



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-106

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); and 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 reimbursement procedures for regional and local emergency response teams.

Submitted by **DEPARTMENT OF MILITARY AFFAIRS**

07-17-2002 RECEIVED BY LEGISLATIVE COUNCIL.

08-07-2002 REPORT SENT TO AGENCY.

RNS:PS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 02-106

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 166.20 (2) (bs), Stats., is one of the statutes cited as statutory authority for this rule. That provision, created in 2001 Wisconsin Act 16, requires the division to promulgate rules establishing the procedures that a regional emergency response team must follow to determine if an emergency requiring the team’s response exists as the result of a Level A release or potential release and that a local emergency response team must follow to determine if an emergency requiring the team’s response exists as the result of a release or potential release of a hazardous substance. It is unclear where those procedures are in this rule. Is the hazardous materials incident response matrix intended to be “the procedures”? If so, this should be clarified in the analysis. If the procedures are not included in this rule, s. 166.20 (2) (bs), Stats., should not be cited as statutory authority or in the list of statutes interpreted.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. WEM 6.04 (4) (a), the citation “s. 6.04 (4) (b)” should be changed to “par. (b)”. See s. 1.07 (2), Manual, for rules on citing internal references.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the bold order language, “create WEM 6” sounds like the entire chapter is being created. The phrase “provisions of” could be inserted after “create” to avoid this impression.

b. In the listing of statutes interpreted, commas should be inserted after the "(f)," "(fm)," "(ge)," and "(k)"; "and" should be inserted after "(gi)" and in place of the comma following "(k)."

c. The proposed order should read:

The Wisconsin Division of 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); and 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 reimbursement procedures for regional and local emergency response teams.

d. In the plain language summary, in addition to clarifying whether the procedures required by s. 166.20 (2) (bs), Stats., are included in this rule (see the statutory authority comment above), the analysis should note that a responsible party appeals process is created in the rule. Also, a comma should be inserted after the "(dr)" on the last line.

e. In s. WEM 6.02 (2), is "county" on line 3 still the appropriate term, given the change in reference on line 1 from "county" to "local" response team, pursuant to the statutory change to s. 166.21 (2m) (e), Stats.? Also, on line 1, "local" should follow "~~county~~."

f. In s. WEM 6.02 (12), the first word on line 2 should be "Stats."

g. In the treatment clause to SECTION 3, an "and" should be inserted after the second comma. In the treatment clause to SECTION 5, an "and" should be inserted before the first "(c)" and the "(d)."

h. To flow from the language in s. WEM 6.04 (intro.), s. WEM 6.04 (4) should begin with the phrase: "The following administrative costs . . ." and the period following the word "party" should be changed to a colon.

i. In s. WEM 6.12, a comma should be inserted after the "(dr)" on the last line.

j. In the treatment language to SECTION 10, "to read" should be changed to "WEM" and the colon at the end should be changed to a period.

k. In s. WEM 6.13 (2) (a), "s." should be inserted before the statutory citation and ", Stats." should follow it. In sub. (2) (b), the phrase "that exceed \$500" should be moved to follow "costs" on line 1.



STATE OF WISCONSIN \ DEPARTMENT OF MILITARY AFFAIRS
WISCONSIN EMERGENCY MANAGEMENT

2400 WRIGHT STREET
P.O. BOX 7865
MADISON, WISCONSIN 53707-7865

July 18, 2003

The Honorable Alan Lasee
President of the Senate
P.O. Box 7882
Madison, WI 53708

The Honorable John Gard
Speaker of the Assembly
P.O. Box 8952
Madison, WI 53708

Dear President Lasee and Speaker Gard:

This is to notify you that the final draft of Clearinghouse Rule 02-106 relating to repeal of the hazardous materials transportation registration program and to the response and reimbursement procedures for regional and local emergency response teams, has been delivered to the Assembly Chief Clerk's office for referral to the appropriate standing committee in the Assembly.

A public hearing was held on the proposed rule as required in ss. 227.17 and 227.18, Stats. The hearing was held on August 27, 2002, in Madison. The deadline for written comments on the proposed rule was August 30, 2002. A total of 6 persons attended the hearing and 3 individuals spoke at the hearing. Two people registered in support of the rule and four people registered for information only. Written comments were received from 1 other person.

A summary of the public comments is attached for your information. All public comments were reviewed and addressed as indicated below.

