

ORDER OF WISCONSIN EMERGENCY MANAGEMENT

To repeal WEM 4 To renumber, amend and create provisions of WEM 6

ANALYSIS PREPARED BY WISCONSIN EMERGENCY MANAGEMENT

Statutory Authority: 166.20 (2) (a), (b), (bm) and (bs), and 227.11 (2) (a), Stats.

Statutes Interpreted: 166.20 (1) (f), (fm), (g), (ge), (gi) and (k) and (2) (bm) and (bs), 166.215 (2) and (3) and 166.22, Stats.

Wisconsin Emergency Management proposes an order to repeal Chapter WEM 4; to renumber WEM 6.05 (4) (a), (b) and (c) and 6.13 (1), (2), (3), (4) and (5); to amend WEM 6.02 (1), (2) and (12), 6.04 (1), (2) and (3), 6.12, and 6.13 (note); to create WEM 6.04 (4), 6.05 (4) (a) and (5) (g) and 6.13 (1) (intro), and (2) relating to the hazardous materials transportation program and to response and reimbursement procedures for regional and local emergency response teams.

Plain Language Summary

The statutory authority for WEM 4, relating to a hazardous materials transportation registration program, no longer exists, and this proposal repeals WEM 4 in its entirety.

The proposal to amend WEM 6 would require regional and local response teams to use the hazardous materials incident response matrix to determine if an emergency that requires the team's response exists. The word "response" was added to the Chapter WEM 6 title to better reflect this aspect of the rule. The proposed rule would also modify reimbursement procedures to reflect a change in statutory language allowing reimbursement for potential releases of hazardous materials as well as to actual releases. It would also require regional and local response teams to utilize an agency-approved hazardous materials incident response matrix, it would create a responsible party appeals process, and would establish limits for reimbursement of potential releases. The proposed change would also clarify that administrative costs are eligible for reimbursement and that costs recovered from responsible parties would be placed in the emergency response supplement under s. 20.465 (3)(dr), Stats.

SECTION 1. Chapter WEM 4 is repealed.

SECTION 1m. WEM 6 (title) is amended to read:

Response and Reimbursement Procedures For Regional and Local Emergency Response Teams

SECTION 2. WEM 6.02 (1), (2) and (12) are amended to read:

(1) "Authorized level A response team" means a regional emergency response team, a member of such team and a local agency that contracts with the division for the provision of regional response team services pursuant to a designation under s. 166.215 (1), Stats.

(2) "Authorized level B response team," means a ~~county~~-local emergency response team, a member of such a team, and the city, county, village or town that contract to provide the emergency response team to the county pursuant to a designation under s. 166.21 (2m) (e), Stats.

(12) "Responsible party" means any person, as defined in s. 299.01(10), Stats. or 42 USC 9607(a), who ~~possesses or controls a hazardous substance that is released or discharged or who causes the release or discharge of a hazardous substance~~ is responsible for the emergency involving a release or potential release of a hazardous substance under s. 166.215 (3) or 166.22 (4), Stats. or a person who is found to have abandoned containers, as defined under s. 292.41 (1), Stats., that are releasing or discharging a hazardous substance to which a response team was called to respond.

SECTION 2m. WEM 6.025 is created to read:

WEM 6.025 Response Procedures

WEM 6.025 (intro) Regional and local emergency response teams shall utilize the following procedure to determine if an emergency exists that requires a Level B or Level A response:

(1) Regional emergency response teams shall use the hazardous materials incident response matrix, DMA form 1060, to determine if an emergency that requires the team's response exists as a result of a Level A release or a potential Level A release.

(2) Local emergency response teams shall use the hazardous materials incident response matrix, DMA form 1060, to determine if an emergency that requires the team's response exists as a result of a Level B release or potential Level B release of a hazardous substance, as defined in s. 299.01 (6).

SECTION 3. WEM 6.04 (1), (2) and (3) are amended to read:

WEM 6.04 (1) Reimbursement for vehicles and apparatus at uniform rates established in ~~the contracts~~ for regional hazardous material response team services or the rate established by the reviewing entity for the authorized level B response Team;

WEM 6.04 (2) Response team personnel expenses which may reflect replacement personnel costs and indirect charges and costs for wage, fringe, death and duty disability retirement benefits; ~~and~~.

WEM 6.04 (3) Necessary and reasonable emergency expenses related to response team services rendered based on actual expenditures;

SECTION 4. WEM 6.04 (4) is created to read:

WEM 6.04 (4) The following administrative costs incurred to collect response costs from a responsible party:

- (a) For a level B response to an emergency in which there is a potential release of a hazardous substance, the maximum eligible reimbursement cost may not exceed \$500 for the initial response assessment except as provided under par. (b).
- (b) Costs that exceed \$500 for a level B response to an emergency, in which there is a potential release of a hazardous substance and for which a hazardous substance is present, shall be justified and documented.
- (c) Response teams are not eligible for reimbursement costs that exceed \$500 for level B responses where the bill of lading or manifest indicate that a hazardous substance is not present and for which the bill of lading or manifest is readily accessible to the response team during the emergency response.

SECTION 5. WEM 6.05 (4) (a), (b) and (c) are renumbered WEM 6.05 (4) (b), (c) and (d).

SECTION 6. WEM 6.05 (4) (a) is created to read:

WEM 6.05 (4)(a) The hazardous materials incident response matrix, DMA form 1060, used by a regional or local emergency response team to determine the initial response to an emergency.

SECTION 7. WEM 6.05 (5) (g) is created to read:

WEM 6.05 (5) (g) The hazardous materials incident response matrix, DMA form 1060, was used by the regional or local emergency response team to determine the appropriate initial response to the emergency.

SECTION 8. WEM 6.12 is amended to read:

If costs subsequently are recovered from responsible parties or other sources after the response team has received reimbursement from the division, the response team shall return the recovered costs to the division, for deposit into the ~~state transportation fund~~ emergency response supplement under s. 20.465 (3) (dr), Stats.

SECTION 9. WEM 6.13 (1) (intro) is created to read:

WEM 6.13 (1)(intro) The regional and local emergency response team appeals process is as follows:

SECTION 10. WEM 6.13 (1) to (5) are renumbered to WEM 6.13 (1) (a) to (e).

SECTION 11. WEM 6.13 (2) is created to read:

WEM 6.13 (2) The responsible party appeals process is as follows:

- (a) A responsible party shall have 30 days after a final determination by the reviewing entity under s. 166.22 (5) (c), Stats. in which to file an appeal with the division.
- (b) A responsible party may appeal emergency response costs that exceed \$500 of a potential release of a hazardous substance for which a hazardous substance is present.
- (c) Following an appeal to the division, a responsible party may then request a problem resolution process in which the adjutant general of the department of military affairs reviews the response team claim and issues a decision based on those materials or meets with the parties to negotiate an acceptable resolution.

SECTION 12. WEM 6.13 (note) is amended to read:

Note: A claim for reimbursement form, DMA Form 96 (4/97) ~~and~~, an expedited reimbursement claim form, DMA Form 59 (4/97), and a Hazardous Materials Incident Response Matrix, DMA Form 1060, can be obtained by contacting the Hazardous Materials Safety/Transportation Coordinator, Wisconsin Emergency Management, 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53707-7865, telephone 608-242-3228. The completed reimbursement claim, Hazardous Materials Incident Response Matrix, and supporting documentations shall be mailed to the Hazardous Materials Safety/Transportation coordinator, Wisconsin Emergency Management, 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53707-7865.

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____ Agency: _____

Edward J. Gleason, Administrator
Wisconsin Emergency Management