

DEPARTMENT OF ENVIRONMENTAL CONSERVATION



18 AAC 75

General Provisions – Cost Recovery

**Public Comment Draft
October 1, 2015**

**Comment Period Ends
November 15, 5:00 p.m.**

**Bill Walker
Governor**

**Larry Hartig
Commissioner**

18 AAC 75 is amended by adding a new section to read:

18 AAC 75.910. (a) In order to implement the provisions of AS 46.08.070, AS 46.04.010, AS 46.03.822 and AS 46.03.760(d), the department will complete and maintain documentation to support its response actions and to form the basis for cost recovery.

(b) Each person who is liable under AS 46.04.020, AS 46.09.020, AS 46.03.822, or AS 46.03.760 is liable for response costs incurred by the department or response costs incurred by the State of Alaska. Response costs are costs reasonably attributable to the site or incident and may include costs of direct activities, support costs of direct activities, and interest charges for delayed payments. Response costs include the costs of direct investigation, containment and cleanup, removal, and remedial actions associated with an incident or site undertaken by the department or its contractors, as well as the costs of oversight by the department of those activities involving an incident or site undertaken by a person other than the department. Response costs include legal costs incurred by the department concerning a site or incident, and include potential responsible party searches, obtaining site access, causal investigations, cleanup orders and agreements, cost recovery and enforcement actions.

(c) The department shall charge an hourly rate based on direct staff costs plus support costs. The department shall on a fiscal year basis use the following formula for computing hourly personnel rates by job class:

(1) Hourly Rate = DSC + DSC(AICR), where: DSC means Direct Staff Costs defined in (2) of this subsection and AICR means Agency Indirect Cost Rate defined in (3) of this subsection.

(2) Direct staff costs (DSC) are the cost of hours worked directly on an incident or site, including salaries, retirement plan benefits, health care benefits, leave and holiday

benefits required by law to be paid to, or on behalf of employees. Direct staff costs do not include costs associated with responding to a public records request, preparing or reviewing invoices or answering questions pertaining to invoices, responding to governor, media, or legislative requests for information, responding to public inquiries concerning the site or incident with the exception of inquiries during a large response, internal or external training presentations or case studies, prospective purchaser agreements, policy or regulatory interpretation or discussion, or activities completed for training purposes.

(3) Agency Indirect Costs are the costs of facilities, communications, personnel, fiscal, and other statewide and agency-wide services that are not directly attributable to a project. The agency indirect cost rate (AICR) used shall be the agency indirect rate expressed as a percentage, approved by the department's federal cognizant agency (which as of July 1, 2014, was the United States Environmental Protection Agency) for each fiscal year.

(d) The department will assign a unique code to each incident or site for purposes of tracking all state costs incurred. When the department requests payment of response costs it shall provide an itemized statement documenting the costs incurred. The department will bill a liable party for response costs on a periodic basis as costs are incurred.

(e) The department will charge interest on past due costs incurred as the result of a release or threatened release. Interest for costs incurred in a calendar year shall accrue at a rate equal to three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the cost is incurred. Unless otherwise agreed by the department and the responsible party, interest begins to accrue on the date a cost is billed. The department may agree to waive interest where payment of the costs is made within 60 days of the billing date for the costs.

(f) A person receiving a cost recovery invoice may seek informal review of a disputed invoice by contacting the commissioner's designee within 30 days of receiving an invoice. Failure to pay invoices presented by the department may result in the department filing cost recovery liens under AS 46.08.075 and referring the matter to the Attorney General for collection of response costs, interest and legal costs.

(g) The department will consider a person's ability to pay response costs if payment of the costs would cause an undue financial hardship to the person. The department may allow for payment of response costs over time. The department may reduce the amount of response costs to be paid by a person by the amount that would create an undue financial hardship. In order to establish an undue financial hardship, the person must provide and authorize release of sufficient financial information to the department to clearly demonstrate that, in the opinion of the department, payment of the response costs would deprive the person of ordinary and necessary assets or cause the person to be unable to pay for ordinary and necessary business expenses or ordinary and necessary living expenses. In making this determination, the department, in consultation with the department of law, will consider the allowances and exemptions in the Alaska Exemptions Act (AS 09.38), and the *Overview of Ability to Pay Guidance and Models*, dated May 1, 1995, adopted by reference, *General Policy on Superfund Ability to Pay Determinations*, dated September 30, 1997, adopted by reference, *Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action*, dated June 29, 2015, incorporated by reference, and the ABEL, INDIPAY, and MUNIPAY EPA Financial Models, incorporated by reference. Under AS 40.25.120, the department will maintain non-public financial information confidential to the extent it qualifies as confidential business information, trade secrets or confidential personal information.

(h) In this section, unless the context requires otherwise,

(1) “costs” means any money expended by the department in response to a release or threatened release of oil or a hazardous substance as those terms are defined in AS 46.03.826; costs may include cost of response personnel, response equipment, necessary support services, additional supplies, overhead, contractors, travel related expenses, oversight, administrative support, and legal services;

(2) “incident” means a release or discharge of oil or a hazardous substance from a facility or vessel or the substantial threat of a release or discharge of oil or a hazardous substance from a facility or vessel as those terms are defined in AS 46.03.826;

(3) “site” means a contaminated site or leaking underground storage tank site subject to the site cleanup rules under 18 AAC 75.325 -18 AAC 75.390 or site assessment and corrective action under 18 AAC 78. (Eff. __/__/____, Register __)

Authority:	AS 46.03.020	AS 46.04.010	AS 46.08.075
	AS 46.03.760	AS 46.04.020	AS 46.09.020
	AS 46.03.822	AS 46.04.070	AS 40.25.120
	AS 46.03.826	AS 46.08.070	