There are a number of definitions that apply to hazardous substances and hazardous materials in this and related sections of the law. As indicated in the comments by the Chippewa County Local Emergency Planning Committee (LEPC), the definition of a hazardous material under the Emergency Planning and Community Right-to-Know Act (EPCRA) is not an appropriate definition to use when determining whether an emergency that requires the team's response exists. Although this definition is referenced in the rule it is not used when determining if an emergency that requires the team's response exists. The definition of a hazardous substance in s. 299.01 (6) Stats., is used for this purpose in the rule, and this is also the definition recommended by the Chippewa County LEPC. This is also the definition used for purposes of reimbursement under WEM 6.

The matrix will be modified to include biological incidents as was suggested in one of the comments. To address concerns regarding response costs to a potential release in which there is no hazardous material present, the costs are capped at \$500 if the bill of lading or manifest is readily accessible to the response team during the emergency. Wisconsin Emergency Management believes this is a reasonable approach and no additional changes were made to the rule in this regard.

As indicated above, regional and local emergency response teams must use the hazardous materials incident response matrix to determine if an emergency that requires the team's response exists. A methamphetamine lab would not normally require a regional team to respond, but could require a local emergency response team to respond. The use of the matrix determines whether the incident, including a methamphetamine lab incident, requires that the team respond.

Although uniform billing rates were mentioned in the public comments, they are not addressed in this rule making process. Wisconsin Emergency Management has made a commitment to establish uniform billing rates for the regional emergency response teams, but will not be included as part of this rule.

Additionally, to address the comments made by the Wisconsin Legislative Clearinghouse a new section was added to the rule to clarify that regional and local teams are required to use the hazardous materials incident response matrix to determine if an emergency requiring the team's response exists. With this change the administrative rule now meets the requirement specified in s. 166.20 (2) (bs) Stats., to promulgate rules establishing procedures that a regional or local emergency response team must follow to determine if an emergency requiring the team's response exists as a result of a release or potential release. Because the rule now specifically deals with response as well as reimbursement procedures the title was amended to include response procedures.

If you have any substantive questions regarding the proposed rule, please contact William Clare at 608-242-3220, at Wisconsin Emergency Management. This is also the person responsible for the internal processing of the rule.

Sincerely,



Edward J. Gleason
Administrator

Enclosures

cc: William Clare
Planning Section Supervisor

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 contracts 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:

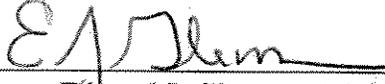
WEM 6.13 (2) The responsible party appeals process is as follows:

- (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: 7/18/03 Agency: 
Edward J. Gleason, Administrator
Wisconsin Emergency Management

Fiscal Estimate — 2001 Session

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WEM 4 and WEM 6

Subject
 Repeal of WEM 4 and amendments to WEM 6

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.
 Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory
 3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 20.465 (3) (dr)

Assumptions Used in Arriving at Fiscal Estimate

The statutory authority for WEM 4 has been repealed. The previous version of WEM 4 was determined to be unconstitutional by the Wisconsin Court of Appeals and the current version has not been enforced since that time. There are no costs associated with the repeal of WEM 4.

The amendments to WEM 6 allow for the State of Wisconsin and local and regional emergency response teams to collect emergency response costs from the responsible party in the event of a potential release of a hazardous material. A responsible party is currently responsible for costs associated with the emergency response to a release of a hazardous material. This rule clarifies that necessary response costs include the potential release of a hazardous material. Money collected by the State of Wisconsin under this rule will be deposited into the emergency response supplement. Money collected by response teams would be used to offset their costs. There are several such incidents annually and the ability to collect these costs means that they would be paid by the responsible party if identified and able to pay. It is estimated that costs to respond to a potential release would typically be \$500 or less. This could mean a decrease in payments from the emergency response supplement.

Long-Range Fiscal Implications

None

Prepared By: William Clare	Telephone No. 608-242-3220	Agency Department of Military Affairs
Authorized Signature <i>William Clare</i>	Telephone No. 242-3156	Date (mm/dd/ccyy) 7/12/02

CLEARINGHOUSE RULE 02-106

PUBLIC HEARING COMMENT SUMMARY

John Hilmer – Regional Response Team Network Chiefs (Fire Chief, City of Racine)

Appeared for issue

John Hilmer spoke to support the change and the matrix. He is with the Racine Fire Dept. and related an incident in Fort Atkinson that they responded to in which there was no release. He also indicated that they are looking forward to working with WEM regarding a uniform rate for billing purposes.

