

## 9. Cost Recovery

One of the tenets of environmental protection is that the polluter pays. Those who violate environmental laws shall pay for society's costs in responding to those violations. These costs include expenses incurred by the state in taking action to end or control pollution or address noncompliance. These costs are in addition to any damages to natural resources the state is also authorized to recover. Part of the public service the department provides is to allocate costs to the sources responsible for state expenses and strive to make the state whole when it is damaged. While compliance and enforcement work is not expected to be self-supporting, for many reasons these costs should be recovered to the extent possible. This section lists procedures to be taken to recover costs in various incidents.

In addition, third parties may be damaged and may seek recovery of economic damages. While the department will not be a party in third party damage actions, the department may have documents sought by the parties involved and will make them available according to the State Sunshine law.

The department is responsible for the general oversight of environmental operations in the state, and the cost of this activity is reasonably paid through a number of sources. Where violations exist, however, the additional costs associated with those violations are to be tracked and recovered. This includes but is not limited to follow-up site visits and inspections, employee efforts in preparing enforcement actions and support for litigation. Total costs are calculated as the direct costs for personnel, materials, mileage, contractual services and other response costs, and includes fringe and indirect costs. Technical staff costs are multiplied by an appropriate factor to represent the total cost of the technical staff time.

Compliance/Enforcement staff time is tracked by staff members and maintained in the case file. Field employee time is also included when significant time is spent on a case.

A request for payment of department costs will be included in any settlement offer or requested separately upon issuance of any order where the total costs equal or exceed \$500. A template document used by Environmental Services Program is included in section 9.A.

### 9.1 Environmental Services

Pursuant to the Missouri Spill Bill, 260.500 to 260.550, RSMo, the department has both the authority and the responsibility to pursue cost recovery from a responsible party when the state incurs expenses in responding to a hazardous substance emergency incident. Cleanup is defined in Section 260.500(1) as "all actions necessary to contain, collect, control, identify, analyze, cleanup, treat, disperse, remove, or dispose of a hazardous substance." In Section 260.530, RSMo, a good faith effort to clean up a hazardous substance involved in a hazardous substance emergency relieves a person of liability for punitive damages (triple the cleanup costs incurred by the state), but not for the reasonable cleanup costs incurred by the state.

Cleanup costs are defined in Section 260.500(2) of the Spill Bill as "all costs incurred by the state or any of its political subdivisions, or their agents, or by any other person participating with the approval of the Department of Natural Resources in the prevention or mitigation of damages from a hazardous substance emergency or the clean up of a hazardous substance emergency, including a proportionate share of those costs necessary to maintain the services authorized in sections 260.350 to 260.500." Clearly, the intent of the law is that, in cases where cost recovery actions are appropriate, the state must make an effort to recover its direct costs for an incident, but also to recover a proportionate share of the cost to maintain the environmental emergency response services.

## 9.2 Solid Waste

Pursuant to the Missouri Solid Waste Management Law Sections 260.228, 260.275 and 260.276, the department has both the authority and the responsibility to ask the Attorney General's Office to institute a civil action to recover the following from any person(s) or operator(s) responsible:

- The reasonable and necessary costs incurred by the department for its nuisance abatement activities and legal expenses related to an abatement.
- All additional costs incurred for the implementation of closure, postclosure and corrective active plans at solid waste disposal areas beyond what is sufficiently covered by a financial assurance instrument.

## 9.3 Water

Section 644.096 of the Missouri Clean Water Law authorizes the state, or any political subdivision or agency to collect actual damages, including all costs and expenses necessary to establish or collect any sums under sections 644.006 to 644.141, and the costs and expenses of restoring any waters of the state to their condition as they existed before the violation.

Pursuant to Section 644.096, the Compliance and Enforcement Section of the Water Pollution Control Branch routinely collects the Missouri Department of Natural Resources' and the Missouri Department of Conservations' cost of investigating incidents of water pollution as well as damages that result from unauthorized discharges or releases i.e. fish kill or gross adverse impact on receiving stream.

Staff should request a Job Code in the following circumstances:

- The observed violations warrant immediate enforcement referral.
- The observed violations require addition follow-up work by staff after issuance of the initial written notification (letter of warning, notice of violation or other). Review of a responsible party response to the initial written notification, by itself, should not warrant creation of a job code.

When investigating unauthorized discharges or releases that have impacted waters of the state and will likely result in a referral for enforcement action, a job code must be established by the Regional Office to assist in tracking the costs incurred by the regional office. For incidents initially investigated by Environmental Emergency Response staff and a job code was established, the Regional Office staff should use EER's job code to track their time.

The procedure for Regional Offices to establish a job code is as follows:

A form must be completed. Revised 9/2008 Code Request Form  
<http://n-nr1ntra.ads.state.mo.us/forms/780-2085-CodeRequest.doc>

For wastewater case cost recovery, do not use a Project code. Complete the form for a job code. Use the following convention to name the job code:

Job Codes (NJ09\*\*\*\*) always begin with:

NJ = Natural Resources and Job

10 = 1s 2 digit fiscal year

4 digits = Can be alpha numeric and defines the job

Once the Code Request Form is filled out it needs to be attached to an email and sent to the SAM II Code and Table Request email group with the subject line being "Job Code".

The SAM II Code and Table Request email group will reply when the code has been set up in SAM II. Ask your Financial staff to check SAM II (JOB table) to ensure that the code was entered correctly.

Inspection and Enforcement staff will use the Job Code to track all expenses associated with the inspection or investigation follow-up. There are several means of tracking costs that are routinely used by Division of Environmental Quality personnel, which include:

- Expense accounts.
- Field expense reports.
- Disposable field supplies checklists.
- Chain-of-custody records.
- Time sheets.
- Vehicle trip tickets.
- Fuel receipts.
- Trip itineraries.

It is the responsibility of staff completing the following up of the notice of violation or letter of warning to ensure that the appropriate cost tracking field documentation is properly completed.

## **9.A Forms**

[\*\*Cost Recovery Agreement\*\*](#)

[\*\*Cost Recovery Policy\*\*](#)

[\*\*Cost Recovery Procedures\*\*](#)