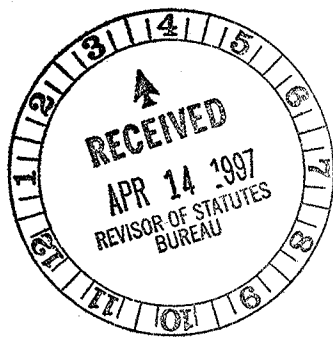


STATE OF WISCONSIN)
) SS
STATE EMERGENCY RESPONSE BOARD)

I, Steven D. Sell, Chairman of the State Emergency Response Board and custodian of the official records, certify that the annexed rules, relating to reimbursement procedures for regional and local hazardous materials emergency response teams when a person responsible can not be found or when the person responsible is unable or unwilling to pay, were duly approved and adopted by the State Emergency Response Board on July 11, 1996.

I further certify that this copy has been compared by me with the original on file in this State Emergency Response Board and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the State Emergency Response Board at 2400 Wright Street, in the city of Madison, this 11th day of April, 1997.



Steven D. Sell
Steven D. Sell,
Chairman
State Emergency Response Board

ORDER OF THE STATE EMERGENCY RESPONSE BOARD

To create ERB 6

Clearinghouse Rule 96-129

ANALYSIS PREPARED BY THE STATE EMERGENCY RESPONSE BOARD

Statutory Authority: ss. 166.20(2)(b), 166.20(2)(bm), 166.215(2), 166.22(3m), 166.22(4), 227.11(2)(a), Stats.

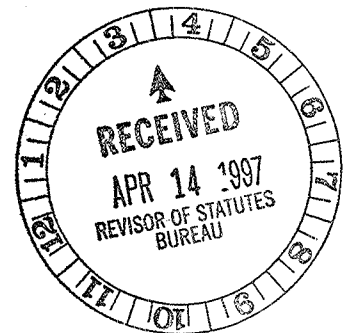
Statutes Interpreted: ss. 20.465(3)(rp), 20.465(3)(rt), 166.20(2)(bm), 166.215(2), 166.22(3m), Stats.

The Wisconsin State Emergency Response Board proposes an order to create chapter ERB 6, relating to reimbursement procedures for regional and local hazardous materials emergency response teams when a person responsible can not be found or when the person responsible is unable or unwilling to pay.

Plain Language Summary

ERB 6 establishes standards to determine if a designated regional or local hazardous materials response team has made a good faith effort to identify a person responsible for a release and to determine if the person responsible is financially able or has the money or resources necessary to reimburse a response team. This administrative rule delineates the procedure that a regional or local hazardous materials emergency response team must follow to be reimbursed from the money allocated in the DOT transportation fund under ss. 20.465(3)(rp) and 20.465(3)(rt), Stats.

The rule defines good faith effort to mean that a regional or local hazardous materials emergency response team has met all response team requirements established in ERB 6. The rule establishes the filing procedures, the costs that are eligible for reimbursement, the required supporting documentation, and an appeals process for the regional and local teams. The rule also establishes the process by which the State Emergency Response Board will review the claims and establishes time frames for State Emergency Response Board review. For those incidents that are catastrophic and which place an undue burden on the response team or the sponsoring jurisdiction, the rule provides for an expedited reimbursement procedure.



SECTION 1. Chapter ERB 6 is created to read:

CHAPTER ERB 6

REIMBURSEMENT PROCEDURES FOR REGIONAL
AND LOCAL EMERGENCY RESPONSE TEAMS

ERB 6.01	Purpose
ERB 6.02	Definitions
ERB 6.03	Filing Procedures
ERB 6.04	Eligible Costs
ERB 6.05	Supporting Documentation
ERB 6.06	Verification
ERB 6.07	Reimbursement Procedure
ERB 6.08	Expedited Reimbursement Procedure
ERB 6.09	Record Retention
ERB 6.10	Payment
ERB 6.11	Collection
ERB 6.12	Dual Payment
ERB 6.13	Appeal Process

ERB 6.01 PURPOSE. The purpose of this chapter is to establish standards as required in ss. 166.20(2)(bm), 166.215(2) and 166.22(3m), Stats.

ERB 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 board for the provision of regional response team services pursuant to a designation under s. 166.215, Stats.
- (2) "Authorized level B response team" means a county emergency response team, a member of such a team, and the city, county, village or town that contracts to provide the emergency response team to the county pursuant to a designation under s. 166.21(2m)(e), Stats.
- (3) "Board" has the meaning given in s. 166.20(1)(a), Stats.
- (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. 128.04, 128.25(1)(d), 181.02(6), 242.02, 401.201(23), 600.03(24) and 645.42(4), Stats.
- (8) "Level A release" has the meaning given in s. 166.20(1)(ge), Stats.

(9) "Level B release" has the meaning given in s. 166.20(1)(gi), Stats.

(10) "Local agency" has the meaning given in s. 166.22(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 board 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 s. 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 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. 166.22(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. 166.22(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.

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 board on DMA Form 96 (4/97) with supporting documentation as specified in s. ERB 6.05.

(3) Reimbursement claims shall be received by the board within two 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 two year deadline shall be submitted within two 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 board. 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 two 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.

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 rates established in the contracts for regional hazardous materials response team services or the rates 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; and
- (3) Necessary and reasonable emergency expenses related to response team services rendered based on actual expenditures.

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) 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.

(b) 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.

(c) 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 board 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. ILHR 30.

6.06 VERIFICATION.

(1) Upon receipt of a reimbursement claim and supporting documentation, the board will verify that the claim complies with all requirements. Where the claim and supporting documentation is incomplete, or has significant defects, the board 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 board 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 board 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 board's receipt and acceptance for evaluation.

(4) If the board 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 board 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 board must be submitted within 60 days unless specifically extended by the board. 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.

6.07 REIMBURSEMENT PROCEDURE.

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

(2) The board 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 board chair. A letter of denial shall be sent upon the decision of the board chair for reimbursement claims that are denied.

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 board under s. 166.215, Stats., or the city, county, village or town that contracts to provide an emergency response team under s. 166.21(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 board chair or his or her designee shall serve as the designated representative to review and process the claims for expedited reimbursement.

(3) The board 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 board chair. For expedited reimbursement claims that are denied, a letter of denial shall be sent upon the decision of the board chair.

6.09 RECORD RETENTION.

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

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)(rt), 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.

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 board. Response teams shall cooperate with the board as is reasonable and necessary to allow the board to bill third parties and pursue cost recovery actions.

6.12 DUAL PAYMENT.

If costs subsequently are recovered from responsible parties or other sources after the response team has received reimbursement from the board, the response team shall return the recovered costs to the board, for deposit into the state transportation fund.

6.13 APPEAL PROCESS.

- (1) Response teams shall have 30 days after receipt of the final determination by the board in which to file a written appeal.
- (2) The response team shall first appeal directly to the board.
- (3) Following an appeal to the board, 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.
- (4) A response team may request an administrative hearing under Ch. 227 Stats.
- (5) A response team may appeal to the circuit court.

Note: A claim for reimbursement form, DMA Form 96 (4/97) and an expedited reimbursement claim form, DMA Form 59 (4/97) 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 and supporting documentation shall be mailed to the Hazardous Materials Safety/Transportation Coordinator, Wisconsin Emergency Management, 2400 Wright Street, Room. 213, PO Box 7865, Madison, WI 53707-7865.

This rule shall take effect as provided in s. 227.22(2)(intro) Stats.

Dated: _____

Agency: _____


 Steven D. Sell, Chairman
 State Emergency Response Board