

**REIMBURSEMENT OF COSTS FOR
OUT-OF-STATE TRANSPORTATION AND DISPOSAL OF
POLYCHLORINATED BIPHENYL (PCB)
CONTAMINATED SEDIMENT**
(s. 292.68, Wis. Stats., and ch. NR 560, Wis. Adm. Code)

PROGRAM & APPLICATION GUIDE

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REIMBURSEMENT OF COSTS FOR OUT-OF-STATE TRANSPORTATION AND DISPOSAL OF POLYCHLORINATED BIPHENYL (PCB) CONTAMINATED SEDIMENT

(s. 292.68, Wis. Stats., and ch. NR 560, Wis. Adm. Code)

2007 Wisconsin Act 20 created section 292.68, Wis. Stats., which directs the Department of Natural Resources (DNR) to administer a program to reimburse costs to certain responsible parties for the difference between costs associated with transporting and disposing of polychlorinated biphenyl (PCB) contaminated sediments at out-of-state hazardous waste disposal facilities and the cost of disposing PCB contaminated sediment in Wisconsin. The DNR has developed ch. NR 560, Wis. Adm. Code, to implement and administer this program.

This Guide describes how eligible sponsors may be reimbursed for eligible costs. Funding for this program comes from the Recycling and Renewable Energy Fund on an annual basis.

I. PROGRAM REQUIREMENTS

A. Eligible Applicants:

An eligible applicant is defined as an entity seeking reimbursement for costs associated with transporting and disposing of PCB-contaminated sediments at out-of-state hazardous waste disposal facilities.

In addition:

- The applicant is a responsible party, as defined by s. 292.11, Wis. Stats., or 42 USC 9601 to 9675, or
- The applicant has entered into a consent decree with the DNR or the US Environmental Protection Agency for remediation projects that contains polychlorinated biphenyls (PCBs) in concentrations of 50 parts per million (ppm) or greater.

B. Eligible Projects:

Eligible projects are those that include all of the points listed below:

- The contaminated sediment contains PCBs in a concentration of 50 ppm or greater.
- PCB contaminated sediment was dredged from the bed or bank of navigable water in the state of Wisconsin.

- PCB contaminated sediment was transported to and disposed of at a licensed hazardous waste disposal facility outside Wisconsin and that disposal occurred on or after May 1, 2007, and the disposal occurred within two years of the date of the application to the DNR.

C. Eligible Costs:

The following costs incurred on or after May 1, 2007, may be eligible for reimbursement by the DNR:

- Transportation of PCB contaminated sediment to an out-of-state hazardous waste disposal facility.
- Disposal of the PCB contaminated sediment in an out-of-state hazardous waste disposal facility.
- Any permits that an applicant is required to obtain in order to transport and dispose of the PCB contaminated sediment.
- Necessary sampling and analytical costs to characterize PCB contaminated sediment for disposal.

D. Ineligible Costs:

Costs not directly associated with eligible costs above are not eligible for reimbursement. Ineligible costs include, but are not limited to, any of the following:

- Costs to prepare the application under s. NR 560.07, Wis. Admin. Code, or to contest an application by the DNR decision under s. NR 560.15, Wis. Admin. Code.
- Costs incurred by any federal, state, or local government entity for services they routinely provide.
- Costs that the applicant has not yet incurred, or for which the owner or operator may later receive a discount or rebate or where payment may be received under another federal or state financial assistance program. If, after being reimbursed by the DNR for any cost, an applicant is reimbursed for the same cost from another source, the owner or operator shall promptly notify the DNR and repay any duplicate reimbursement award, unless otherwise directed.
- Costs incurred earlier than the first day of the 24th month before the month in which the application is submitted.

Note: Section 292.68 (7)(b), Wis. Stats., limits reimbursement to costs incurred on or after the first day of the 24th month before the month in which the application is submitted.

- Costs incurred by a federal, state or local government for overseeing investigation or remedial action costs.
- Site investigation or remedial action costs incurred by the applicant, its contractors or agents.
- Fees required by third parties to obtain samples, including municipal permits or access fees.
- Sampling and analytical costs associated with sediment characterization.
- Costs associated with the excavation or dredging of polychlorinated biphenyl contaminated sediment.
- Supplemental charges for expedited services, including expedited laboratory analysis unless the DNR approves those charges in advance.
- Costs not documented by an invoice and by a canceled check, or other conclusive proof of payment by the eligible applicant applying for reimbursement.
- Costs incurred by an applicant because of a contractor's breach of contract.
- Costs associated with the delivery of documents.
- Any fines and penalties due to violations of, or failure to comply with, federal, state or local laws or regulations.
- Liability claims or judgments.
- Costs which create a real or apparent conflict of interest such as awarding a contract to a spouse or partner, or to a person and then receiving a gratuity or favor resulting from the award of the contract.
- Costs which are fraudulent.
- Costs that the DNR determines to be unreasonable or unnecessary.

II. How to Submit an Application:

Eligible sponsors shall apply using DNR Form 8700-325 (provided in the appendix to this Guide). In addition, an application shall include a completed W9 form; the DNR cannot issue reimbursement without this form. Complete pages 1 and 2 of the application form; instructions for completing pages 1 and 2 may be found on page 4.

Page 3 of the application form is a checklist of required attachments that must accompany each application.

Send the complete application and attachments to Edward Lynch, DNR Program Manager, at the address in the “DNR Program Contacts” section below.

