunting;
- emission of pollutants into ambient air, water body, groundwater or soil;
- waste disposal;
- production of electricity from wind energy;
- deforestation.

Source: Environmental Charges Act

verified, the proceedings were not finalised, and the circumstances have not been clarified.

The Environmental Board has also not verified the collection and accuracy of the baseline data for the calculated quantities of water used for the calculations in companies using the calculation method.

**The Environmental Board has permitted the recovery of large amounts of waste, when in fact the recovery has not been justified in many cases, and the state has therefore missed out on millions of euros in pollution charges.** If waste is used for a purpose for which other materials should normally be used, it can in certain cases be considered as recovery and no environmental charge must be paid on the waste recovered. However, if the same waste is landfilled, an environmental charge must be paid.

For example, from 2021–2024, the Environmental Board accepted the recovery of nearly 8 million tons of mineral waste from oil shale by Enefit Power AS<sup>1</sup> for building a structure up to 40 metres high underneath two solar parks in the industrial area of the Estonia Mine. The Board also accepted the recovery of nearly 5.9 million tons of mineral waste for the construction of a solar park in the case of another oil shale miner.

#### Did you know that...

if an environmental charge had to be paid on waste recovery based on the pollution charge rates effective in early 2025, around €22.6 million would have been payable for the mineral waste from oil shale used to build the solar parks specified in the audit.

Source: National Audit Office



Solar Park II of the Estonia Mina (Solar Park I in the background)

Source: Enefit Industry AS (previous business name Enefit Power AS)

It is likely that, if the Environmental Board had not allowed the recovery of mineral waste for the construction of the structure, such a structure would not have been built from other natural materials, as there was no

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<sup>1</sup> Now known as Enefit Industry AS.

objective need to do this. Similar cases of mineral waste from oil shale recovery have also occurred in previous years.

**Most cases of environmental damage are dealt with under sectoral laws, which do not require compensation for damage to nature. In the cases processed under the Environmental Liability Act, the damage is mostly remedied, but there are also cases where it is impossible to identify the person responsible or prove the causal link between the person's actions and the damage, and therefore the damage is not remedied.**

In the case of specific sectoral acts (e.g. the Forest Act and the Water Act), damage is only dealt with through misdemeanour or criminal proceedings, where a fine is imposed, but the damage caused to nature is not remedied.

The damage caused must be remedied first and if this is not possible, financial compensation must be paid. The National Audit Office finds that there is a need for clearer rules and a well-functioning system, which would make it possible to demand that damages are remedied also in cases that fall outside the scope of the Environmental Liability Act.

#### Recommendations of the National Audit Office

#### Recommendations of the National Audit Office to the Minister of Energy and the Environment in cooperation with the Director General of the Environmental Board

- Develop and establish methodologies or guidelines for calculation of environmental charges in the areas of water use, waste disposal, emission of pollutants and peat extraction.

#### **Response of the Minister of Energy and the Environment:**

environmental charges are calculated based on environmental use. Pursuant to subsection 32 (3) of the Environmental Charges Act, the quantity of water subject to the charge is calculated based on the reading of the water meter. If the quantity of water abstracted is not measured with a water meter, the calculations are made based on a methodology recognised by the issuer of the environmental permit. Pursuant to subsection 32 (6) of the Environmental Charges Act, the pollution charge is calculated based on the quantities of the pollutants emitted into the ambient air, water bodies, groundwater or soil, or disposed waste measured or calculated according to the Atmospheric Air Protection Act, Water Act and Waste Act. That is, if the quantity of environmental use has not been measured, the calculation of the quantity of environmental use is either regulated by a specific law or based on a methodology recognised by the issuer of the permit, depending on the area.

The establishment of a general calculation methodology at the level of legislation is not appropriate in every area, as it may not be usable in every situation. To ensure a fair calculation of environmental charges also in non-standard situations, a flexible approach should be maintained, whereby the Environmental Board approves specific methodologies in specific cases when issuing an environmental permit.

