

Chapter WEM 6

RESPONSE AND REIMBURSEMENT PROCEDURES FOR REGIONAL AND LOCAL EMERGENCY RESPONSE TEAMS

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Note: Chapter ERB 6 was renumbered to be Chapter WEM 6 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, April, 1999, No. 520.

WEM 6.01 Purpose. The purpose of this chapter is to establish standards as required in ss. 323.70 (3), (7) (a) and 323.71 (3), Stats.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97; corrections made under s. 13.92 (4) (b) 7., Stats., Register February 2010 No. 650.

WEM 6.02 Definitions. In this chapter:

(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. 323.70 (2), Stats.

(2) "Authorized level B response team," means a 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. 323.61 (2m) (e), Stats.

(3) "Division" means the division of emergency management.

(4) "Good faith effort" means that the authorized level A or B response team has diligently pursued collection and reimbursement of emergency response costs from a responsible party pursuant to the requirements of this chapter.

(5) "Hazardous material" has the meaning given in 49 USC 5102(2).

(6) "Hazardous substance" has the meaning given in s. 299.01 (6), Stats.

(7) "Insolvent" has the meaning as given in 11 USC 101(32), ss. 128.001 (1), 128.25 (1) (d), 242.02, 401.201 (2) (Lm), 600.03 (24) and 645.42 (4), Stats.

(8) "Level A release" has the meaning given in s. 323.02 (11), Stats.

(9) "Level B release" has the meaning given in s. 323.02 (12), Stats.

(10) "Local agency" has the meaning given in s. 323.70 (1) (c), Stats.

(11) "Qualified authority" includes, but is not limited to, any federal, state, or local government agency, court of competent jurisdiction, financial institution, insurer, or any person whom the response team and the division reasonably believes has the expertise, knowledge, skills and training necessary to make a determination or analysis of the insolvency of the responsible party.

(12) "Responsible party" means any person, as defined in s. 299.01 (10), Stats., or 42 USC 9607(a), who is responsible for the emergency involving a release or potential release of a hazardous substance under s. 323.70 (4) or 323.71 (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.

(13) "Reviewing entity" for an authorized level A response team has the meaning given in s. 323.71 (5) (a), Stats., or an employee or body of a local agency as designated by the response team.

(14) "Reviewing entity" for an authorized level B response team has the meaning given in s. 323.71 (5) (a), Stats.

(15) "Standard and customary collection procedures" means the specific collection procedures and practices established and used by a local agency for the collection of accounts due and owing.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97; corrections in (7) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; CR 02-106: am. (1), (2), (12), Register October 2003 No. 574, eff. 11-1-03; corrections in (1), (2), (8) to (10), (12) to (14) made under s. 13.92 (4) (b) 7., Stats., Register February 2010 No. 650; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register January 2011 No. 661.

WEM 6.025 Response procedures. 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), Stats.

History: CR 02-106: cr. Register October 2003 No. 574, eff. 11-1-03.

WEM 6.03 Filing procedures. (1) Only one claim for reimbursement shall be accepted for each response team's emergency response to a hazardous substance release.

(2) A claim for reimbursement shall be submitted to the division on DMA Form 96 (4/97) with supporting documentation as specified in s. WEM 6.05.

(3) Reimbursement claims shall be received by the division within 2 years of the date of completion of the response for which reimbursement is being requested. Authorized level A response teams shall comply with all contractual notice requirements. A request for an extension of the 2 year deadline shall be submitted within 2 years of the date of the incident. The request for an extension shall include the need and rationale for the extension and shall be considered on a case by case basis by the division. Late reimbursement claims shall be cause for denial of the reimbursement claim.

Note: This section is not intended to limit collection efforts by the response team and extended collection efforts may be used as a rationale for an extension of the 2 year deadline.