There is no limit to how frequently an applicant may submit an application or the maximum that an applicant may request. The DNR Program Manager may combine applications if more than one is received during the same review time period.

III. DNR Program Contacts:

(1) For receipt, review, and decision regarding the application:

Edward Lynch, DNR Program Manager
Wisconsin Department of Natural Resources
Bureau of Remediation & Redevelopment
101 S. Webster Street, PO Box 7921
Madison, WI 53707-7921
Email: Edward.Lynch@wisconsin.gov
Phone: (608) 266-3084

(2) For grant award and issuance of reimbursement:

Kari Beetham, DNR Grant Manager
Wisconsin Department of Natural Resources
Bureau of Community Financial Assistance
101 S. Webster Street, PO Box 7921
Madison, WI 53707-7921
Email: Kari.Beetham@wisconsin.gov
Phone: (608) 264-9207

IV. DNR Application Decision:

The DNR Program Manager will determine the status of the application (complete, incomplete, or denied). The DNR Program Manager may request additional information from the applicant for applications found to be incomplete.

The DNR Program Manager may approve part or all of a complete application that complies with the requirements of this program (see Section I above). The DNR Program Manager’s approval may include special conditions.

The DNR Program Manager will issue an application status letter to the applicant. This letter will specify all the following:

- The amount of eligible costs for which reimbursement may be requested.

- The total amount approved for the grant award, subject to the terms and conditions of this program.
- Any amounts and items not approved and the reasons for the disapproval.

Applications deemed complete by the DNR Program Manager will be forwarded to the DNR Grant Manager for processing of the grant award and reimbursements to the applicant.

V. Appeal of DNR Decision:

The applicant may appeal the DNR Program Manager's decisions no later than the 30th day after the date on which the DNR Program Manager approved or denied an application in writing. The applicant's appeal shall be conducted in accordance with s. 292.68(9), Wis. Stats.

VI. Grant Award:

The DNR Grant Manager shall process the grant award and issue reimbursement to the applicant within 60 days of receiving a complete approved application from the DNR Program Manager.

VII. Reimbursements:

A. Timing of Payment:

Reimbursement payments will be issued on a first-come, first-served basis, based on the order in which an application is deemed complete by the DNR Program Manager, until all program funds are exhausted.

B. Partial Payment:

If the amount determined as eligible for reimbursement by the DNR Program Manager exceeds the amount available to the program, the DNR Grant Manager shall issue a partial payment with available funds and issue payment for the balance when additional funds become available. The DNR Grant Manager shall notify the applicant, in writing, as to the reason for the partial payment.

C. Delayed Payment:

If no funds are available at the time of a reimbursement, the DNR Grant Manager will send the applicant a "Grant Award" indicating the total amount allowed for the application and an explanation that reimbursement will be possible when and if additional funds become available. The DNR cannot guarantee that the program will receive additional funds.

D. State Share of Project:

The reimbursement amount may not exceed 95% of actual DNR approved eligible costs.

E. Applicant Share of Project:

The applicant's share of total eligible costs shall be at least 5%. The applicant's share may not be comprised of "in-kind" costs.

VIII. Recordkeeping Requirements:

The applicant shall maintain an accounting system that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards, and provides a clear reference, particularly as to source of original documents in the application.

Fiscal Controls and Accounting Procedures. Financial schedules and statements filed with applications and reimbursement requests shall be based on records maintained using generally accepted accounting principles that meet the following minimum requirements:

- Project accounts shall separate receipts associated with reimbursement requests from those allocable to other programs and activities.
- Receipts and expenditures shall be listed in sufficient detail as to provide a basis for accurate and complete program reporting.
- All project receipts shall be identified in sufficient detail to reflect their source and purpose.
- Supporting documents for all project expenditures shall indicate the nature and appropriateness of each. Proof of payment, such as canceled checks or receipts from vendors, shall be maintained.

Service Contracts. Any request for reimbursement for services shall include a copy of the formal contract or agreement between the applicant and the service provider. That contract or agreement shall specify financial terms, contract duration, and services to be rendered.

Records Retention. An owner or operator who receives reimbursement of costs shall retain all records pertaining to the project for a period of 3 years after the date of the final payment and, upon request, shall make those records available to the DNR within 96 hours of the request.

IX. Payments as Income for Tax Purposes:

The DNR is required by the Federal tax code to file with the U.S. Internal Revenue Service (IRS) a 1099G form for all payments issued that are greater than \$600 and are made to entities other than state or local governments. As a result, payments issued by the DNR may be considered as "other income." Information regarding income tax issues may be obtained from your professional tax preparer, the IRS web site (www.irs.gov), or the IRS hotline at 1-800-829-1040.

X. Sanctions:

The DNR may impose any of the following sanctions upon an applicant who receives a reimbursement but fails to comply with the provisions of the program:

- The DNR may terminate a grant in whole or in part, and require the owner or operator who received reimbursement(s) to repay all or part of the reimbursement(s), if the DNR determines there is substantial evidence that reimbursement was obtained on the basis of fraud or inaccurate/ erroneous information.
- The DNR may declare project costs that are directly related to the noncompliance as ineligible for reimbursement.

XI. Appendices:

- Application DNR Form 8700-325
- W9 FORM (2 pages) for DNR check processing purposes

Disclaimer: This material is provided for program clarification only and does NOT supersede reference s. 292.68, Wis. Stats., and ch. NR 560, Wis. Adm. Code.