



# Frequently Asked Questions

## Dry Cleaner Environmental Response Fund (DERF) Program

RR-784

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This publication answers common questions raised about the Dry Cleaner Environmental Response Fund (DERF) Program. For more information about DERF, visit our *Dry Cleaner Environmental Response Fund (DERF)* webpage: [dnr.wi.gov/Aid/DERF.html](http://dnr.wi.gov/Aid/DERF.html).

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### Answers

1. **Is there enough money in the Dry Cleaning Fund to pay claims immediately or is there a waiting period?**

As of July 2014 reimbursements are delayed due to a shortage of revenue in the Dry Cleaner Environmental Response Fund. Current demand is approximately \$1.2 million per year while annual revenues are approximately \$800,000. Claims are paid in the order they are received. Most program revenue comes in on a quarterly basis, therefore, as long as the shortage of



revenue exists claims will be paid every three months: on or about February 1, May 1, August 1, and November 1. A list of pending reimbursement requests can be found at [dnr.wi.gov/Aid/documents/derf/pending-claims.pdf?o=n](http://dnr.wi.gov/Aid/documents/derf/pending-claims.pdf?o=n).

**2. Does proof of payment have to be provided as a cancelled check?**

No, a copy of a canceled check is not required. NR 169, Wis. Adm. Code, allows for other conclusive proof of payment. DNR will accept the documentation that you provide as a record of a successful payment transaction. That documentation may be provided by a financial institution, payment service or directly from the company being paid.

Examples of items that have been accepted are:

- images of cancelled checks;
- statement from a bank/financial institution detailing the transaction (date, amount, payee, etc.); or,
- documentation provided from a 3rd party verifying an electronic payment was made (confirmation number, amount, date/time transaction was successfully processed).

Contact the DERP Fund Manager at 608-266-1967 with further questions.

**3. Can a Dry Cleaner or other Responsible Party change consultants during an SI or RA phase?**

We have allowed dry cleaners to change consultants without rebidding IF the new consultant picks up the same scope of work at the same unit costs and bid prices. A variance letter must be issued which documents the change and requirements for the new consulting firm.

The downside of this action for the dry cleaner is that he or she has a contract with the original consulting firm. That contract may have penalties for ending the contract early that the dry cleaner may incur.

**4. Are agent agreements transferrable upon the death of a principal (dry cleaner or agent)?**

As a general rule, an agent agreement terminates upon the death of either the eligible applicant or agent and a new agent agreement must be created and signed for future cleanup work (by an agent) to be DERF eligible. An eligible applicant can choose to perform the cleanup at any time and be eligible for reimbursement.

In the event the agreement was terminated by the death of the eligible applicant, the agent must enter into a new agreement with the eligible applicant's personal representative, unless the agent has an "interest" (i.e., owns) in the property. All work completed by the agent prior to the death of the eligible applicant is DERF eligible, but no new work will be reimbursable without an effective agent agreement in place. If the agent owns the property, the agent

continues to be eligible for reimbursement under the original agreement with the eligible applicant.

In the event that the agreement was terminated by the death of the agent (and the eligible applicant is not completing the work), the work can continue to be reimbursed without a new agent agreement only if a corporation was acting as agent AND the corporation continues to exist upon the death of the agent.

**5. When is a change order to increase bid costs to a DERF workplan acceptable and what must be included in a change order?**

All investigation and remediation performed under DERF must adhere to the requirements of NR 169, Wis. Adm. Code. Site investigation and remedial action work must be competitively bid. The eligible applicant selects and approves the bidder and the workplan. The DNR project manager (PM) must approve the bidder and workplan before the work can begin.

Interim actions do not necessarily require a competitive bid; however, the interim action workplan must also be approved by the eligible applicant and the project manager. The selected bidder must perform the work proposed in the workplan for no more than the amount of money stated in the bid. That is, change orders to increase the bid costs are not appropriate just because it cost more to carry out specific tasks than originally estimated. It is the responsibility of a bidder to properly define the costs for each task in the bid.

The **workplan** outlines the intended scope of the response action. A workplan is equivalent to a scope of work. The bid price for the site investigation (SI) and remedial action is based on the workplan.

The **eligible applicant** is usually the drycleaner owner/operator or his/her agent. See NR 169.05(16) and (17) for definitions of who is eligible for entry to the DERF program.

Wisconsin Administrative Code NR 169.23(3)(d) sets out the requirements for reimbursing costs beyond those originally bid. The consultant must be selected through competitive bidding; the consultant's billing rates must be the same or lower than the per-unit billing rate provided in the original bid; and the consultant must provide a cost estimate for the additional services. Therefore, a change order to increase bid costs may be appropriate when the eligible applicant's consultant believes additional work is necessary beyond the work bid in the original contract. The consultant must provide the eligible applicant with a cost estimate of the additional work. The eligible applicant and the DNR must approve the change order.

