



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

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Memorandum

To: Deputy Commissioner, Bureau of Indian Affairs
Director, Bureau of Land Management
Commissioner, Bureau of Reclamation
Director, Fish and Wildlife Service
Director, National Park Service
Deputy Solicitor
Director, Office of Environmental Policy and Compliance

From: Frank DeLuise, Program Manager *Frank DeLuise*
Office of Natural Resource Damage Assessment and Restoration

Subject: Policy on Recovering Indirect Costs

The purpose of this memorandum is to provide instruction and guidance on the use of an indirect cost rate by bureaus and offices that participate in the Natural Resource Damage and Assessment Program (Restoration Program). The focus of the Restoration Program is to develop claims for the injury and loss of natural resources related to the release of hazardous waste and oil spills and then to seek compensation to restore those injured resources. In addition to seeking compensation for restoration of natural resources, the Department as a natural resource trustee, has both the authority and the responsibility to recover reasonable costs, both direct and indirect, of bringing claims against those responsible for natural resource injuries. Until now, the Department had not developed a Departmental methodology for determining an indirect cost rate for activities conducted under the Restoration Program.

There are three components to the Department's methodology for calculating the indirect cost rate for natural resource damage cases, including a DOI headquarters indirect rate, a program management indirect rate, and bureau indirect rates. The application of all three components provide a complete indirect cost amount for an individual case. At this time, a **provisional** headquarters' indirect cost rate has been determined and should be used in developing natural resource damage claims. There are additional steps needed to complete the Department's program management indirect cost calculation, as well as developing guidance to bureaus to implement their own respective indirect cost rates. We anticipate completion of these remaining tasks by the end of the calendar year.

The provisional headquarters indirect rate includes the Office of the Secretary, the Office of the Solicitor, the Office of the Inspector General, and the Interior Service Center and National Business

Center. This indirect rate represents the non-programmatic functions and services of the Department that support the Restoration Program. The calculated provisional rate for the headquarters function is **16.84%**, to be multiplied by all direct labor costs from the bureau(s) that are involved in a natural resource damage case. The rate should not be applied to any non-labor related direct costs such as travel, contracts, or supplies.

An example of the application of the provisional 16.84% indirect rate might be a case involving the National Park Service and the Fish and Wildlife Service, where 16.84% would be applied to the total direct labor costs for both the National Park Service and the Fish and Wildlife Service for that particular case. The headquarters indirect costs would then be added to the direct costs and included in the natural resource damage claim for purposes of settlement negotiations or litigation. Please note that this rate should be applied not only to past direct costs incurred, but should also be included in your calculations developing any future direct labor costs for assessment, restoration and oversight activities.

The second component of the Department's indirect cost calculation is the program management indirect rate, which is based on the Department's Restoration Program Office costs. The Restoration Program includes representatives from the Office of the Solicitor, Office of Environmental Policy and Compliance (OEPC) and the bureaus that participate in the Restoration Program. The indirect rate for program management is still under review; however, once completed, the program management indirect rate will be applied to the total of all program direct costs from all bureaus, the Office of the Solicitor and OEPC. The program management indirect cost rate, once completed, will be provided to bureaus along with guidance on the calculation and use of the rate.

The third and final component for calculating the Department's indirect cost rate for natural resource damage cases are the indirect rates for individual bureaus that are applied to each bureau's direct costs. While bureaus may already have indirect rates in use, we will be discussing those rates with bureaus to make sure they are consistent with the methodology used in the development of the headquarters rate and the program management rate for use in natural resource damage cases. Bureaus and offices need not adopt the methodology used to develop the headquarters function. It is only necessary that (1) direct labor for specific tasks be identifiable, and (2) that neither direct nor indirect costs include any costs for which reimbursement is received from headquarters, the NRDAR program office, or any other bureau.

Bureaus involved in the development of natural resource damage claims should immediately begin to apply the provisional headquarters indirect rate of 16.84% to bureau direct labor costs for both hazardous waste cases and oil spill cases. The provisional headquarters indirect rate for any given case is calculated by multiplying all direct labor costs by 16.84% and adding this amount to the natural resource damage claim (along with the other natural resource damage components) that is presented to responsible parties in settlement negotiations or litigation.

The Restoration Program Office is working on a number of concurrent issues which coincide with this order to immediately begin including the 16.84% provisional headquarters indirect rate in your claim. First, a template will be developed to help the Solicitor's Office calculate claims, which will clearly identify the multiple components of a claim. The initial template will include components such as bureau direct charges, Solicitor direct charges, and the headquarters indirect rate. Future

versions of the template will incorporate the program management indirect rate and lastly, bureau indirect rates.

The Restoration Program will be developing a policy reflecting the Program's priorities in the event of less-than-complete recovery of all costs. We anticipate this policy will be weighted towards the recovery of sufficient restoration funds and past assessment costs provided by the Restoration Fund.

Please note that all bureaus and offices working on specific natural resource damage cases should keep complete records of all direct costs, including labor and non-labor costs, for purposes of cost recovery. It is important for cost recovery to have complete and accurate direct cost figures not only to recover direct costs from PRPs but also to accurately calculate indirect costs for individual cases.

Further guidance on program management indirect cost rate and agency indirect cost rate for use in natural resource damage cases will be forthcoming. Please contact the Restoration Program Office at (202) 208-4143 if you have any questions related to this policy.

cc: Restoration Program Work Group
Restoration Program Executive Board
Bill Webber, PFM