(4) A claim for reimbursement shall be signed by an authorized representative of the designated level A or B response team, or his or her designee, and the reviewing entity.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

WEM 6.04 Eligible costs. Costs for which reimbursement is sought must be incurred for temporary emergency measures taken by the response team to protect human health and the environment from releases or threatened releases of hazardous substances, pollutants or contaminants. Eligible response costs include response team expenses associated with security, emergency evacuation, source, control, release containment, neutralization or other treatment methods, contaminated runoff control and similar activities mitigating immediate threats to human health and the environment. Specific response team costs include, but are not limited to:

(1) Reimbursement for vehicles and apparatus at uniform rates established for regional hazardous material response team services or the rate established by the reviewing entity for the authorized level B response team.

(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.

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

(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.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97; CR 02-106: am. (1) to (3), cr. (4) Register October 2003 No. 574, eff. 11-1-03.

WEM 6.05 Supporting documentation. (1) Supporting documentation shall include an invoice itemizing the response team's emergency response costs for services rendered. Documentation shall be submitted to support the response team's good faith effort to identify the responsible party and to collect response costs from a responsible party once identified.

(2) Documentation for the authorized level A response teams shall include, but is not limited to, a letter, with supporting documentation and the applicable collection procedure, from the local agency certifying that it has complied with its standard and customary collection procedures to collect its emergency response costs from a responsible party that is unknown, unable or unwilling to pay.

(3) Documentation for the authorized level B response teams shall include, but is not limited to, a letter, with supporting documentation, from the sponsoring municipality certifying steps and efforts taken to collect emergency response costs from a responsible party that is unknown, unable or unwilling to pay.

(4) Additional supporting documentation shall be submitted by the response teams and shall include the following information, as applicable:

(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.

(b) When no responsible party can be identified, the response team shall submit reports from appropriate law enforcement agencies who have investigated the release site, abandoned containers, vehicles or vessels. The supporting documentation shall address attempts to document possible addresses, identification numbers, bills of lading or other potential identifying information that could establish a responsible party.

(c) If the responsible party is identified, but is unable to pay, then documentation shall include a determination or analysis by a qualified authority that the responsible party does not have adequate money or other resources to reimburse the response team for emergency response costs.

(d) If the responsible party is identified, but is unwilling to pay, then documentation shall include proof of personal service or substituted personal service of a notice for payment upon the responsible party and attempts to resolve billing disputes with the responsible party.

(5) A response team and reviewing entity must certify that:

(a) All costs are accurate, and were incurred specifically for the response for which reimbursement is being requested;

(b) The level A response team complied with the requirement to notify the division under the contract for regional hazardous materials response team services;

(c) Reimbursement for costs incurred for response activities does not supplant local funds normally provided for response;

(d) The responsible party cannot be identified, is unable to pay, or is unwilling to pay;

(e) Good faith efforts have been made to recover costs from the responsible party and from any other available source, and that such effort has been unsuccessful;

(f) Response actions were consistent with applicable safety regulations, which include, but are not limited to, 29 CFR 1910.120 and ch. SPS 330.

(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.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97; CR 02-106: renum. (4) (a) to (c) to be (4) (b) to (d), cr. (4) (a) and (5) (g) Register October 2003 No. 574, eff. 11-1-03; correction in (5) (f) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674.

WEM 6.06 Verification. (1) Upon receipt of a reimbursement claim and supporting documentation, the division will verify that the claim complies with all requirements. Where the claim and supporting documentation is incomplete, or has significant defects, the division will return the claim to the response team and provide the reviewing entity with written notification of its deficiencies.

(2) A claim returned to the response team for correction of deficiencies must be resubmitted to the division within 60 days from receipt. The failure of the response team to provide in a timely manner the requested information without reasonable cause shall be cause for denial of the reimbursement claim.

(3) For purposes of this section, a reimbursement claim and supporting documentation is deemed complete when the division determines that the claim complies fully with all requirements for reimbursement, all filing procedures and applicable contractual requirements. When the claim is complete, a notice will be provided to the response team of the division's receipt and acceptance for evaluation.