Jayne Meyer – Wisconsin Regional Response Team Network

Appearance for Issue (Also submitted comments in writing)

Jayne Meyer is the Coordinator for the Regional Response Team Network and spoke to support the administrative rule changes and the matrix. She indicated that many teams have been using the new draft matrix side by side with the current one to test it. They have found that it delivers accurate assessments of responses. She suggested that biological incidents be added to the matrix under toxicological hazards. She also indicated that regional teams have been reviewing their rate schedules and will make every effort to make the schedules as uniform as possible.

Tom Howells – Wisconsin Motor Carriers Association

Appearance to Receive Information Only

He indicated that WEM did a nice job and liked that we tightened up on the response matrix. He liked the limit for potential releases but was still concerned with the situation when no hazmat was being transported. He thanked WEM for accepting motor carrier input and indicated his wholehearted support for the repeal of WEM 4.

Ken Kortenhoff – Oneida County Emergency Management

Appearance to Receive Information Only

He did not speak on the issue.

Clarence Puza – Oneida County Hazardous Materials Team

Appearance to Receive Information Only.

He did not speak on the issue.

Kathy Wilmot – Fond du Lac County Emergency Management/Level B Hazmat

Registration to Receive Information Only

WRITTEN COMMENT SUMMARY

Dennis Brown – Chippewa County LEPC

Dennis Brown submitted written comments via email. He questioned the definition used in the rule for hazardous substance. He followed the first email with another indicating that the definition of hazardous substance should have the meaning given in s. 299.01 (6) and that the definition in s. 166.20 (1) (g) is too restrictive. He indicated that the definition of a level B release at s. 166.20 (1) (gi) appears to be in conflict with s. 166.22 (3m), which references the s. 299.01 (6) definition. He also questioned whether methamphetamine labs, in which a number of over the counter products may be combined to form a hazardous mixture, would qualify for a level B response.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The statutory authority for WEM 4 has been repealed. The previous version of WEM 4 was determined to be unconstitutional by the Wisconsin Court of Appeals and the current version has not been enforced since that time. The repeal of WEM 4 will have no effect on small business.

The amendments to WEM 6 allow for the State of Wisconsin and local and regional emergency response teams to collect emergency response costs from the responsible party in the event of a potential release of a hazardous material. A responsible party is currently responsible for costs associated with the emergency response to a release of a hazardous material. This rule clarifies that necessary response costs include the potential release of a hazardous material. It is estimated that costs to respond to a potential release would typically be \$500 or less. To date there have not been more than 3 such incidents annually. This rule change will not have a significant economic impact on a substantial number of small businesses.



Hazardous Materials Incident Response Matrix

Response Matrix for Incident Number/Name _____

		Value
SITUATION STATUS		
What is the size, severity, and immediacy of the threat? Release and/or fire in progress Container/vehicle has been damaged or failure likely Conditions are stable Minimal or no threat detected	Assign a value of 3 Assign a value of 2 Assign a value of 1 Assign a value of 0	<input style="width: 50px; height: 20px;" type="text"/>
What type of container/vehicle is involved? Railcar, road transport tanker, or bulk storage Totes, drums, small medium tanks Small packages, bottles or containers Package is not damaged	Assign a value of 3 Assign a value of 2 Assign a value of 1 Assign a value of 0	<input style="width: 50px; height: 20px;" type="text"/>
What is the location of the Incident? Outside Confined inside facility Confined to room/area of facility No release	Assign a value of 3 Assign a value of 2 Assign a value of 1 Assign a value of 0	<input style="width: 50px; height: 20px;" type="text"/>
QUANTITY AT RISK		
To what degree is the quantity a threat? >55 gallons, 500 pounds, 200 cubic feet >20 gallons but <56 gallons, 500 lbs, 200 cubic feet <21 gallons, 50 lbs, 20 cubic feet De minimis quantity	Assign a value of 3 Assign a value of 2 Assign a value of 1 Assign a value of 0	<input style="width: 50px; height: 20px;" type="text"/>
PHYSICAL and TOXICOLOGICAL HAZARDS		
What Hazard does the Material present to personnel? Inhalation, eye/sight hazard, skin absorbent, Inhalation, skin contact, eye/sight irritant Chronic long term exposure > 30 minutes No known physical concerns	Assign a value of 3 Assign a value of 2 Assign a value of 1 Assign a value of 0	<input style="width: 50px; height: 20px;" type="text"/>
CHEMICAL HAZARDS		
What Hazard does the material present? Radioactive, air or moisture reactive, ability to polymerize, explosive, poisonous gas Cryogenic, corrosive, combustible/flammable Small amounts of above Stable product	Assign a value of 3 Assign a value of 2 Assign a value of 1 Assign a value of 0	<input style="width: 50px; height: 20px;" type="text"/>
LOCAL RESOURCES		
Exceeds local level B or county-wide response capabilities Local responders can handle with limited outside assistance No on site assistance needed. Phone or radio assistance only No assistance needed by local responders	Assign a value of 3 Assign a value of 2 Assign a value of 1 Assign a value of 0	<input style="width: 50px; height: 20px;" type="text"/>
TOTAL ALL BOXES TO ESTABLISH APPROPRIATE RESPONSE		
14 – 21 Full response by regional team 8 – 13 County team with optional regional CAT team assistance 0 – 7 Local fire department / county or regional team phone advice	TOTAL	<input style="width: 50px; height: 20px;" type="text"/>



