Standard Operating Procedure
DES SOP #: 901

Recovery of Hazardous Waste Remediation Expenses

Purpose:

Owners and operators of facilities or property contaminated with hazardous substances are responsible, under New Hampshire law, for remediation of that contamination. The Department of Environmental Services (Department) is responsible for ensuring that the cleanup is done in a manner that protects both human health and the environment. The owner or operator of a facility is strictly liable for all costs incurred by the State in responding to a release of hazardous waste or hazardous materials from such a facility. This policy does not apply to Petroleum cost recovery activities.

Procedure:

Determination of State Costs to be Recovered

Hazardous waste laws authorize the Department to charge all costs relating to containment, cleanup, restoration and removal of hazardous wastes or hazardous materials to the responsible parties. These include the direct and indirect labor costs incurred by the Department to monitor, assess and evaluate the release or threat of release of hazardous waste or hazardous material. The following is an outline of considerations used in determining recoverable costs:

1. Labor Costs Multiplier – Labor costs incurred by the Department shall be subject to the following labor multipliers for indirect costs incurred during the following periods:
   - Prior to December 27, 2002 — 1.77
   - December 27, 2002 to January 25, 2009 — 1.986
   - After January 25, 2009 — 2.65

   These multipliers are intended to account for indirect costs such as office space, equipment, office supplies, telephones, clerical staff and employee benefits. The justification for the current multiplier is outlined in a January 22, 2009 document titled *Waste Management Division Remediation Programs Cost Recovery Multiplier* which can be found at:

http://des.nh.gov/organization/divisions/waste/hwrb/documents/cost-recovery-multiplier.pdf.

2. Expenses and Other Direct Charges – Non-labor expenses incurred by the Department are billed at actual costs. These expenses may include travel, meals, materials, laboratory costs, and outside consultants and/or contractors.

3. Past Site Costs - Cost recovery for past Department expenses will extend back to January 1, 2000 unless the Department chooses to seek Attorney General assistance. In those cases referred to the Attorney General, the Attorney General will make the determination of an appropriate recovery range.

Invoicing

1. Inclusion – The Department will make every effort to include all costs incurred during a billing period in the invoice for that period. However, where legitimate expenses have been overlooked or for whatever reason were delayed in being posted for that period, those expenses will be included in the next invoicing period.

2. Frequency of Billing - Invoices will be prepared quarterly with expenses through March invoiced in July, through June invoiced in October, through September invoiced in January, and through December invoiced in April. Invoices will also be generated immediately before closing a site.

3. Explanation - Each invoice will include a listing of labor hours expended by Department employees and a brief activity designation.

4. Payment – Payment is due 60 days after the date of the invoice.

5. Discounts -

    a. There will be an Early Payment Discount of 25% for expenses incurred by the Department prior to January 1, 2003 provided the payment is received by the Department within 30 days of the date of the invoice.

    b. There will be an Early Payment Discount of 5% for expenses incurred by the Department on or after January 1, 2003 provided the payment is received by the Department within 30 days of the date of the invoice.

6. Credits – Certain permit and/or application fees paid by responsible parties will be credited to their account. These fees are:

a. Groundwater management permit application fee of $2,000, RSA 485:3-c.
b. Brownfields program participation fee of $4,500, RSA 147-F:14,II.

7. Expedited Site Assessment Review Fee – The Expedited Site Assessment Review fee, authorized under RSA 485:3-b, which is paid to obtain an expedited review of a site assessment report, will not be credited.

8. Brownfields Application Fee for Program Eligibility – The application fee authorized under RSA 147-F:14,I., which is paid to determine Brownfields program eligibility, will not be credited.

9. Charges by Other State Agencies - In instances where it is necessary for the Department to involve other state agencies at a site, the efforts of those agencies may be included in cost recovery actions. The same labor multiplier, discussed above, will be applied to these non-Department labor costs.

10. Invoicing Amounts – Invoices will be issued by the Department for costs incurred at a site for any amounts incurred during the billing period. There will be no minimum billing amount for invoices.

Other Considerations

1. Recovered Costs – Costs recovered under the Cost Recovery Program will be deposited in the Hazardous Waste Cleanup Fund except where they are properly due to other State agencies. The Hazardous Waste Cleanup Fund is used for the proper, adequate, and safe cleanup of sites where hazardous wastes have been improperly discharged, disposed of, or spilled.

2. Site Closure – The Department will not issue a Certificate of No Further Action until all cost-recoverable expenses have been paid or otherwise resolved.

3. Off-site Contamination - Where it is determined by the Department that the contamination originated from an off-site source, any cost recovery action will be taken against the off-site responsible party.

4. Not an Admission of Liability – Payment by responsible parties of cost recovery invoices issued by the Department is not an admission of liability by the responsible party.

5. Resolution of Disputes - The Department will work with responsible parties to achieve an equitable resolution to all disputes. Any settlement of a dispute shall be approved by the Director of the Waste Management Division or his/her designee. If an equitable resolution can not be reached, the Department may

turn the matter over to the Attorney General's Office for their action in accordance with the statute.

Adopted: February 23, 2011

Revised: N/A

Approved:

Michael J. Wimsatt
Director