(4) If the division determines that it cannot complete its evaluation of a reimbursement claim because the records, documents and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any reason inadequate to demonstrate the reasonableness of the costs claimed, the division may reject the claim or make adjustments, if possible. Further consideration of such

amounts will depend on the adequacy of subsequent documentation. Any additional information requested by the division must be submitted within 60 days unless specifically extended by the division. The failure of the response team to provide in a timely manner the requested information without reasonable cause shall be cause for denial of the reimbursement claim.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

WEM 6.07 Reimbursement procedure. (1) The division administrator or his or her designee shall serve as the designated representative to review and process the claims for reimbursement when submitted. The division shall notify the response team of an incomplete claim for reimbursement within 45 days from the date the claim is received by the division.

(2) The division shall take no longer than 60 days from the time the claim for reimbursement is deemed complete in which to approve or deny the claim. Claims for reimbursement that are approved shall be paid upon the decision of the division administrator. A letter of denial shall be sent upon the decision of the division administrator for reimbursement claims that are denied.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

WEM 6.08 Expedited reimbursement procedure.

(1) If the response is catastrophic and places an undue burden or hardship on the response team, a local agency that contracts with the division under s. 323.70, Stats., or the city, county, village or town that contracts to provide an emergency response team under s. 323.61 (2m) (e), Stats., and the response team wishes to expedite the reimbursement process, the response team shall submit an expedited reimbursement claim on DMA Form 59 (4/97) with required documentation that shall include a statement explaining why payment from the responsible party is not imminent and the specific hardship posed.

(2) The division administrator or his or her designee shall serve as the designated representative to review and process the claims for expedited reimbursement.

(3) The division shall approve or deny the expedited reimbursement claim as soon as is reasonably possible. Expedited reimbursement claims that are approved shall be paid upon the decision of the division administrator. For expedited reimbursement claims that are denied, a letter of denial shall be sent upon the decision of the division administrator.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97; corrections in (1) made under s. 13.92 (4) (b) 7., Stats., Register February 2010 No. 650.

WEM 6.09 Record retention. A response team receiving reimbursement from the division is required to maintain all cost documentation and any other records relating to the reimbursement claim, and to provide the division with access to such records. If, after 5 years from the date of the reimbursement from the division, the division has not initiated a cost recovery action, the response team may destroy or otherwise dispose of the records. To give the division an opportunity to take possession of the records, the response team shall give the division 60 days written notice before any such record may be destroyed.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

WEM 6.10 Payment. Reimbursement may be paid only when monies are available. An approved claim in excess of appropriations available in the emergency response supplement created under s. 20.465 (3) (dr), Stats., may be paid only when

additional money is appropriated. As appropriations in the fund become available, reimbursements will be made in the order in which approved claims are ranked, according to the burden or hardship.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

WEM 6.11 Collection. Response teams shall follow all requirements established in this chapter to collect monies from the responsible party pursuant to guidelines and procedures provided by the division. Response teams shall cooperate with the division as is reasonable and necessary to allow the division to bill third parties and pursue cost recovery actions.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

WEM 6.12 Dual payment. 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 emergency response supplement under s. 20.465 (3) (dr), Stats.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97; CR 02-106: am. Register October 2003 No. 574, eff. 11-1-03.

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

(a) Response teams shall have 30 days after receipt of the final determination by the division in which to file a written appeal.

(b) The response team shall first appeal directly to the division.

(c) Following an appeal to the division, a response team may then request a problem resolution process in which the adjutant general of the department of military affairs reviews the materials submitted by the response team and issues a decision based on those materials or meets with the parties to negotiate an acceptable resolution to the problem.

(d) A response team may request an administrative hearing under ch. 227, Stats.

(e) A response team may appeal to the circuit court.

(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. 323.71 (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.

Note: A claim for reimbursement form, DMA Form 96 (4/97), 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.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97; CR 02-106: cr. (1) (intro.) and (2), renum. (1) to (5) to be (1) (a) to (e) Register October 2003 No. 574, eff. 11-1-03; correction in (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register February 2010 No. 650.