STATE OF WISCONSIN \ DEPARTMENT OF MILITARY AFFAIRS
WISCONSIN EMERGENCY MANAGEMENT

2400 WRIGHT STREET
P.O. BOX 7865
MADISON, WISCONSIN 53707-7865

July 18, 2003

Mr. Ron Sklansky, Director
Wisconsin Legislative Rules Clearinghouse
One E. Main St., Suite 401
P.O. Box 2536
Madison, WI 53701-2536

Dear Mr. Sklansky:

This is to inform you that Wisconsin Emergency Management has accepted the recommendations of the Administrative Rules Clearinghouse pertaining to Clearinghouse Rule 02-106, and has modified the rule accordingly. The Wisconsin Legislative Rules Clearinghouse comment number "5., e" Clarity, Grammar, Punctuation and Use of Plain Language" asked if the term "county" on line 3 is still the appropriate term. The term "county" should be used and no change was made in this instance.

To address the comment made in Clearinghouse comment number "1. Statutory Authority", a new section was added to the rule to clarify that regional and local teams are required to use the hazardous materials incident response matrix to determine if an emergency requiring the team's response exists. With this change the administrative rule now meets the requirement specified in s. 166.20 (2) (bs) Stats., to promulgate rules establishing procedures that a regional or local emergency response team must follow to determine if an emergency requiring the team's response exists as a result of a release or potential release. Because the rule now specifically deals with response as well as reimbursement procedures the title was amended to include response procedures.

If you have any substantive questions regarding the proposed rule, please contact William Clare at 608-242-3220, at Wisconsin Emergency Management. This is also the person responsible for the internal processing of the rule.

This rule will take effect pursuant to s. 227.22 (2) (intro), Stats.

Sincerely,


Edward J. Gleason
Administrator

Encl.

cc: William Clare
Planning Section Supervisor

Chapter WEM 6
**RESPONSE AND REIMBURSEMENT PROCEDURES FOR REGIONAL
AND LOCAL EMERGENCY RESPONSE TEAMS**

WEM 6.01	Purpose.	WEM 6.08	Expedited reimbursement procedure.
WEM 6.02	Definitions.	WEM 6.09	Record retention.
WEM 6.03	Filing procedures.	WEM 6.10	Payment.
WEM 6.04	Eligible costs.	WEM 6.11	Collection.
WEM 6.05	Supporting documentation.	WEM 6.12	Dual payment.
WEM 6.06	Verification.	WEM 6.13	Appeal process.
WEM 6.07	Reimbursement procedure.		

WEM 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.

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

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. 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 contracts to provide the emergency response team to the county pursuant to a designation under s. 166.21(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. 128.04, 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 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 ~~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) 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 employe 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.

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

WEM 6.025 Response procedures

WEM 6.025 (intro) Regional and local emergency response teams shall use 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.

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 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.

(4) The following administrative costs incurred to collect response costs from the 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.

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.

(ab) 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.

(bc) 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.

(ed) 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. ILHR 30.

(g) The hazardous materials incident response matrix 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.

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~~ 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~~ the division 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 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.

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~~ 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~~ 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.

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

WEM 6.13 Appeal process.

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

(a1) Response teams shall have 30 days after receipt of the final determination by the division in which to file a written appeal.

(b2) The response team shall first appeal directly to the division.

(c3) 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.

(d4) A response team may request an administrative hearing under ch. 227 Stats.

(e5) 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. 166.22 (5) (c), Stats. in which to file an appeal to 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) and an expedited reimbursement claim form, DMA Form 59 (4/97), and a Hazardous Materials Incident Response Matrix, DMA Form 1060 (5/02) 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 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.

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