An analysis of the aforementioned environmental accounting methodologies and the need to amend the relevant legislation will be carried out by the Ministry of Climate in cooperation with the Environmental Board by the end of the first half of 2026 at the latest, after which the necessary amendments to the legislation or guidelines will be prepared, if necessary.

**Response of the Director General of the Environmental Board:** the Environmental Board is ready to contribute to the preparation of legal amendments if necessary. The Environmental Board finds that providing clarity at the level of legislation will reduce the volume and administrative burden of both discretionary decisions during the permitting process and subsequent correspondence.

- Initiate an amendment to the regulation<sup>2</sup> to specify the information to be provided in the application and the permit. Set forth clear requirements in the regulation that the application for a permit and the permit must contain the information on which the environmental use is based.

**Response of the Minister of Energy and the Environment:** the data required for the calculation of the scale of certain environmental use could be included in the application for an environmental permit. The Ministry of Climate in cooperation with the Environmental Board will analyse the need to amend Regulation No 56 by the end of the first half of 2026 at the latest, after which the necessary amendments to the legislation will be prepared, if necessary.

**Response of the Director General of the Environmental Board:** the Environmental Board, in cooperation with the Ministry, is ready to analyse in which areas and cases calculation is used; to prepare, if necessary, proposals to amend the regulation to ensure that the data submitted include the necessary calculation data and methodologies; to develop the necessary improvements to the information system for environmental decisions to ensure that the possibility to add attachments to declarations is provided.

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<sup>2</sup> Minister of the Environment Regulation No 22 of 05.04.2011 "Forms and procedure for filling in the declaration of environmental charges and the requirements, form and procedure for submitting the report on the volume of extraction of mineral resources". RT I, 26.03.2024, 3.

## Recommendations of the National Audit Office to the Minister of Energy and the Environment

- Propose to the Minister of Economy and Industry to initiate an amendment to the regulation<sup>3</sup> to set out the list of measuring instruments subject to mandatory inspection and to add the measuring instruments used for environmental use accounting. For example, add to the list the meters used to measure the flow of wastewater and the scales used to weigh waste going to landfill.

**Response of the Minister of Energy and the Environment:** as far as the Ministry of Climate is aware, there is currently no capacity in Estonia for verification of wastewater flow meters. We therefore consider it necessary that before the expansion of the scope of Regulation of the Minister of Economic Affairs and Infrastructure No 65 of 18.12.2018 “Mandatory areas of use of metrologically controlled measuring instruments with exemptions, list of measuring instruments subject to metrological control, accuracy requirements, period of validity of verification and specified requirements for metrological control and statistical verification” to include instruments for measuring waste water flow rates, the Ministry of Climate will analyse whether adding the instruments for measuring waste water flow rates to the list and thereby establishing a verification obligation is proportional and justified.

The scales used to weigh waste deposited in landfills must already be verified according to the requirements of the Metrology Act (the requirement arises from subsection 17 (2) of Minister of the Environment Regulation No 38 of 29.04.2004 “Requirements for establishment, operation and closure of landfills”).

## Recommendations of the National Audit Office to the Director General of the Environmental Board

- Assess, when permitting the recovery of waste, whether the proposed activity meets the criteria for recovery. This requires verification of the data submitted by companies and requesting additional information, which makes it possible to assess whether all requirements of the recovery criterion have been met.

**Response of the Director General of the Environmental Board:** the Environmental Board agrees that when recovery is permitted, it is necessary to assess very thoroughly whether the activity meets the recovery criteria and will do so also in the future. The Environmental

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<sup>3</sup> Regulation of the Minister of Economic Affairs and Infrastructure No 55 of 18.12.2018 “Mandatory areas of use of metrologically controlled measuring instruments with exemptions, list of measuring instruments subject to metrological control, accuracy requirements, period of validity of verification and specified requirements for metrological control and statistical verification”. RT I, 16.11.2021, 10.

Board will update the existing guidelines that are the basis for the assessment of compliance with recovery criteria.

- Establish a clear set of rules on how all environmental liability cases are handled and ensure that environmental damage is remedied and compensated.

**Response of the Director General of the Environmental Board:** the Environmental Board is in the process of updating the guideline that helps better identify cases of environmental liability.