In the change order, the consultant must explain the proposed additional work. The change order must include:

- a complete accounting of the work done to date;
- a complete accounting of the money spent to date; and
- an accounting of the specific changes proposed to the tasks in the original workplan, including the increased costs per task.

The consultant must summarize money spent to date, the money remaining on the original contract and the change in cost per task. We recommend that the consultant use the original bid sheets to summarize the proposed changes. New columns can be added showing percentage of work complete to date, money spent, money remaining and proposed changes. Total costs for the change order as well as the new contract cost must be clearly indicated.

Change orders to increase bid costs must be approved by the eligible applicant and DNR Project Manager (PM) prior to beginning the additional work included in the change order.

**6. The Administrative Code (NR 169) allows some costs beyond the original bid costs to be reimbursed without DNR's prior approval. Under what conditions can a consultant use this provision?**

Under NR 169.23(3)(d)5, if the total additional service beyond what was approved in the workplan exceeds the greater of \$3,000 or 5% of the workplan cost, the eligible applicant must provide a change order and cost estimate to the DNR, and must obtain written approval before implementing the additional work. Also, NR 169.23(10)(c) makes it clear that the DNR may reimburse—without prior approval—cumulative contract costs that do NOT exceed the greater of \$3,000 or 5% of the costs included in the workplan.

This provision in the rules is intended to allow consultants latitude when dealing with changed conditions in the field. Changes in cost without prior DNR approval apply to the ENTIRE workplan, even though site investigations and remedial actions may be performed in phases. For instance, an owner can make a request for interim payment of SI costs. If the first interim payment for an SI includes \$3,000 of additional work beyond the approved scope, then any future increase in cost, regardless of the amount, later in the site investigation will require prior DNR approval. The \$3,000 or 5% of workplan costs do NOT apply to each payment request but to the ENTIRE workplan over the time of the site investigation or remedial action.

In addition, the \$3,000 or 5% of total cost provision applies to the total cost of additional service. The consultant must obtain DNR approval before expending any money on a service that will exceed these amounts. For example, if the total additional service costs \$5,000, a consultant may not expend \$3,000 on the service and then seek DNR approval for the additional \$2,000. The eligible applicant will not be reimbursed for the past, unapproved costs (in this example, \$3,000). It is best to talk to the DNR PM and obtain approval for additional costs if there is any question about whether proposed work will be reimbursable.

**7. How are requests for DERF reimbursement to be submitted to the DNR?**

DNR provides a "[Reimbursement Application Instructions and Checklist](#)" to help the eligible applicant or their consultant prepare reimbursement applications. The DERF Linking Spreadsheet (form 4400-214D) - Reimbursement Cost Detail Worksheet must be submitted

with each reimbursement claim. The Cost Detail Worksheet links the bid, change order, costs claimed and expenses for the claim. The worksheet and instructions can be found on the [DERF webpage](#) under “reimbursement.” This form must be updated with each change order request and subsequent approval. While some costs may shift from one category to another, total invoiced costs can not exceed approved bid costs (with the exception of the \$3,000 or 5% of the total contract costs provision explained above).

The Cost Detail Worksheet will allow the DNR PM to more easily review and approve the costs submitted for reimbursement.

Invoices should contain a detailed explanation of the work performed. They should identify the nature of the services or materials provided, the amount charged for the services or materials, the identity of the provider and the dates on which the services or materials were provided. If an invoice from a contractor does not provide a detailed explanation, the consultant must attach an explanation to the invoice. If an invoice identifies subcontractor costs, include a copy of the subcontractor’s invoice.

## **8. How is the payment order for reimbursement determined?**

When a reimbursement application is received, the DNR PM dates the application, signs it, and faxes it to the DERF Auditor in Madison. The date the application is received by the PM determines the order in which the reimbursement will be paid.

The DNR has 90 days after receipt of the application to review it for completeness, which includes invoices, cancelled checks and consistency with the original bid items, etc. If anything is missing from the application, the DNR PM will call and ask the eligible applicant or the consultant (depending on who submitted the application) for the missing information. The eligible applicant or consultant will have **14 calendar days** to complete the application. If the application is not complete within that time frame, **the application will be pulled from the queue and re-dated when a complete application is received.**

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This document contains information about certain state statutes and administrative rules but does not necessarily include all of the details found in the statutes and rules. Readers should consult the actual language of the statutes and rules to answer specific questions. The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240. This publication is available in alternative format upon request. Please call 608-267-3543 for more information.